

PORT LABOUR IN THE EU

**Labour Market
Qualifications & Training
Health & Safety**

Volume II – The Member State Perspective Annexes

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*Study commissioned by the European Commission, Brussels
Contract Number MOVE/B3/ADM/2013-663/SI2.661305
Updated Report, 13 October 2014*

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9. PORT LABOUR IN EU MEMBER STATES AND INDIVIDUAL PORTS

9.1. Belgium

9.1.1. Port system¹

373. Belgium's main sea ports are Antwerp, Zeebrugge, Ghent and Ostend.

Antwerp is the second ranked cargo port in the EU, and the largest in Belgium, providing a gateway for all cargo types to the neighbouring regions of France, the Netherlands and Germany, via road, rail and waterway networks. Antwerp is one of Europe's main continental gateways for container traffic, ranked third in Europe in this sector. Antwerp is Europe's biggest port for general cargo.

Zeebrugge is ranked 20th in Europe as a container port and is also important for ro-ro services, particularly to the UK.

The port of Ghent is a large multipurpose port, located on the Ghent-Terneuzen canal, where mainly dry and wet bulk cargo is handled at industrial plants.

The port of Ostend is a smaller short sea port, located on the seacoast.

In 2012, the gross weight of seaborne goods handled in Belgian ports was about 224.0 million tonnes². As for container throughput, Belgian ports ranked 4th in the EU and 13th in the world in 2011³.

¹ For general information on Belgian ports, see Nelissen, E. and Nevala, A.-M., European Commission, *An exhaustive analysis of employment trends in all sectors related to sea or using sea resources. Country report – Belgium*, 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/belgium_employment_trends_en.pdf, 10-14; Eurostat, *The Netherlands emerged as the largest maritime freight country in the EU*, Eurostat, Statistics in Focus, 12/2012, http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-12-012/EN/KS-SF-12-012-EN.PDF; Eurostat, *Maritime ports freight and passenger statistics*, http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Maritime_ports_freight_and_passenger_statistics; Mathys, C., *Economic importance of the Belgian ports: Flemish maritime ports, Liège port complex and the port of Brussels – Report 2010*, Brussels, National Bank of Belgium, July 2012 (Working Paper Document No. 225), <http://www.nbb.be/doc/ts/Publications/wp/wp225En.pdf>, 92 p.; Merckx, J.-P. and Neyts, D., *De Vlaamse havens. Feiten, statistieken en indicatoren voor 2011*, Brussels, Vlaamse Havencommissie, 2012, 188 p.; Merckx, J.-P. and Neyts, D., *De Vlaamse havens. Feiten, statistieken en indicatoren voor 2013*, Brussels, Vlaamse Havencommissie, 2014, 193 p.; NEA, *Ports and their connections with the TEN-T*, Report on behalf of the European Commission, Directorate-General Mobility and Transport, 2010, 106-107; Nelissen, E. and Nevala, A.-M., European Commission, *An exhaustive analysis of employment trends in all sectors related to sea or using sea resources. Country report – Belgium*, 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/belgium_employment_trends_en.pdf, 10-14; ISL, *Public Financing and Charging Practices of Seaports in the EU*. Bremen, ISL, 2006 http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 228 et seq.; for detailed statistics, see <http://www.serv.be/vhc/thema/1134> and http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

374. The ports of Antwerp, Ghent and Ostend are managed by autonomous, municipally owned port authorities. The port of Zeebrugge is a limited company controlled by the municipality.

Belgian seaports are landlord ports. All cargo handling services are provided by the private sector. In Antwerp, the port authority still operates a fleet of floating and shore cranes which are manned by the authority's own staff and can be hired by stevedoring companies.

9.1.2. Sources of law

375. Belgium is governed under a federal constitutional system. Since 1989, port policy and legislation have been devolved to the Regions who each have their own Parliament and Government.

All four main Belgian sea ports are located in the Region of Flanders. The legal status of Flemish port authorities is defined in the Flemish Ports Decree of 2 March 1999.

Some maritime shipping is handled in inland ports in other Regions (mainly at the port of Brussels in the Brussels Region and at the port of Liège in the Region of Wallonia).

Labour policy and law, however, remain a federal competence. As a result, legislation on port labour continues to be regulated by the federal Belgian lawmaker.

376. Belgian law on port labour is based on the Port Labour Act of 8 June 1972⁴, which was implemented by the Royal Decree of 12 January 1973 establishing a (national) Joint Committee for ports⁵, the Royal Decree of 12 August 1974 establishing (local) Joint Subcommittees for ports⁶ and the Royal Decree 5 July 2004 on the registration of dockworkers⁷.

²

See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

³ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

⁴ Wet van 8 juni 1972 betreffende de havenarbeid / Loi du 8 juin 1972 organisant le travail portuaire.

⁵ Koninklijk besluit van 12 januari 1973 tot oprichting en tot vaststelling van de benaming en van de bevoegdheid van het Paritair Comité van het havenbedrijf / Arrêté royal du 12 janvier 1973 instituant la Commission paritaire des ports et fixant sa dénomination et sa compétence.

⁶ Koninklijk besluit van 12 augustus 1974 tot oprichting en tot vaststelling van de benaming en van de bevoegdheid van paritaire subcomités voor het havenbedrijf en tot vaststelling van het aantal

The Port Labour Act and its implementing decrees apply in the ports of Antwerp, Brugge-Zeebrugge, Ghent, Ostend, Nieuwpoort and Brussels.

The Port Labour Act is not applicable in numerous other, albeit smaller, ports and terminals where maritime and/or inland ships are accommodated, such as Hemiksem, Hoboken, Roeselare, Liège, Namur, Charleroi and the numerous terminals along the Flemish part of the Brussels-Scheldt Canal and the Albert Canal which connects Antwerp and Liège. Reportedly, port workers in these places are employed under the collective agreements for the transport sector reached within Joint Committee No. 140, or under agreements for yet other industries. In some cases, this results in employment costs which are said to be 30 to 50 per cent lower than in the port sector. An investigation of these alleged cost differences is beyond the scope of our study however.

377. General employment law is mainly regulated in the Employment Contract Act of 3 July 1978⁸. It applies to port labour to the extent that specific laws and regulations do not provide otherwise.

378. Health and safety at work is mainly governed by general laws and regulations, in particular the Act of 4 August 1996 on Welfare of Workers in the Performance of Their Work⁹.

Some port labour-specific rules are contained in the General Regulations concerning Protection at Work, which were adopted on 11 February 1946 and 27 September 1947¹⁰.

Directive 2001/96/EC of the European Parliament and of the Council of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers was transposed into Belgian law by a particularly complicated set of federal and regional legal instruments¹¹.

leden ervan / Arrêté royal du 12 août 1974 instituant des sous-commissions paritaires pour des ports, fixant leur dénomination et leur compétence et en fixant leur nombre de membres.

⁷ Koninklijk besluit van 5 juli 2004 betreffende de erkenning van havenarbeiders in de havengebieden die onder het toepassingsgebied vallen van de wet van 8 juni 1972 betreffende de havenarbeid / Arrêté royal du 5 juillet 2004 relatif à la reconnaissance des ouvriers portuaires dans les zones portuaires tombant dans le champ d'application de la loi du 8 juin 1972 organisant le travail portuaire. The legal basis of this Decree is Article 3 of the Port Labour Act.

⁸ Wet van 3 juli 1978 betreffende de arbeidsovereenkomsten / Loi du 3 juillet 1978 relative aux contrats de travail.

⁹ Wet 4 augustus 1996 betreffende het welzijn van de werknemers bij de uitvoering van hun werk / Loi du 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail.

¹⁰ Algemeen Reglement voor de Arbeidsbescherming (ARAB) / Règlement Général pour la Protection du Travail (RGTP).

¹¹ See Decree van 17 maart 2006 tot omzetting van Richtlijn 2001/96/EG van het Europees Parlement en de Raad van 4 december 2001 tot vaststelling van geharmoniseerde voorschriften en procedures voor het veilig laden en lossen van bulkschepen; Besluit van de Vlaamse Regering van 20 oktober 2006 tot uitvoering van het decreet van 17 maart 2006 tot omzetting van Richtlijn 2001/96/EG van het Europees Parlement en de Raad van 4 december 2001 tot vaststelling van

379. Belgium has ratified neither ILO Convention No. 137 nor ILO Convention No. 152.

During the legislative process leading to the adoption of the Port Labour Act of 8 June 1972, reference was made on multiple occasions to ongoing research activities within the ILO in preparation of Convention No. 137. The then Labour Minister Louis Major – who himself had a dockers' union background – even argued that the Port Labour Act was necessary in order to conform to (unspecified) international rules¹². Strikingly, once Convention No. 137 was signed, Belgium chose not to ratify it. It was not until 2001 that the ratification process was started, and initially ratification seems to have found support in the Joint Committee for Port Labour¹³. To our knowledge, no further steps were taken though.

In 1981, the Government stated that, subject to certain minor amendments to existing national safety regulations, it could consider ratifying ILO Convention No. 152. Also, it declared that, whilst it was impossible to implement all its provisions in the immediate future, it was able to propose acceptance of ILO Recommendation No. 160¹⁴. The intention to ratify ILO Convention No. 152 never materialized however. Apparently, Belgium is still bound by ILO Convention No. 32 of 1932¹⁵.

380. To a large extent, Belgian port labour regulations are laid down in collective labour agreements concluded within the national Joint Committee for the port sector (Joint Committee No. 301) or within local Joint Subcommittees, in which employers and trade unions are represented on an equal footing¹⁶.

geharmoniseerde voorschriften en procedures voor het veilig laden en lossen van bulkschepen; Koninklijk besluit van 19 maart 2004 tot wijziging van het koninklijk besluit van 20 juli 1973 houdende zeevaartinspectiereglement; Besluit van de Brusselse Hoofdstedelijke Regering van 18 november 2004 betreffende de voorschriften en procedures voor veilig laden en lossen van bulkschepen; Arrêté du Gouvernement wallon du 19 mai 2005 établissant des exigences et des procédures harmonisées pour le chargement et le déchargement sûrs des vraquiers.

¹² See *infra*, para 473.

¹³ See Rombouts, J., "De toekomst van de regelgeving betreffende de havenarbeid", in Van Hooydonk, E. (Ed.), *Stouwers, naties en terminal operators*, Antwerp / Apeldoorn, European Institute for Maritime and Transport Law / Maklu, 2003, (103), 120 and especially footnote 39.

¹⁴ *Parliamentary Documents*, Chamber of Representatives, 1980-81, no. 856.

¹⁵ Wet van 7 juli 1952 houdende goedkeuring van de Internationale Overeenkomst (nr. 32) betreffende de bescherming tegen ongevallen van arbeiders werkzaam bij het laden en lossen van schepen, door de Internationale Arbeidsconferentie in de loop van haar zestiende zitting, op 27 April 1932, te Genève, aangenomen / Loi du 7 juillet 1952 portant approbation de la Convention internationale (nr. 32) concernant la protection contre les accidents des travailleurs occupés au chargement et au déchargement des bateaux, adoptée à Genève, le 27 avril 1932, par la Conférence internationale du Travail, au cours de sa seizième session.

¹⁶ See Koninklijk Besluit van 12 augustus 1974 tot oprichting en tot vaststelling van de benaming en van de bevoegdheid van paritaire subcomités voor het havenbedrijf en tot vaststelling van het aantal leden ervan / Arrêté Royal du 12 août 1974 instituant des sous-commissions paritaires pour des ports, fixant leur dénomination et leur compétence et en fixant leur nombre de membres. The official name of the local Joint Committee for the port of Antwerp is, quite confusingly, 'National Joint Committee for the Port of Antwerp'.

Some aspects such as wage levels are regulated through collective labour agreements at national level, but the main sources of law are the detailed collective labour agreements at port level which are codified into so-called 'Codices'¹⁷. Such Codices exist in the ports of Antwerp (where actually three different Codices apply: one for the General Register, one for the Logistics Register and one for Mechanics), Zeebrugge (one Codex for the General Register and one for the Logistics Register), Ghent and Ostend / Nieuwpoort. The port of Brussels has no Codex.

To our knowledge, the social partners never asked the Government to declare a port labour Codex generally binding. As a result, the Government was never in a position to officially assess the compatibility of the normative provisions of the Codices with higher rules of law. Because the competence of the local Joint Subcommittees for port labour coincides with the scope of the Port Labour Act and all employers are obliged to join a single employers' association which also represents them within the Joint Subcommittee, the Codices by law govern all employment relations in the port. As a result, there is no need to declare a Codex generally binding in order to further extend its scope.

Some Codices expressly mention that they have the legal status of '(Company) Labour Regulations' (*arbeidsreglement / règlement de travail*; i.e. a mandatorily adopted and binding employee handbook)¹⁸.

Changes are made to the collective labour agreements on a regular basis.

381. Some Codices expressly refer to local usages as an additional source of law¹⁹.

¹⁷ See also Vandevoorde, J.-L., "Havenarbeid in België is een huis met vier kamers", *De Lloyd* 21 February 2012, 8-9.

¹⁸ See Art. 1, 3° of the Codex for the General Register in the port of Zeebrugge-Brugge; Art. 1, 3° of the Codex for the ports of Ostend and Nieuwpoort.

¹⁹ See, for example, Art. 811 and 831 of the Codex for the General Register in the port of Antwerp.

9.1.3. Labour market

- Historical background²⁰

382. For the purposes of the present study, the Belgian case is for several reasons particularly worth considering. Belgian ports not only count among the most important in Europe, they also have a long-standing tradition of port labour regulations and arrangements which go back to the Middle Ages.

383. The Belgian lawyer and historian Baron Gillès de Pélichy, who studied the history of labour arrangements in Flemish ports²¹ distinguished the following port labour corporation types:

- (1) the mere 'brotherhood' (*confrérie*, sometimes called guild (*gilde*)), an association which was based on a cooperation agreement between port workers who vowed not to work with non-members, which was inspired by Christian morality but apparently did not enjoy any official privilege or monopoly;
- (2) the '(cooperative) corporation' (*coopérative*) which owned some cargo handling equipment and on whose behalf all members performed manual port work, sharing

²⁰ The leading authority on the modern history of port labour in Antwerp is Vanfraechem, S., *Een sfeer om haring te braden. Arbeidsverhoudingen in de haven van Antwerpen 1880-1972*, Ghent, Academia Press / Amsab, 2005, 554 p. See also Asaert, G., Devos, G. and Suykens, F., *The 'naties' in the port of Antwerp*, Tielt, Lannoo, 1993, 328 p.; Brugge, J., "Die niet zuipt of koopt, wordt niet gerekend om te werken." *Het sociaal overleg met betrekking tot de Gentse haven tijdens het interbellum (1919-1939)*, master thesis, Ghent University, 2008-2009, http://lib.ugent.be/fulltxt/RUG01/001/361/037/RUG01-001361037_2010_0001_AC.pdf, 191 p.; Decavele, J. and De Herdt, R., *Gent op de wateren en naar de zee*, Antwerp / Ghent, Mercatorfonds / Stadsbestuur Gent, 1976, 158-182 and 307-326; De Roey, J. and Rosiers, H., *De Antwerpse stouwer*, Brasschaat, Pandora, 2010, 239 p.; De Vos, E. and Patteet, P., *75 jaar havenarbeidersbond Antwerpen*, Antwerp, Lloyd, s.d., 68 p.; De Vreese, A.M., *De haven van Gent*, Brussels, Standaard-Boekhandel, 1933, 189-201; Suykens, F., Asaert, G., De Vos, A., Thijs, A. and Veraghtert, K., *Antwerp. A port for all seasons*, Antwerp, MIM, 1986, *passim*; Van Elsen, J., "Het slagveld van den arbeid". *Arbeidsrisico in de haven van Antwerpen rond 1900*, Masters thesis, Catholic University of Louvain, 2003, <http://www.scriptiebank.be/sites/default/files/1796e1d689e75e1ccfaf8beae28206a6.pdf>; Vanfraechem, S., "Survival of the fittest? Macht en concurrentiekracht in de Antwerpse Haven 1900-1964", in X., *NEHA-Jaarboek 2000*, Amsterdam, Nederlands Economisch-Historisch Archief, 2000, 195-222; Vanfraechem, S., "The Antwerp docker: militant by nature?", *Revue belge d'histoire contemporaine / Belgisch tijdschrift voor nieuwste geschiedenis* 2001, 113-175; Vanfraechem, S., "“Much ado about Nothing?” Reorganising the hiring system and decasualization in the port of Antwerp during the 1960s: motives, obstacles, outcome", in Loyen, R., Buyst, E. and Devos, G. (Eds.), *Struggling for leadership: Antwerp-Rotterdam port competition between 1870-2000*, Heidelberg / New York, Physica-Verlag, 2003, 257-273; Vanfraechem, S. and Baete, B., *100 jaar Havenarbeidersbond Antwerpen. Van dokwerker tot havenarbeider*, Ghent, Amsab, 2004, 176 p.; Van Isacker, K., *Meesters en huurlingen*, Antwerp, De Nederlandsche Boekhandel, 1962, 146 p.; Van Isacker, K., *De Antwerpse dokwerker 1830-1940*, Antwerp, De Nederlandsche Boekhandel, 1963, 243 p.; Van Isacker, K., *Afscheid van de havenarbeider*, Antwerp, De Nederlandsche Boekhandel, 1967, 222 p.; Vermeersch, V. (Ed.), *Brugge en de zee. Van Bryggia tot Zeebrugge*, Antwerp, Mercatorfonds, 1982, *passim*.

²¹ Gillès de Pélichy, C., *L'organisation du travail dans les ports flamands*, Louvain / Brussels / Paris, 1899. The study also comprises Maastricht, which is presently in the Netherlands.

among themselves the benefits and paying a contribution to the corporation; the corporation or its members also paid out from their own funds charity-based social security allowances to widows, orphans and the disabled; among these corporations, some (and indeed most of them) were open to all candidates fulfilling certain conditions (especially being a local citizen, acceptance by the other members, paying an entrance fee and showing sufficient muscular strength and dignity), while others were closed, *i.e.* access was granted on a strictly hereditary basis;

(3) the 'public office' (*office public*) which was regulated by either central or local government through the granting of privileges, the approval of tariffs and the taking of an oath, and the award of which was often put up for sale to the highest bidder, which led to abuses aimed at increasing the revenue of office sales (by forcing up of the number of monopolistic offices for all kinds of work, while limiting the number of available individual licences);

(4) (later on) corporations depending on the local Chamber of Commerce (where the public sale of offices was however maintained);

(5) (in a few cases only) unions or federations depending on other corporations, especially those formed by local bargemen.

384. With the lapse of time, the corporative organisation of port labour evolved in many port cities of the Low Countries into an extremely rigid network of petty monopolies which spread over innumerable quays and waterways which were often dedicated to specific segments of waterborne traffic (e.g. certain commodities such as wine, coal, peat or timber, or certain regular inland shipping lines, or just certain quays or localities within the city). Even if no special occupational qualifications or training were required, access to the job was severely restricted, in many cases under the heredity rule. Productivity was low and all too often the available workforce was insufficient to cope with demand. Monopolies together with various other restrictions including the ban on self-handling – in one case even the prohibition on carrying one's own hand luggage upon disembarkation from a passenger barge – were increasingly challenged before courts and municipal authorities by the competing corporations as well as by merchants. Of course, the interests of the latter did not coincide with those of the workers. In Antwerp, as also undoubtedly in all other port cities, the merchants wished for the fast, efficient, inexpensive and unhampered movement of freight. The privileged labourers insisted upon a reasonable wage for their services, a restriction on access to the profession, which ensured every worker employment, a humane rhythm of working and a fair distribution of work. They kept a careful watch to prevent the introduction by the merchants of so-called 'unfree workers', who would work for very little payment²².

²² On the Antwerp situation, see Suykens, F., Asaert, G., De Vos, A., Thijs, A. and Veraghtert, K., *Antwerp. A port for all seasons*, Antwerp, MIM, 1986, 142. For further details, see Prims, F., *De Antwerpsche natiën in de geschiedenis van het midden der XIIIde eeuw tot rond 1550*, Antwerp, Kiliaan, 1922, 78 p.; Prims, F., *De Antwerpsche natiën in de geschiedenis. II. Van rond 1550 tot aan de Barreeltractaten*, Antwerp, Kiliaan, 1922, 112 p.

385. As a result of the annexation to France in 1794, the French Décret d'Allarde of 2-17 March 1791 and the Loi Le Chapelier became applicable, which radically outlawed monopolistic workers' corporations²³. In the City of Ghent, the 24 privileged corporations of port workers disappeared. Every worker was at liberty to load or unload goods, which inevitably led to fierce resistance on the part of the previously privileged port workers. This state of affairs however was not long-lived. By 1802, four barely abolished old corporations had been re-established. However, they only vaguely resembled the guilds which the French revolutionary government had abolished and did not have the same rights or privileges²⁴. In Antwerp, too, the abolition of the old monopolies proved easier said than done, and the corporations struggled with the authorities, customers and competing casual workers to defend their existence and also to establish new corporations. In 1827, a Royal Decree allowed the municipalities to re-establish associations of port workers, but they could no longer claim any monopoly and freedom of labour had to be observed at all times²⁵. Even so, the mediaeval spirit continued to linger along the quays until the 1850s²⁶.

386. In the course of the 19th century, a number of port labour corporations from the Ancien Régime transformed into commercial cooperative societies, the shareholders of which (*bazen* or 'bosses') no longer performed manual labour themselves but hired casual port workers on the basis of short-term (daily) employment contracts; these casual and unskilled workers were not allowed to join the corporation. The restyled corporations also became capitalistic in the sense that they invested in specialised handling gear and means of transportation. Today, this transformation from Ancien Régime corporation to modern cargo handling company remains the basis of the 'naties' in the port of Antwerp and the Stukwerkers company in the port of Ghent. Towards the end of the century, trade unionism demanded reform measures ensuring job security and safety of working practices. In 1906, the Government imposed specific safety rules for port labour²⁷.

387. Prior to the adoption of the 1972 Port Labour Act, cargo handling in ports was exclusively regulated by collective agreements and customs²⁸. In Antwerp, registration of dockers was introduced in 1929. Interestingly, the trade union's primary objective at that time was to close off the port labour market to workers from France and unemployed workers from other sectors in Belgium; the union would have preferred to have an exclusive right of employment for its

²³ On these laws, see also *infra*, para 833.

²⁴ Claey's, P., *Les Associations d'ouvriers d'ébardeurs ou portefaix « aerbeiders » à Gand au XVIIIe siècle*, Ghent, J. Vuylsteke Editeur, 1906, 108. See also De Vreese, A.M., *De haven van Gent*, Brussels, Standaard Uitgeverij, 1933, 190-201.

²⁵ See *Pandectes belges*, v° Débardeur, paras 3-4.

²⁶ See Van Isacker, K., *De Antwerpse dokwerker 1830-1940*, Antwerp, De Nederlandsche Boekhandel, 1963, 13 *et seq.*

²⁷ Arrêté Royal du 20 novembre 1906 prescrivant les mesures spéciales à observer dans les entreprises de chargement, de déchargement, de réparation et d'entretien des navires et bateaux.

²⁸ In some ports such as Ghent, criminal sanctions on the use of non-registered workers were laid down in the local Port Regulations.

members ratified in an Act of Parliament, but employers feared a return to a mediaeval guild system and defended freedom of employment²⁹. At first, registration of workers was not restricted to a fixed maximum number of workers³⁰.

388. In 1946, social partners in Antwerp agreed on a system of social security for all port workers, under which employers pay a 15 per cent levy on wages to finance a Subsistence Guarantee Fund (*Fonds voor Bestaanszekerheid*) which guarantees workers an additional allowance on top of the State's unemployment benefits. These social security arrangements are still in place today.

389. In 1972, the Port Labour Act gave port workers legal status. To this day, this Act has remained the basis of the Belgian port labour system. We shall summarize and assess it below³¹.

390. As regards 20th century developments, foreign observers consider Belgium to have been a forerunner, especially in the fields of the establishment of hiring and payment halls, the distinction between professional and occasional workers, joint decision-making, collective agreements, etc.³². It should be pointed out, however, that the Antwerp registration system was certainly not the first one in Europe. As we have seen, it was only established in 1929 and drew inspiration from arrangements which were already in place in England, Germany (Hamburg) and the Netherlands (Amsterdam and Rotterdam)³³.

Be that as it may, today Belgium is perhaps the Member State with the most 'classical' port labour system in the entire EU. Whereas other registration and pool systems underwent substantial reform, the Belgian regime has largely remained unaltered since its confirmation in the national Port Labour Act of 1972. It does not come as a surprise, then, that Belgian

²⁹ See Vanfraechem, S., *Een sfeer om haring te braden. Arbeidsverhoudingen in de haven van Antwerpen 1880-1972*, Ghent, Academia Press / Amsab, 2005, 130 et seq. and 143-144.

³⁰ See Vanfraechem, S., *Een sfeer om haring te braden. Arbeidsverhoudingen in de haven van Antwerpen 1880-1972*, Ghent, Academia Press / Amsab, 2005, 182 et seq.

³¹ See *infra*, para 391 et seq.

³² On the Antwerp example of "labour exchanges", established in 1902 and soon copied in Hamburg and Rotterdam, see Helle, H.J., *Die unstetig beschäftigten Hafnarbeiter in den nordwesteuropäischen Häfen*, Stuttgart, Gustav Fischer Verlag, 1960, 16-17. The author, who studied port labour regimes in Antwerp, Bremen, Bremerhaven, Hamburg and Rotterdam, termed the Antwerp hiring arrangements, characterised by the use of hiring halls open to registered dockers only and by free choice of dockers by the foremen, the "institutionalisierte Ecke" of the "Antwerpener System", and considered Antwerp the first and also the last port to have used such a system; compare on Antwerp's international influence Vigarié, A., *Ports de Commerce et Vie Littorale*, Paris, Hachette, 1979, 417.

³³ See Vanfraechem, S., *Een sfeer om haring te braden. Arbeidsverhoudingen in de haven van Antwerpen 1880-1972*, Ghent, Academia Press / Amsab, 2005, 126 et seq.

stakeholders – and, for that matter, Belgian MEPs – played a leading role during the debates on both EU Port Packages.

- *Regulatory set-up*

391. The essence of the current Belgian port labour regime is that only registered port workers (Dutch *erkende havenarbeiders*, French *les ouvriers portuaires reconnus*³⁴) may perform port work.

Article 1 of this Act indeed provides that no one shall have port work performed by any employee other than a registered port worker³⁵.

Infringements are criminally and/or administratively sanctioned on the basis of Article 4 of the Port Labour Act. These infringements are investigated, recorded and sanctioned in accordance with the Social Penal Code³⁶. Practically speaking, the Act may be enforced by the public prosecutor, the police, national labour agencies and, in some rare cases, the harbour master. In most cases, enforcement actions are started at the request of a trade union.

The Federal Service for Employment, Labour and Social Dialogue, the employers' organisation CEPA, the trade unions BTB, ACV Transcom and ACLVB and the port authorities of Antwerp, Zeebrugge and Ghent all confirmed that the Belgian register of port workers can be considered a register within the meaning of ILO Convention No. 137 which ensures priority of engagement for registered dockworkers. Even if Belgium is today not bound by this Convention³⁷, we concur with Peter Turnbull that the current Belgium system of employment and training of port workers can be considered fully consistent with its requirements³⁸.

³⁴ We prefer to translate 'erkend' and 'reconnu' as 'registered' rather than as 'recognised'.

³⁵ The Dutch and French versions of this key provision read as follows:

Niemand mag in de havengebieden, havenarbeid laten verrichten door andere werknemers dan erkende havenarbeiders.

Nul ne peut faire effectuer un travail portuaire dans les zones portuaires par des travailleurs autres que les ouvriers portuaires reconnus.

³⁶ The current amount of fines is between 300 to 3,000 EUR for a penal fine and 150 to 1,500 EUR for an administrative fine. See also Koninklijk Besluit van 5 januari 1978 tot aanwijzing van de ambtenaren en beambten, belast met het toezicht op de toepassing van de wet van 8 juni 1972 betreffende de havenarbeid en van de uitvoeringsbesluiten ervan / Arrêté royal du 5 janvier 1978 désignant les fonctionnaires et agents chargés de surveiller l'application de la loi du 8 juin 1972 organisant le travail portuaire et de ses arrêtés d'exécution; on the sanctioning system, see further *infra*, para 462.

³⁷ See *supra*, para 379.

³⁸ See Turnbull, P., "Training and Qualification Systems in the EU Port Sector: Setting the State of Play and Delineating an ETF Vision", Brussels, ETF, July 2009, <http://www.itfglobal.org/files/extranet/-75/17739/Final%20report%20EN.pdf>, 16.

Practically speaking, registered port workers receive a personal registration card and/or an access card as well as a personal wages book³⁹.

392. Pursuant to Article 3*bis* of the Port Labour Act, the King, upon the advice of the local Joint Subcommittee, may make it mandatory upon employers employing port workers in the relevant port area to join a registered employers' association which shall be mandated to fulfil all the obligations of the employer under labour and social security laws⁴⁰. In order to be registered as an employers' association, the association must already have the majority of port employers as its members⁴¹.

By virtue of this provision, employers' associations were designated by Royal Decree for the ports of Antwerp (Centrale der werkgevers aan de haven van Antwerpen, originally Centrale des Employeurs au Port d'Anvers and still known as CEPA)⁴², Brugge-Zeebrugge (Centrale der werkgevers aan de haven van Zeebrugge, CEWEZ)⁴³, Ghent (Centrale van de werkgevers aan de haven van Gent, earlier Centrale des Employeurs au Port de Gand, still operating as CEPG)⁴⁴, Ostend and Nieuwpoort (Centrale der werkgevers aan de haven van Oostende, CEWO)⁴⁵ and Brussels and Vilvoorde (Centrale der werkgevers aan de haven van Brussel en Vilvoorde / Centrale des employeurs des ports de Bruxelles et de Vilvorde, CEMPO)^{46,47}.

393. For the purposes of the Port Labour Act (as well as the Collective Bargaining Act of 5 December 1968⁴⁸), the notion of port labour is defined in considerable detail by the Royal Decree of 12 January 1973 establishing a Joint Committee for ports (Art. 1).

The definition of port labour includes (1) all handling, whether performed as main activity or incidentally, of goods carried in and out by sea-going ship or inland waterway vessel, by railway goods wagon or lorry, and the ancillary services relating to those goods, whether such operations take place in docks, on navigable waterways, on quays or in establishments

³⁹ See, for example, Art. 1, 3° and 7 of the Codex for the General Register in the port of Zeebrugge-Brugge; Art. 2.1 of the Codex for the port of Ghent.

⁴⁰ Case law suggests that the mandate of the organisation only bears on administrative formalities as required by laws and regulations (see Court of Appeal of Ghent, 17 September 2009, Advocate General for Labour / N.V. Gentse Havenbehandelingen and CEPG, no. C/1016/09, unreported).

⁴¹ On this provision, see Beckers, J., "Werken tussen schip en kade", *Belgisch Tijdschrift voor Sociale Zekerheid* 1989, (1065), 1071-1073; Messiaen, T., "De lasthebber in de Welzijnswet: haar strafrechtelijke aansprakelijkheid in de havenarbeid?", *Journal des Tribunaux du Travail* 2010, 385-389; Rombouts, J., "Nieuwe regels bij de tewerkstelling van havenarbeiders", *Rechtskundig Weekblad* 1985-86, 1311-1320.

⁴² Royal Decree of 4 September 1985.

⁴³ Royal Decree of 10 July 1986.

⁴⁴ Royal Decree of 29 January 1986.

⁴⁵ Royal Decree of 1 March 1989.

⁴⁶ Royal Decree of 20 March 1986.

⁴⁷ At national level, the employers are represented in the Joint Committee for port labour by the Federation of Employers at Belgian Ports (Werkgeversverbond der Belgische havens). Unlike the local association, this Federation has no specific legal status.

⁴⁸ See Art. 2 of the Port Labour Act.

engaged in the importation, exportation and transit of goods, as well as all handling of goods carried in and out by sea-going ship or inland waterway vessel on the quays of industrial plants; and (2) all handling of goods and performance of ancillary services within port areas falling neither under (1) nor under the competence of any other Joint Committee for manual or office workers.

The Royal Decree goes on to define the notions of goods, handling, ancillary services and establishments.

The notion of goods comprises all merchandise including containers and means of transportation, with the exception of (1) crude oil, petroleum products and liquid bulk carried in and out for refineries, chemical plants and storage and transformation activities at petroleum facilities, (2) fish shipped in by fishing vessels and (3) liquified gases under pressure and in bulk.

Handling, then, comprises loading, unloading, stowing, unstowing, restowing, dumping, trimming, classifying, sorting, calibrating, stacking, unstacking, and assembling and disassembling individual consignments.

Ancillary services refers to tallying, weighing, measuring, cubing, controlling, receiving, guarding (with the exception of guarding services performed on behalf of port companies by undertakings falling under the Joint Committee for guarding and inspection services), delivering, sampling, sealing, lashing and unlashng.

Finally, the concept of establishments refers to shelters, sheds, loading, unloading and storage places, and warehouses.

394. The same provision contains detailed geographical delimitations for each of the port areas to which the Port Labour Act applies. The contours of these port areas are particularly wide. As a result, these areas include large stretches of land behind the quays, where warehouses and industrial plants and even offices or residential zones are located.

Figure 55. The port area of Antwerp – which is probably the biggest port area in the world – as defined for port labour purposes in the Royal Decree of 12 January 1973 (source: CEPA)

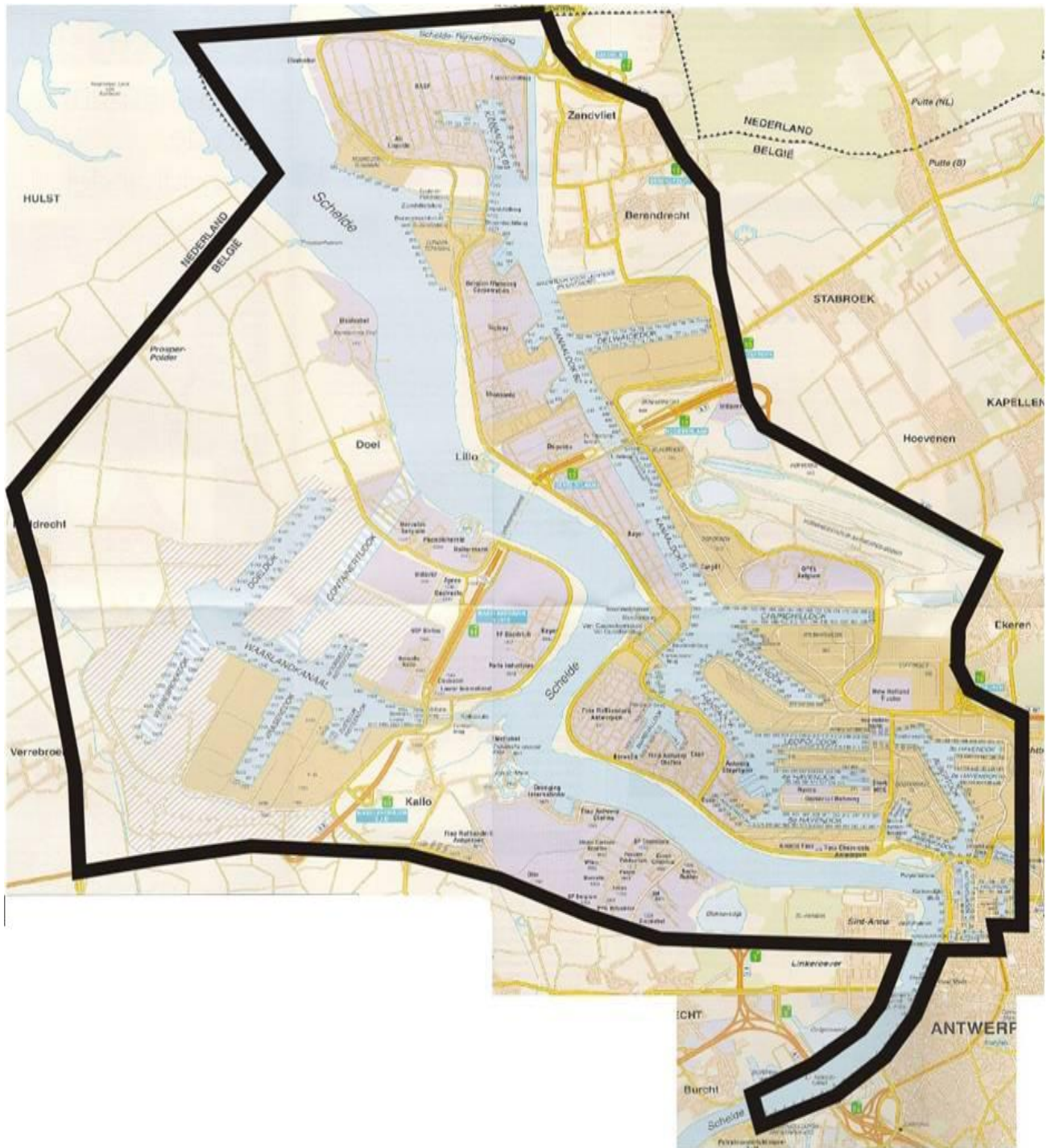


Figure 56. The port areas of Zeebrugge (brown) and Brugge (green) as defined for port labour purposes in the Royal Decree of 12 January 1973 (source: CEWEZ / Zeebrugge Port Authority)

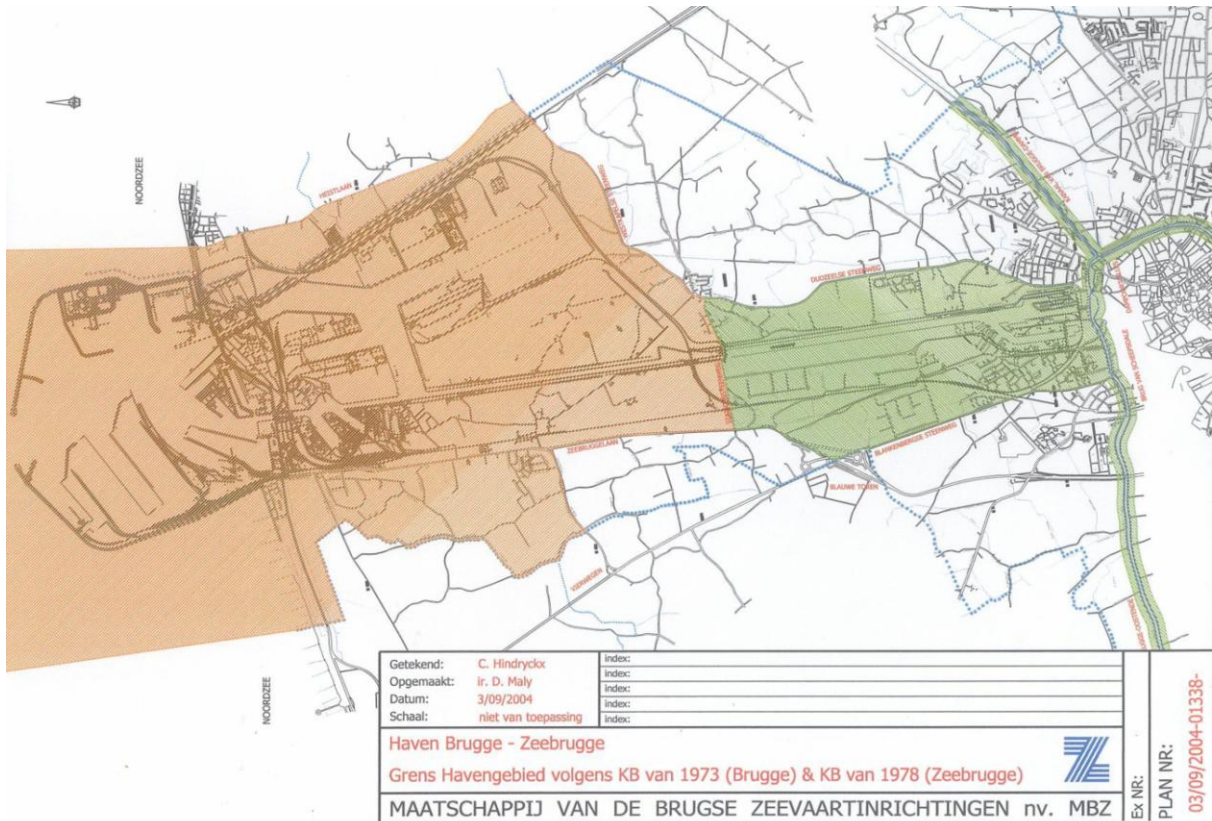
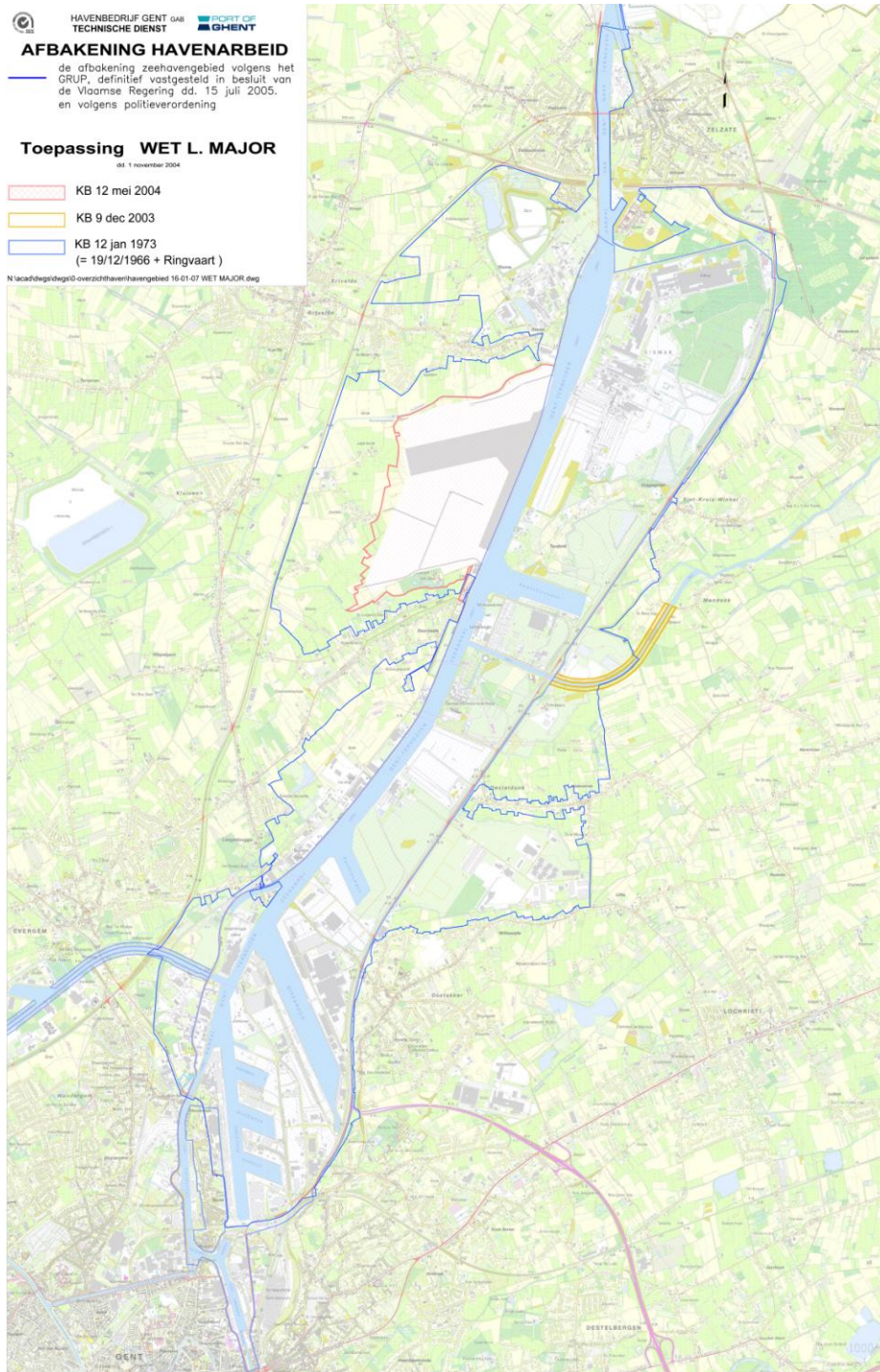


Figure 57. The port area of Ghent as defined for port labour purposes in the Royal Decree of 12 January 1973 (source: Ghent Port Authority)



395. Pursuant to the Royal Decree of 5 July 2004, all port workers are registered by an Administrative Commission which is established within each local Joint Subcommittee for port labour. Within the Administrative Commission, the employers' organisation and the trade unions are equally represented (Art. 1).

396. Upon registration, the port workers are divided into two groups: the General Register (Dutch *algemeen contingent*) and the Logistics Register (Dutch *logistiek contingent*). General Register workers are registered for the purpose of performing all port labour as defined in the Royal Decree of 12 January 1973. Logistics Register workers are registered for the purpose of performing all port labour as defined in the Royal Decree of 12 January 1973 on locations where goods, in preparation of their subsequent distribution or forwarding, undergo a transformation which indirectly leads to a demonstrable added value (Dutch: *op locaties waar goederen ter voorbereiding van hun verdere distributie of verzending een transformatie ondergaan die indirect leidt tot een aanwijsbare toegevoegde waarde* / French *sur des lieux où des marchandises subissent, en préparation de leur distribution ou expédition ultérieure, une transformation qui mène indirectement à une valeur ajoutée démontrable*) (Art. 2).

397. Both General and Logistics Register workers are registered for either an unlimited or a limited period (Art. 3).

398. According to the Royal Decree of 5 July 2004⁴⁹, a worker who meets the following requirements is eligible for registration in the General Register (Dutch: *komt in aanmerking voor de erkenning als havenarbeider* / French *entre en ligne de compte pour la reconnaissance comme ouvrier portuaire*):

- (1) 'good behaviour and morality' (proven by a certificate delivered by the municipal authorities);
- (2) confirmation of medical fitness by an industrial medical officer;
- (3) passing a psychotechnical test which assesses intelligence, personality and motivation;
- (4) minimum age of 18⁵⁰;
- (5) sufficient professional knowledge of languages to understand all orders and instructions relating to the work;
- (6) attendance of induction courses on safe working practice and professional skills during 3 weeks, and passing a final exam;

⁴⁹ The Codex for the Port of Ghent (Art. 4.2) mentions conditions for registration which are superseded by the Royal Decree of 5 July 2004. In practice, the latter instrument is of course applied.

⁵⁰ Art. 291 of the Codex for the General Register in the port of Antwerp requires a minimum age of 21 for crane drivers. The legality of this requirement can be questioned. Also, issues of equal treatment may arise.

(7) not having been the subject of a withdrawal of registration in the same port area in the course of the previous 5 years⁵¹ (Art. 4, § 1).

399. In order to be eligible for registration in the Logistics Register, the criteria are less stringent. No psychotechnical test is imposed, the induction courses last only 3 days and there are no language requirements. All other requirements are identical however (Art. 4, § 2).

400. The Royal Decree expressly stipulates that port workers who demonstrate that they meet comparable requirements (*vergelijkbare voorwaarden / des conditions équivalentes*) with regard to port labour in another EU Member State do not have to satisfy the requirements of the Decree (Art. 4, § 3). This rule implements the principle of mutual recognition⁵².

401. The Royal Decree of 5 July 2004 obliges all registered port workers to accept port labour and perform tasks in accordance with standards of good workmanship. Workers of the General Register also have to meet minimum performance criteria (Art. 5).

402. Should the Regional Employment Agency note a shortage of registered port workers, an occasional worker (*gelegenheidsarbeider / ouvrier portuaire occasionnel*) may be employed, but only by way of exception and for one shift. Where they are employed to fill up the General Register, occasional workers must meet the normal requirements concerning good behaviour and morality, medical fitness, minimum age and language skills, but not the other requirements⁵³. In order to fill up the Logistics Register, the occasional worker need only be of minimum age (Art. 6).

403. Pursuant to the Royal Decree of 5 July 2004, the Administrative Commission may (Dutch *kan* / French *peut*) withdraw the registration of a port worker:

(1) in the case of serious shortcomings which result in the immediate and full impossibility for the worker and the company concerned continuing professional cooperation;

⁵¹ The Council of State and the Government both stated that such a time limit is necessary in order to comply with the freedom of commerce and the principle of equal treatment (see Report to the King on the Royal Decree of 19 December 2000).

⁵² See the Report to the King on the Royal Decree of 19 December 2000. The latter Decree did however not contain an express provision to this effect.

⁵³ See also Art. 9 of the Codex for the General Register in the Port of Antwerp; Art. 15 of the Codex for the General Register in the port of Zeebrugge-Brugge.

- (2) in the case of physical or intellectual inability to perform port work;
- (3) in the case of the worker refusing to submit certain documents;
- (4) with regard to General Register workers in the case of a worker not meeting the minimum performance requirements (Art. 7).

In certain cases the Administrative Commission may suspend registration (Art. 8).

The Royal Decree also sets out the cases where the registration expires (Art. 9) and regulates procedural matters (Art. 10-11).

Further details on disciplinary measures are contained in the local Codices⁵⁴.

404. Finally, the Royal Decree of 5 July 2004 defines the minimum performance requirements, *i.e.* the obligation on General Register workers to perform a minimum number of tasks during a reference period, taking into account the actual demand for labour, the age, the ranking and professional category of the worker and his or her actual attendance at hiring sessions (Art. 12-13).

405. The local employers' association, in conjunction with the port workers' unions, determines the number of port workers and decides whether new port workers can be registered. The Antwerp Codex expressly provides that the Joint Subcommittee decides on registration taking into account the need for workers (Art. 7). In Zeebrugge and Ghent, the register is extended as need arises.

406. In the port of Antwerp, the general port workers are divided into several occupational categories corresponding to the various trades (general work, crane drivers, drivers *etc.*), and two subgroups A and B based on seniority⁵⁵. New recruits join subgroup B and can move up to subgroup A after 18 months. An overview of the classification system is provided above⁵⁶.

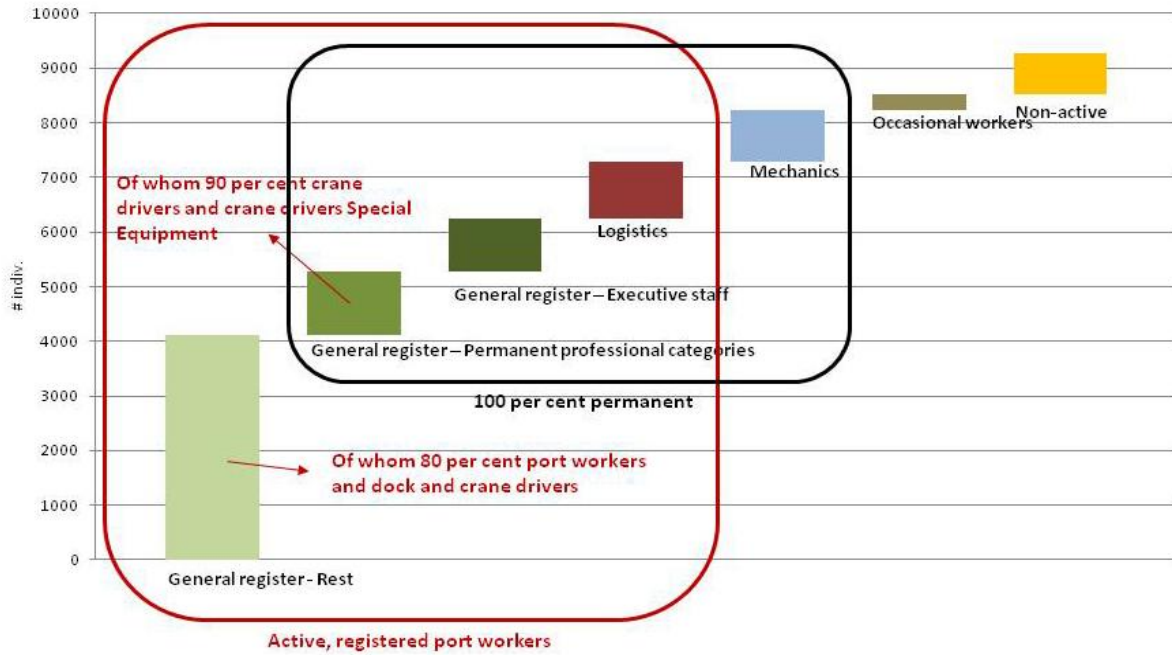
407. The figure below provides an insight into the classification of the Antwerp port workers in registers and categories.

⁵⁴ See, for example, Chapter X (Art. 581 *et seq.*) of the Codex for the General Register in the port of Antwerp.

⁵⁵ See Chapter IX (Art. 568 *et seq.*) of the Codex for the General Register in the port of Antwerp.

⁵⁶ See *infra*, para 415.

Figure 58. Categories of port workers in Antwerp, 2012 (source: CEPA)



408. For the purpose of (un)employment regulation, the pools and the hiring halls are managed by the Flemish official Public Employment Agency VDAB (Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding) or, in the case of the Port of Brussels, by the Brussels official Public Employment Service Actiris. In the hiring halls, one or more daily calls are organised. The hiring halls are staffed by the Public Employment Agency.

However, not all general port workers are hired on a daily basis and must therefore report to the hiring halls. First of all, local collective labour agreements may allow permanent employment for a number of job categories. In Antwerp, for example, office staff and crane drivers may be permanently employed by an individual port company. Still, in pursuance of the Port Labour Act these permanently employed workers must be registered as well. Next, a substantial number of port workers are almost always employed by the same employer on a basis of ‘repeat hiring’ (Dutch *doorbestelling*) which means that the employer continues to engage an individual worker, without interruption, for several consecutive tasks; in this case, it is unnecessary for the worker to report to the hiring hall to find a job. These workers are known as semi-regulars (*losvasten*)⁵⁷.

As a result, in the port of Antwerp, about 67 per cent of the port workers are permanently employed by the same employer and another 19 per cent work for the same company almost

⁵⁷ See further details on permanent employment *infra*, para 450.

every day. Approximately 14 per cent of registered workers are casual and are assigned to different employers on a daily basis⁵⁸. In Zeebrugge, some 85 per cent of port workers work according to a timetable which ensures semi-permanent employment for a minimum number of days; 15 per cent are casual pool workers. In Ghent, approximately 50 per cent of workers work for the same employer every day, and a large majority of workers are re-hired by their employer without having to report to the hiring hall. In Ostend, a timetable system is applied as well. In Brussels, all registered port workers are employed on a daily basis.

409. Port workers in subgroup A who are not hired are entitled, on the one hand, to payment of unemployment benefit (Dutch *werkloosheidsuitkering*, French *allocation de chômage*) by the National Employment Office and, on the other hand, to an attendance allowance (Dutch *aanwezigheidsvergoeding*, French *jeton de présence*) funded by the Subsistence Guarantee Fund owned by the Antwerp employers. As a rule, the total amount of these two benefits – the main daily unemployment benefit and the attendance allowance – is equal to 66 per cent of the basic wage. Thus an Antwerp port worker for whom there is no work receives a higher compensation than someone who is unemployed in another industry. Port workers in subgroup B are not entitled to the attendance allowance⁵⁹. Specific provisions apply to logistics workers⁶⁰.

410. A particular type of port worker in Antwerp is the *natiebaas*, a self-employed port worker who is also an associate in a port company, especially a warehousing company, called *natie* (with *baas* meaning boss)⁶¹. These port workers perform port labour on an independent basis. Their legal position is laid down in a special collective labour agreement which was declared generally binding by a Royal Decree of 25 October 1988⁶². According to the Antwerp Codex, the *natiebazen* are the only port workers who may perform port labour on a self-employed basis⁶³.

⁵⁸ Data provided by CEPA. See also De Roo, M., "Havenarbeid in catch 22", *De Tijd* 15 July 2011, 7.

⁵⁹ See the detailed regulation in the Articles of Association of the Subsistence Guarantee Fund of the Port of Antwerp: <http://www.cepa.be/wp-content/uploads/statuten.pdf>; see also International Labour Conference (90th Session 2002), General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973, <http://www.ilo.org/public/english/standards/realm/ilc/ilc90/pdf/rep-iii-1b.pdf>, 61, para 143.

⁶⁰ See Art. 165 of the Codex for the Logistics Register in the port of Antwerp.

⁶¹ On the historical background of these companies, see *supra*, para 386. The term *natiebaas* started to appear in the 1830s, when members of the old corporations were hiring large numbers of casual port workers (see Van Isacker, K., *De Antwerpse dokwerker 1830-1940*, Antwerpen, De Nederlandsche Boekhandel, 1963, 18).

⁶² Koninklijk Besluit van 25 oktober 1988 waarbij algemeen verbindend wordt verklaard de collectieve arbeidsovereenkomst van 24 mei 1988, gesloten in het Paritair Subcomité voor de haven van Antwerpen, Nationaal Paritair Comité der haven van Antwerpen genaamd, houdende het statuut van de natiebazen / Arrêté Royal du 25 octobre 1988 rendant obligatoire la convention collective de travail du 24 mai 1988, conclue au sein de la Sous-commission paritaire pour le port d'Anvers, dénommée " Nationaal Paritair Comité der haven van Antwerpen ", portant le statut des membres-actionnaires de nations.

⁶³ Article 916 of the Codex for the General Register in the port of Antwerp.

411. Another specific category of workers in the port of Antwerp are the mechanics (*vaklui*). These workers construct, maintain and repair port equipment and gear (the manning of which is an exclusive right of registered dockworkers however; mechanics are not allowed to perform port labour)⁶⁴. The employment of mechanics is governed by a separate Codex⁶⁵.

The work of mechanics may only be performed by a registered port worker or by a registered mechanic⁶⁶. As a matter of fact, mechanics, who remain outside the scope of the Port Labour Act, must also be registered by the Joint Subcommittee for Port Labour. While port workers obtain an *erkenning*, mechanics receive an *inschrijving*. There does not seem to exist any substantial difference between the two, however; both Dutch terms should be translated as 'registration'. Of course, whereas the registration of port workers is based on the Port Labour Act, the registration of mechanics is only based on the Codex for Mechanics, which is a collective labour agreement.

The conditions for registration as a mechanic are:

- (1) minimum age of 18 or not being subject to compulsory full-time education;
- (2) not having been the subject of a withdrawal of registration in the same port area in the past;
- (3) submission of a document issued by a trade union certifying that the candidate was informed of his rights and duties by a trade union represented in the Joint Subcommittee for the Port of Antwerp⁶⁷.

The port of Ghent also maintains a separate register of mechanics, which is regulated in a collective agreement which was declared generally binding⁶⁸. Conditions for registration are identical to the Antwerp regime, except that the submission of a trade union document is replaced by the presentation of a document issued by the harbour master confirming the right to enter the port area.

Zeebrugge and Ostend have no separate Codex or collective agreement on mechanics.

⁶⁴ See Art. 1 and 2 of the Codex for Mechanics in the port of Antwerp.

⁶⁵ See already *supra*, para 380.

⁶⁶ See again Art. 2 of the Codex for Mechanics in the port of Antwerp.

⁶⁷ Art. 7 of the Codex for Mechanics in the port of Antwerp. On the absence of a time limit under (2), see *supra*, para 398, footnote. On the condition under (3), see *infra*, para 448.

⁶⁸ Koninklijk Besluit van 21 november 1985 waarbij algemeen verbindend wordt verklaard de collectieve arbeidsovereenkomst van 8 augustus 1985, gesloten in het Paritair Subcomite voor de haven van Gent houdende het statuut van de vaklui in het Gentse havengebied / Arrêté Royal du 21 novembre 1985 rendant obligatoire la convention collective de travail du 8 août 1985, conclue au sein de la Sous-commission paritaire pour le port de Gand, portant le statut des gens de métier dans la zone portuaire de Gand.

- *Facts and figures*

412. According to CEPA, the employers' association in the port of Antwerp, there are presently about 135 port employers in the port of Antwerp, with 15 dominant commercial groups⁶⁹. In mid 2012, the port had 5,659 port workers on the General Register and 1,073 port workers on the Logistics Register. The port also employs 923 mechanics (Dutch *vaklui*) who remain outside the scope of the Port Labour Act and are not registered as port workers.

According to the Port Authority of Zeebrugge, there are 20 port employers in the port of Zeebrugge. The port has 1,752 port workers on the General Register, 327 port workers on the Logistics Register, 27 mechanics and 45 occasional port workers.

The Port Authority of Ghent and CEPG report that there are about 20 employers in the port, belonging to 5 or 6 major groups. The port has about 470 port workers on the General Register and 550 port workers on the Logistics Register.

In Ostend, there remain only some three regular employers, and port workers number around 40. Some of them are also registered as occasional workers in Zeebrugge. Nieuwpoort no longer employs registered port workers.

According to the Port Authority of Brussels, there are 10 port employers in the port of Brussels, and 39 registered port workers (figures for April 2014). Employers' association CEMPO and the Brussels official Public Employment Service Actiris report that only about 10 port workers are employed on a regular basis.

The Port Authority of Antwerp acts as an employer for its own team of crane drivers.

As a result, the total number of employers is around 190, with perhaps 50 companies who regularly use the pool.

413. According to the Federal Public Service for Employment, Labour and Social Dialogue there are currently (April 2014) 10,988 registered port workers in Belgium. This would appear to represent, roughly, about 10 percent of total direct employment in port areas in Belgium⁷⁰.

⁶⁹ See further *infra*, para 473.

⁷⁰ In its authoritative annual report on the economic importance of Belgian ports, the National Bank of Belgium states that the ports of Antwerp, Zeebrugge, Ghent, Ostend and Brussels directly employed 105,829 persons in 2011. Direct and indirect employment, including in Liège, resulted in 256,382 jobs (Matthys, C., *Economic importance of the Belgian ports: Flemish maritime ports, Liège port complex and the port of Brussels – Report 2011*, Brussels, National Bank of Belgium, July 2013 (Working Paper Document No. 242), <http://www.nbb.be/doc/ts/publications/wp/wp242En.pdf>, 14.

414. The tables below show details on the evolution of the number of port workers in Belgian sea ports between 1980 and 2012.

Table 3. Evolution of port labour employment in Antwerp, 1980-2012 (source: Flemish Ports Commission, CEPA and AGHA (SEA)⁷¹)

Year	General register	Additional register (fruit sorters, mechanics, logistics and warehouse workers)	Total of registered workers	Total number of performed tasks (general register)	Average annual number of tasks per worker (general register)
1980	9,270	1,026	10,296	1,613,105	174
1990	7,009	1,434	8,443	1,384,598	198
2000	5,567	1,530	7,097	1,071,813	193
2001	5,388	1,402	6,790	1,076,236	200
2002	5,720	1,164	6,884	1,153,354	202
2003	5,739	1,377	7,116	1,182,298	206
2004	6,303	1,555	7,858	1,232,722	196
2005	6,742	1,651	8,393	1,274,413	189
2006	6,900	1,696	8,596	1,303,664	189
2007	6,819	1,679	8,498	1,356,651	199
2008	6,898	1,777	8,675	1,377,539	200
2009	6,650	1,785	8,435	1,228,708	185
2010	6,240	1,827	8,067	1,322,822	212
2011	6,053	1,862	7,915	1,170,613	193
2012	6,029	1,776	7,805	1,166,335	193

⁷¹ <http://www.vlaamsehavencommissie.be/vhc/page/evolutie-contingent-havenarbeiders-en-gepresteerde-taken-haven-van-antwerpen-1980-2012>. Figures are for end of year (data were valid on 21 March 2014).

Table 4. Evolution of port labour employment in Zeebrugge, 1980-2013 (source: Flemish Ports Commission and CEWEZ⁷²)

Year	General register	Additional register (fruit sorters, mechanics, logistics workers)	Total of registered workers	Total number of performed tasks (general register)	Average annual number of tasks per worker (general register)
1980	327	0	327	36,162	111
1990	862	0	862	158,725	184
2000	1,080	0	1,080	238,235	221
2001	1,058	0	1,058	235,986	223
2002	1,037	0	1,037	228,979	221
2003	1,000	0	1,000	228,463	228
2004	1,089	0	1,089	247,497	227
2005	1,246	276	1,522	281,247	226
2006	1,395	277	1,672	309,241	222
2007	1,487	323	1,810	347,698	234
2008	1,645	282	1,927	352,689	214
2009	1,560	262	1,822	288,796	185
2010	1,516	259	1,775	331,731	219
2011	1,499	313	1,812	332,766	222
2012	1,480	320	1,800	294,914	199
2013	1,458	323	1,781	322,266	221

⁷² <http://www.vlaamsehavencommissie.be/vhc/page/evolutie-contingent-havenarbeiders-en-gepresteerde-taken-haven-van-zeebrugge-1980-2012>. Figures are for end of year. See further details on <http://www.zeebruggeport.be/nl/node/136>.

Table 5. Evolution of port labour employment in Ghent, 1980-2013 (source: Flemish Ports Commission and CEPG⁷³)

Year	General register	Additional register (crane drivers, mechanics, tallymen)	Total of registered workers	Total number of performed tasks (general register)	Average annual number of tasks per worker (all registers)
1980	787	0	787	131,095	167
1990	761	119	880	126,293	166
2000	479	207	686	81,142	169
2001	459	190	649	75,185	164
2002	430	179	609	67,620	157
2003	424	175	599	68,768	162
2004	442	169	611	76,980	174
2005	430	168	598	74,967	174
2006	432	163	595	9,465	184
2007	464	164	628	81,536	176
2008	458	163	621	88,500	193
2009	445	159	604	66,990	151
2010	419	164	583	81,659	194
2011	463	166	629	95,268	206
2012	457	147	604	86,978	190
2013	456	142	598	82,817,50	181,50

⁷³ <http://www.vlaamsehavencommissie.be/vhc/page/evolutie-contingent-havenarbeiders-en-gepresteerde-taken-haven-van-gent-1980-2012>. Figures are for **beginning** of year, (data collected on 21 March 2014).

Table 6. Evolution of port labour employment in Ostend, 1980-2012 (source: Flemish Ports Commission Autonoom Gemeentebedrijf Haven Oostende, Sociale Samenwerking - Group S⁷⁴)

Year	General register	Total number of performed tasks (general register)	Average annual number of tasks per worker (general register)
1990	55	5,135	93
2000	40	6,838	171
2001	34	7,308	215
2002	45	9,157	203
2003	59	12,206	207
2004	57	12,143	213
2005	53	11,949	225
2006	58	12,792	221
2007	66	14,203	215
2008	76	15,757	207
2009	74	10,941	148
2010	40	5,698	142
2011	34	4,135	122
2012	31	4,294	139
2013	23	2,449	106

The figures above do not include workers performing cargo handling work who are not registered as port workers, such as occasional workers or crane drivers employed by a port authority or a manufacturing company⁷⁵.

415. In the port of Antwerp, in 2012 the numerical strength of the port workers' register and its various subcategories was as follows:

⁷⁴ <http://www.vlaamsehavencommissie.be/vhc/page/evolutie-contingent-havenarbeiders-en-gepresteerde-taken-haven-van-oostende-1990-2012>. Figures are for beginning of year (data collected on 21 March 2014).

⁷⁵ See *infra*, paras 473 and 475 *et seq.*

Table 7. Composition of the port labour pool in Antwerp, 30 June 2012 (source: CEPA)

REGISTER / PROFESSIONAL CATEGORY	ACTIVE	SUSPENDED	TOTAL
I. GENERAL REGISTER			
1. Port workers rank A			
PORT WORKERS ALL TASKS	1.635	186	1.821
Other professional categories	1.669	156	1.825
Dock drivers / crane drivers	298	33	331
Dock drivers	590	41	631
Signalmen	62	12	74
Guards	0	0	0
Lashers	417	28	445
Container tallymen	23	10	33
General cargo tallymen	71	15	86
Multicompetent tallymen	208	17	225
Dry bulk workers	0	0	0
Dry bulk signalmen	0	0	0
Permanent professional categories	1.174	30	1.204
Permanently employed port workers	21	7	28
Warehouse workers A	8	1	9
Container inspectors	2	1	3
Permanent container tallymen	115	3	118
Crane drivers	17	0	17
Crane drivers / Special equipment	27	0	27
Dock drivers / Crane drivers special equipment	984	18	1.002
Executive categories	924	27	951
Supervisors ⁷⁶	115	5	120
Lashing supervisors	14	0	14
Dry bulk supervisors	0	0	0
Chief tallymen	92	3	95
Foremen	444	11	455
Lashing foremen	91	0	91
Dry bulk foremen	0	0	0
Assistant chief tallymen	149	6	155
Chief warehousemen ⁷⁷	19	2	21
TOTAL OF PORT WORKERS RANK A	5.402	399	5.801

⁷⁶ Dutch *ceelbazen*, which can also be translated as 'chief foremen'.

⁷⁷ Dutch *conterbazen*.

2. Port workers rank B			
PORT WORKERS ALL TASKS	74	28	102
Other professional categories	53	6	59
Dock drivers / crane drivers	0	0	0
Dock drivers	3	0	3
Signalmen	0	0	0
Guards	0	0	0
Lashers	44	3	47
Container tallymen	2	2	4
General cargo tallymen	1	1	2
Multicompetent tallymen	3	0	3
Dry bulk workers	0	0	0
Dry bulk signalmen	0	0	0
TOTAL OF PORT WORKERS RANK B	127	34	161
TOTAL OF PORT WORKERS RANKS A + B	5.529	433	5.962
II. LOGISTICS REGISTER			
Warehouse workers	854	9	863
Fruit sorters	47	5	52
Fruit packers	0	0	0
Logistics workers	151	7	158
TOTAL OF LOGISTICS WORKERS	1.052	21	1.073
III. OTHER WORKERS UNDER THE JOINT COMMITTEE			
Mechanics	898	25	923
Partly incapacitated ⁷⁸	0	712	712
Awaiting registration ⁷⁹	331	7	338
CEPA books ⁸⁰	0	0	0

In addition, the Crane Department of the Antwerp Port Authority currently operates some 15 shoreside cranes and 3 floating cranes which are manned by a staff of 34 crane drivers.

⁷⁸ Dutch *verminderd arbeidsgeschikt*.

⁷⁹ This category comprises logistics workers who have concluded an employment contract but are still awaiting registration, a procedure which may last several weeks or months.

⁸⁰ This category mainly comprises shop stewards or union staff employed at the Prevention and Protection Service and the training centre OCHA.

416. The main unions representing port workers are the Belgian Transport Workers' Union (Belgische Transportarbeiders Bond, BTB), the Confederation of Christian Trade Unions Transcom (Algemeen Christelijk Vakverbond, ACV Transcom) and the General Confederation of Liberal Trade Unions of Belgium (Algemene Centrale der Liberale Vakverbonden van België, ACLVB).

According to BTB and ACLVB, 99 per cent of Belgian port workers are members of a trade union. The Antwerp port employers' organisation CEPA mentions a level of unionisation of between 90 and 95 per cent for the General Register. Its Ghent counterpart CEPG states that 99.9 or perhaps 100 per cent of workers on the General Register are unionised, whereas only a minority of Logistics Register workers has joined a union. The Port Authority of Brussels and CEMPO report that 100 per cent of local port workers are members of a union.

Exact figures on union membership are not available, but interviewees helped us estimate membership shares for the General Register.

Table 8. Estimates of union membership shares in the General Register of port workers in Antwerp, Zeebrugge-Brugge and Ghent, 2012, in per cent (source: replies to Portius port labour questionnaire and interviews with trade union representatives)

	BTB	ACV Transcom	ACLVB
Antwerp	50-55	35-38	10-12
Zeebrugge-Brugge ⁸¹	52-55	45-48	0
Ghent ⁸²	50-60	40-50	0
Brussels	0	65	35
All ports	50	38	10-11

9.1.4. Qualifications and training

- Regulatory set-up

417. Pursuant to the Royal Decree of 5 July 2004, before port workers can be registered in the General Register, they have to attend an intensive three-week training programme which

⁸¹ Reportedly, ACV Transcom has a stronger position in the logistics register.

⁸² Reportedly, BTB and ACV Transcom agreed to distribute nominations for registration on a 55/45 basis, while the actual memberships are 60/40. This agreement has a duration of 3 years. In the logistics register of Ghent, the distribution between BTB and ACV Transcom is reported to be 50/50.

comprises both theoretical and practical courses. Workers of the Logistics Register must attend a 3 day-training course only⁸³.

418. In response to our questionnaire, the following types of formal port training were reported to be available in Belgian ports:

- induction courses for new entrants (compulsory);
- courses for the established port workers (compulsory);
- training in safety and first aid (compulsory);
- different specialist courses for certain categories of port workers (compulsory);
- training aimed at the availability of multi-skilled or all-round port workers;
- retraining of injured and redundant port workers (compulsory or voluntary).

419. In Antwerp, the training takes place at a purpose-built training centre, the Port Worker Training Centre (*Opleidingscentrum voor Havenarbeiders, OCHA*)⁸⁴, which is financed and managed by the port employers' association CEPA. The training centre is a non-profit making institution that currently employs some 12 practical trainers, all of whom are registered port workers. In addition, theoretical courses are taught by CEPA staff. In 2011, the employers contributed 2.6 million EUR to finance OCHA.

OCHA first opened its doors in 1980 for induction training and has since expanded training activities to engine drivers (in 1984) and then tally clerks, signalmen and lashers, adding courses for warehouse workers in 1994, straddle carrier drivers in 2002 and gantry crane drivers in 2003. Since 1994, the training centre has also provided courses in the handling of dangerous goods and offered back-to-school training for long-standing port workers who need to be brought up to date with new cargoes, new cargo handling methods and new regulations⁸⁵.

Until 2001 port companies used on-the-job training for crane and straddle-carrier drivers. As of 2002 OCHA decided to buy and install a simulator for the operation of straddle-carriers, gantry cranes and mobile jib cranes. Training in a safe environment results in higher productivity and increased efficiency of operators. The straddle-carrier driver training actually consists of 5 working days at the simulator and 10 days on the site, where a real engine is used.

⁸³ See *supra*, paras 398-399.

⁸⁴ See <http://www.cepa.be/> and Van Krunkelsven, G., "Port of Antwerp. Training Center for Port Workers", <http://www.itfglobal.org/files/extranet/-75/15445/Vankrunkelsven.pdf>.

⁸⁵ Turnbull, P., *Training and Qualification Systems in the EU Port Sector: Setting the State of Play and Delineating an ETF Vision*, July 2009, <http://www.itfglobal.org/files/extranet/-75/17739/Final%20report%20EN.pdf>, 26-27; Van Krunkelsven, G., "Port of Antwerp. Training Center for Port Workers", <http://www.itfglobal.org/files/extranet/-75/15445/Vankrunkelsven.pdf>.

Figure 59. Antwerp's training centre for port workers OCHA, which is jointly managed by employers and unions, is excellently equipped and internationally renowned, yet not without its critics (photos by the author).



Figure 60. Port worker training programmes in Antwerp, 2012 (source: CEPA/OCHA and Turnbull⁸⁶)

Category	Duration (weeks)	Theoretical instruction	Practical instruction
Dockers	3	41.75 hours – Codex (collective agreement), hoisting materials, dangerous goods, handling general cargo, work safety	67 hours – loading and unloading general cargo, handling containers, stuffing and stripping containers
Engine drivers	4	20 hours – stability forklifts, working of engines, safe working with forklifts	125 hours – learning to drive forklifts with different hoisting aids, tug-masters, reach-stacker
Lashing and securing	4	24 hours – forces in the hold of a ship and on a truck, ways of lashing different cargoes	121 hours – lashing different goods in the hold, container, wagon, truck
Signalman	2	10 hours – stability on cranes, crane driver signals	62.50 hours – working with ship pedestal crane, practical knowledge of all the signals
Tally clerk	5	1 week – types of containers, different commodities, damage codes, computer programme	4 weeks – working on the gates, ship, railroad and trucks, practical knowledge of the computer programme
Straddle carrier	4	1 week – stability of straddle carrier, different types of containers, safety rules on the terminal (including simulator training)	3 weeks – two weeks driving at the training centre, one week on the quayside, working together with other straddles and gantry cranes
Gantry crane	6	2 weeks – stability of cranes, influence of the wind (including simulator training)	4 weeks – loading and unloading ships and barges, working with twin spreader, extendable twin spreader and dual hoist spreader

In recent years, OCHA scaled back its activities and the number of trainers was reduced dramatically (from 37 in 2008 to 12 today⁸⁷). Reportedly, this was due to the global economic crisis, which resulted in a decrease in recruitment activity and, logically, less demand for training. However, we were also informed that there is some reluctance among employers to rely further on a training institution which they perceive to be dominated by trade union representatives. Recently, the employers explored the possibility of a co-operation with other entities (especially the Flemish Public Employment Service VDAB), but this proposal was opposed by the unions and has since been abandoned.

It should also be mentioned that terminal operators designate experienced port workers to act as mentors (*peters*, or 'godfathers') to coach new workers on an individual basis.

⁸⁶ Turnbull, P., *An international assessment of training in the port sector*, Geneva, International Labour Office, 2011, http://www.ilo.org/public/libdoc/ilo/2011/111B09_336_engl.pdf, 53.

⁸⁷ See www.cepa.be. OCHA reports that there were 37 trainers in 2008, 26 in 2009, 11 in 2010, 10 in 2011 and 12 on 8 May 2012.

420. Training of port workers in Belgium is also organised by CEWEZ, the employers' organisation of the port of Zeebrugge. In Zeebrugge, theoretical courses are organised in the CEWEZ building. Practical courses are organised on the terminals and/or their own 5,000 m² compound called Rostra, where 12 trainers are employed⁸⁸. The Rostra facility was achieved with the support of the European Union and the European Regional Development Fund⁸⁹. In the port of Zeebrugge, Antwerp training models were deliberately kept at bay.

421. Candidates for the Ghent General Register receive their training at Antwerp's OCHA. For specific categories such as foremen, signalmen, bulldozer drivers and crane drivers, special training is organised by CEPG or individual employers.

Reportedly, Ghent is the only Belgian port where a VCA certificate is required⁹⁰.

422. The port workers of Ostend are trained at Zeebrugge, except for very specific jobs (for example, the handling of offshore windfarm components), for which they may be trained by an individual company.

423. The port of Brussels has its own logistics training centre called IRIS TL (Beroepsreferentiecentrum Transport & Logistiek vzw). Additional training for port workers in Brussels is provided by the terminal operators. The organisation of specific training for port workers at port level is under investigation.

424. Another provider of training for port workers is the Antwerp-based commercial company Global Port Training (GPT) which operates independently from the local employers' organisations and the unions⁹¹. GPT was established in 2008 and offers training and consultancy services at a global level. GPT has organised bespoke training courses in various countries including Angola, Congo, Mali, Mauretania, Oman, the Netherlands and Zambia. Upon its establishment, a gentlemen's agreement reportedly obliged GPT to refrain from offering its services on the domestic market and to restrict its activities to foreign ports⁹².

⁸⁸ See http://www.apzi.be/news/detail_nl.phtml?id=293.

⁸⁹ See <http://www.cewez.be/nl/2080>.

⁹⁰ On this certificate, see *infra*, para 1465.

⁹¹ See <http://www.globalporttraining.com/en>.

⁹² See further *infra*, para 488.

425. OCHA developed several training curricula for port workers 'All Tasks', dock drivers, lashers, signalmen, tallymen, breakbulk tallymen and container tallymen.

In addition, Global Port Training says that it developed its own training curricula, for example for tallymen, mobile harbour crane operators, empty container handlers, ship-to-shore crane operators and gantry crane operators.

426. The training system is regularly improved by the social partners. For example, additional training efforts were agreed upon in a specific national collective agreement on port labour of 27 September 2011.

9.1.5. Health and safety

- Regulatory set-up

427. The Belgian Act of 4 August 1996 on Welfare of Workers in the Performance of Their Work, which transposed the OSH Framework Directive 89/391/EEC, also applies to port workers. It is the fundamental Belgian law on this matter and concerns not only safety and health at work, but also every field related to welfare at work, especially psychosocial aspects, ergonomics, occupational health and prevention of occupational accidents and illnesses. The Act is implemented by a large number of Royal Decrees on specific aspects of occupational health and safety, such as the use of personal protective equipment, which are not sector-specific however.

428. The General Regulations concerning Protection at Work which were adopted on 11 February 1946 and 27 September 1947, and which have been repeatedly revised since, contain a dedicated chapter on safety of work in the transportation industry, with specific provisions on work in ports, such as the loading and unloading of ships (Art. 525 *et seq.*). Some of these provisions might appear outdated in view of technological developments in the ports industry however.

429. Specific rules and guidance instruments were adopted by the local Joint Committees for Prevention and Protection and by the Joint Services for Prevention and Protection. Such Joint Committees and Services exist in the ports of Antwerp and Ghent.

The Joint Services for Prevention and Protection are entrusted by law with the assessment of the risk of occupational accidents and monitoring safety, health and hygiene at work. The establishment of a Joint Service for the whole port is justified by the fact that non-permanent workers work for different employers and that safety rules should be identical everywhere⁹³. In practice, the role of the Antwerp Joint Service especially is said to go beyond what the law requires.

Recently, the Court of Appeal of Ghent ruled that the Joint Committee and the Joint Service for Prevention and Protection merely fulfil a supporting, assisting and advisory role, and that responsibility for safety policy continues to rest entirely with the individual employer, who may be held criminally liable for failure to take sufficient preventive safety measures⁹⁴.

In Zeebrugge, no Joint Service or Committee was established. Instead, the Codex sets out a safety policy at three levels: informal meetings of prevention advisers, a safety body within the company, and a joint port-based safety meeting⁹⁵.

430. In the port of Antwerp, an extremely detailed regulation of health and safety aspects is laid down in the *Veiligheidsvademecum* (Safety Manual) which was published and is regularly updated by the Joint Committee for Prevention and Protection at the Port of Antwerp.

The Joint Service for Prevention and Protection at the port of Antwerp also developed safety instruction cards for port workers⁹⁶.

In Ghent, a safety manual for the port is currently under preparation.

In Zeebrugge, where responsibility for safety of work rests with individual companies, no common safety manual exists.

431. Other relevant rules are found in general laws and regulations on safety of shipping and in local port regulations.

⁹³ See X., "Arbeidsveiligheid prioritair in de haven ", *Portaal* April-May-June 2012, (12), 12.

⁹⁴ Court of Appeal of Ghent, 17 September 2009, Advocate-General for Labour vs. N.V. Gentse Havenbehandelingen and CEPG, no. C/1016/09, unreported.

⁹⁵ See Art. 40 of the Codex for the General Register in the Port of Zeebrugge-Brugge.

⁹⁶ See for example <http://www.cepa.be/wp-content/uploads/C-VIK-026-E.pdf>.

432. Health and safety rules may be enforced with the cooperation of the public prosecutor, the police, the Labour Inspectorate, the port authority and its harbour master, the terminal operators and their Prevention and Protection services or the Administrative Commission, and also the unions.

433. In 2009, the Belgian Labour Inspection explained its approach towards inspections in ports in the following terms:

Priorities regarding the selection of a specific sector are set in Belgium every year where several campaigns take place (i.e. construction, chemical industry, public employers). Investigations take place as a result of:

- 1. Labour accidents;*
- 2. Demands made by the attorney and his administration;*
- 3. Demands for intervention from everyone;*
- 4. Own experiences in companies with bad risk policy.*

[...]

Harbours are not seen as a priority sector in the Belgian Labour Inspectorate, at least not more or less important than any other sectors [...] characterised by low compliance and/or bad working conditions. Belgium has four harbours, namely: Antwerp, Brugge, Ostend and Zeebrugge.

Indicators used to conduct inspections are the same as those mentioned above. Inspections within the harbours take place annually, while inspection points vary – depending on the strategy sought after. During inspections it is at forehand unclear what obstacles inspectors come across. Inspectors can be confronted with several obstacles and act spontaneously according to their experience. In this sense there is a rather open approach. Lastly, a mutual concern during inspections is that all harbours deliver services in different “supply chains” and therefore a mixture of employees working for different companies are often found working together on the same floor. This rather complex situation sometimes makes interventions concerning working conditions difficult, Belgium also brought up the specific position of contractors and subcontractors as a specific harbour-theme for a possible joint strategy – how to propagate safety related concerns up/down to the international scope⁹⁷.

The Belgian Labour Inspectorate cooperates within an EU cooperation framework on labour inspection of ports⁹⁸.

⁹⁷ Labour Inspectorate (Netherlands), *Meeting European Port Inspectors Rotterdam 2009. Evaluation Report*, <http://www.hamburg.de/contentblob/2547432/data/d501-portinsp-2009-rotterdam.pdf>, 7-8. We kept the English original unchanged.

⁹⁸ See *supra*, para 260.

- Facts and figures

434. The Federal Public Service for Employment, Labour and Social Dialogue maintains statistics on the basis of NACE Code 52 241 'Cargo Handling in Seaports'. The Federal Public Service for Economy informed us that this category does not fully coincide with the scope of the Port Labour Act, and statistics maintained by the Occupational Accidents Fund also mention accidents in places such as Liège, Louvain and Malle which are outside the scope of that Act. In the table below, we also included figures on the Codes for storage and other cargo handling activities.

Table 9. Occupational accidents and their frequency and severity rates in cargo handling and storage activities in Belgium, 2012 (source: Occupational Accidents Fund and Federal Public Service for Employment, Labour and Social Dialogue⁹⁹)

	NACE Code 52.100 Storage in refrigerated warehouses and other storage	NACE Code 52.24 Cargo handling	NACE Code 52.241 Cargo handling at seaports	NACE Code 52.249 Other cargo handling, outside seaports
Hours of exposure	27,105,413.63	14,473,031.36	5,206,643.30	9,266,388.06
No. of accidents	832	1,290	987	303
No. of fatal accidents	0	3	2	1
Sum of incapacity degree	448.50	1,242.00	1,000.00	242.00
Lost days	18,931.00	34,066.00	26,391.00	7,675.00
Frequency rate	30.69	89.34	217.56	32.81
Severity rate	0.70	2.35	5.37	0.83
Global severity rate	1.94	10.34	25.43	3.60

The same official statistical materials suggest that the frequency and severity of occupational accidents in cargo handling at seaports is by far the highest of all sectors of the Belgian economy. The table below allows a comparison with data for other activities involving heavy manual work for the years 2008, 2009 and 2010, all based on the same 2008 NACE BEL Code.

⁹⁹ See http://www.faofat.be/site_nl/stats_etudes/taux_freguence_gravite/documents/Graden-2012-NL_000.pdf.

We also added the data on maritime and inland waterway transportation and on temporary agency work, which is indeed identified as a separate sector.

Table 10. Frequency and severity rates of occupational accidents in cargo handling at seaports and selected other economic sectors in Belgium, 2010-2012 (source: Occupational Accidents Fund and Federal Public Service for Employment, Labour and Social Dialogue¹⁰⁰; our adaptation)

NACE Code	Frequency rate			Severity rate			Global severity rate		
	2010	2011	2012	2010	2011	2012	2010	2011	2012
52.241 Cargo handling at seaports	217.56			5.34			25.43		
08 Other mining and quarrying	43.16	46.35	32.90	1.25	1.55	1.11	7.57	5.29	2.93
16 Manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials	43.39	39.98	37.74	1.02	0.97	0.82	4.81	3.74	3.61
24.5 Casting of metals	57.83	54.63	47.72	1.20	1.27	1.06	9.93	4.01	4.76
41 Construction of buildings, development of building projects	56.45	56.44	49.61	1.68	1.69	1.54	7.23	7.44	7.11
41.201 General construction of residential buildings	61.74	61.84	54.58	1.84	1.77	1.66	7.56	7.42	7.84
42.130 Construction of bridges and tunnels	73.59	64.76	37.98	2.00	2.30	1.38	8.86	5.82	4.90
49.42 Removal services	62.83	56.84	48.88	1.86	1.58	1.32	6.60	6.22	4.64
50.2 Sea and coastal freight water transport	27.67	48.58	58.78	0.71	0.78	1.91	1.78	2.20	5.57
50.4 Inland freight water transport	18.54	19.12	13.52	1.01	1.42	0.22	3.90	8.47	0.85
78.2 Temporary employment agency activities	61.71	60.77	51.04	1.11	1.15	0.93	3.97	3.87	3.19

¹⁰⁰ See http://www.faofat.be/site_nl/stats_etudes/taux_frequence_gravite/documents/Graden-2010-NL.pdf; http://www.faofat.fgov.be/site_nl/stats_etudes/taux_frequence_gravite/documents/Graden-2011-NL.pdf; http://www.faofat.be/site_nl/stats_etudes/taux_frequence_gravite/documents/Graden-2012-NL_000.pdf.

Also available in Belgium are detailed nation-wide statistics on the types and causes of occupational accidents in cargo handling at seaports, which conform to the European ESAW standards¹⁰¹.

435. The number of accidents resulting in at least one day of incapacity for work in the port of Antwerp evolved as follows:

Table 11. Occupational accidents in the port of Antwerp, resulting in at least one day of incapacity for work, 2008-2013 (source: Gemeenschappelijke Dienst voor Preventie & Bescherming Haven van Antwerpen¹⁰²)

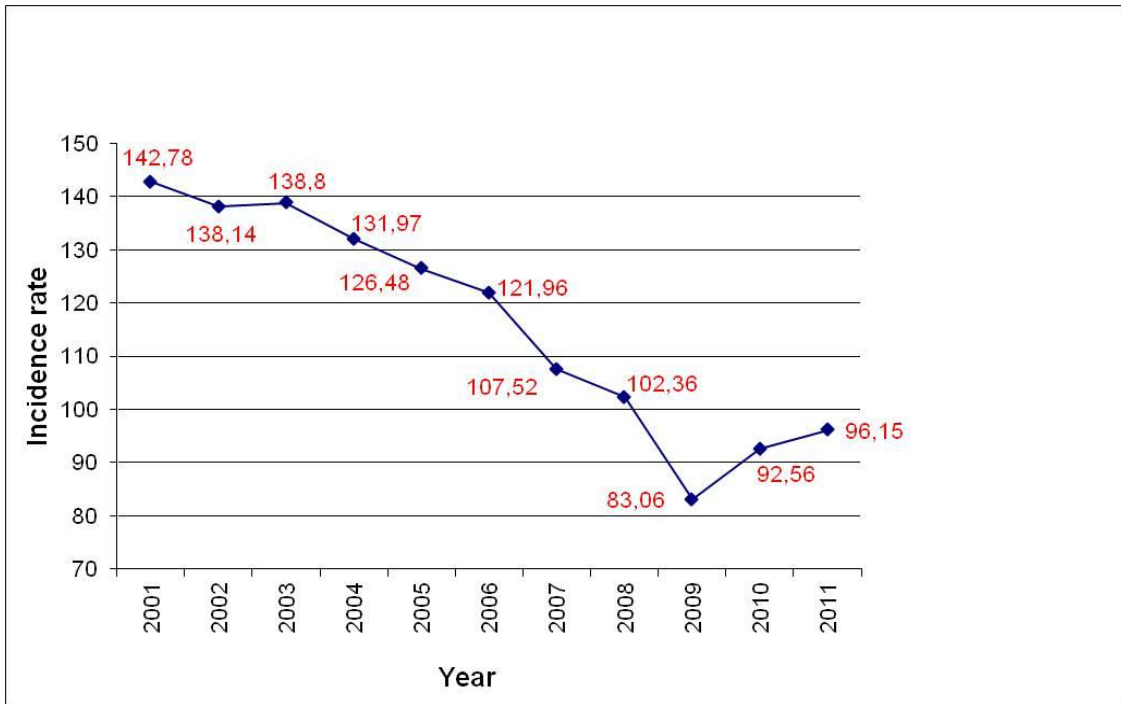
	Fatal	Permanent incapacity	Temporary incapacity	Total
2008	2	164	1,404	1,570
2009	0	148	878	1,026
2010	1	191	1,008	1,200
2011	5	190	1,109	1,304
2012				
2013				

The figure below shows the evolution of incidence rates over the past decade:

¹⁰¹ See http://www.faofat.be/site_nl/stats_etudes/infos_gen/variables/variables-SEAT/variables-SEAT.html.

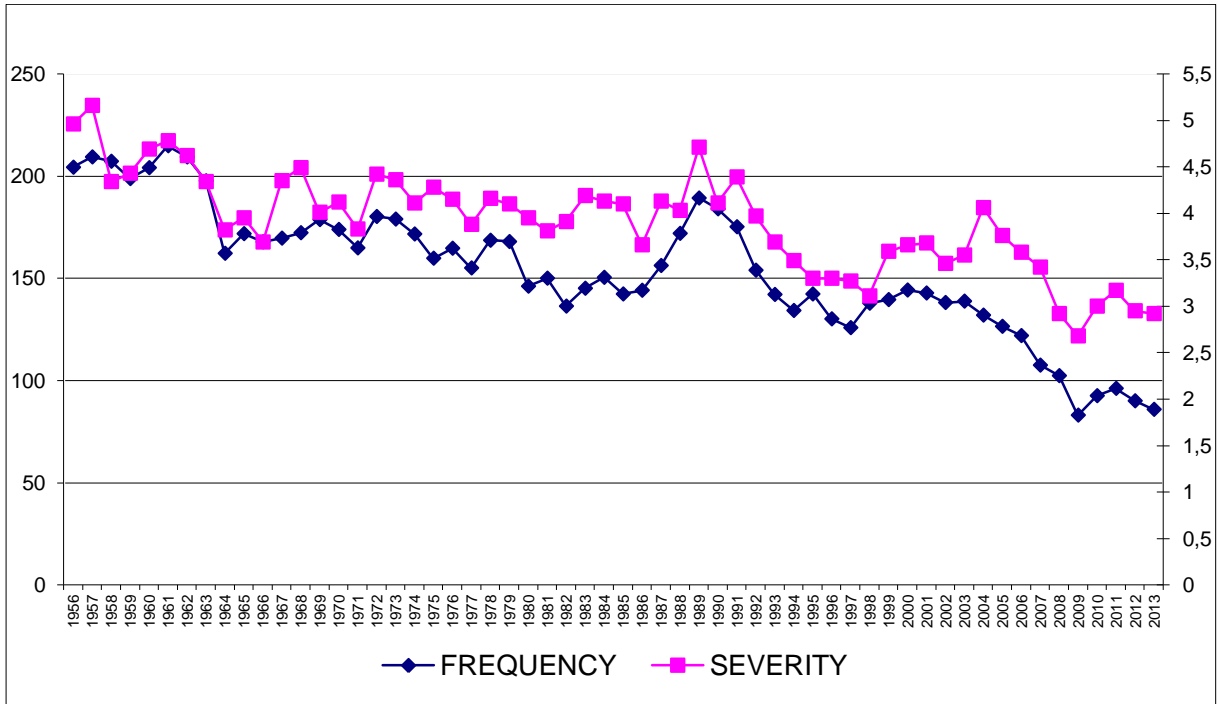
¹⁰² Gemeenschappelijke Dienst voor Preventie & Bescherming Haven van Antwerpen, *Annual Report 2010*, 11; Gemeenschappelijke Dienst voor Preventie & Bescherming Haven van Antwerpen, *Annual Report 2011*, 10.

Figure 61. Incidence rate of port labour accidents in Antwerp, 2001-2011 (source: CEPA)



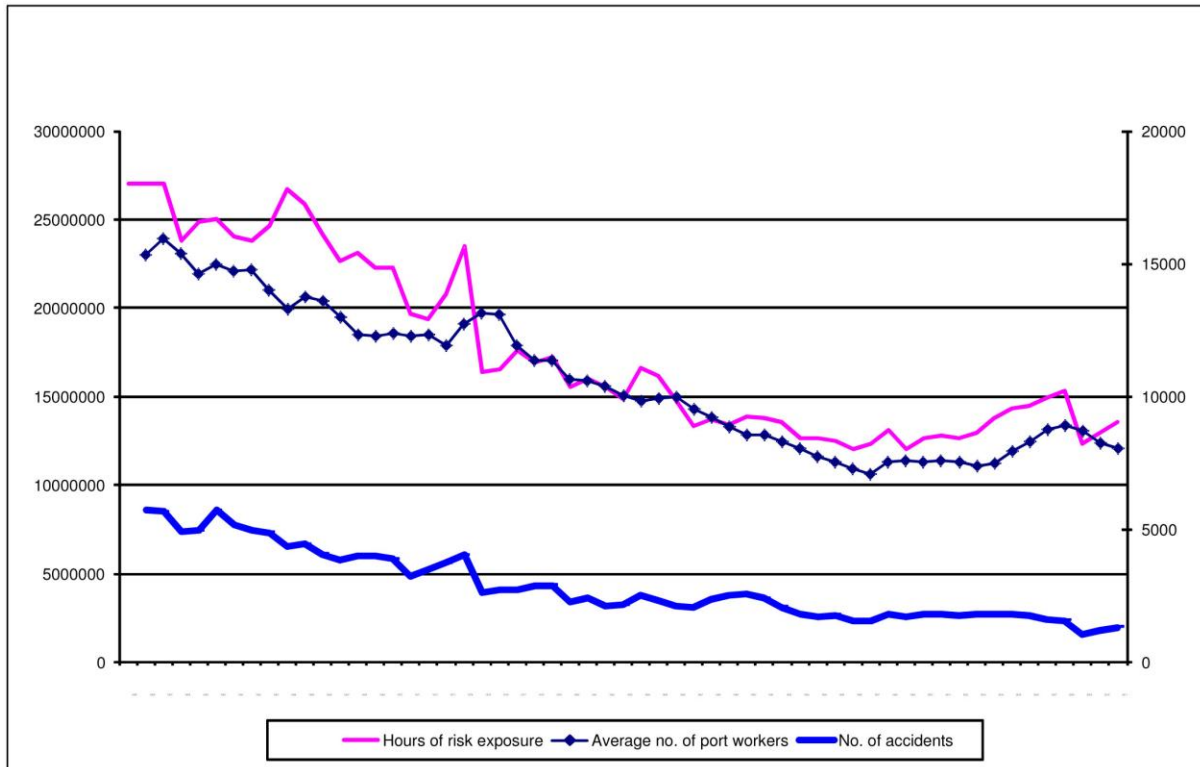
The following graphs provide further insight into the evolution between 1955 and 2011:

Figure 62. Evolution of frequency and severity of accidents in the port of Antwerp, 1956-2013
(source: CEPA¹⁰³)



¹⁰³ Vankrunkelsven, G., "Organisatie van de havenarbeid", Master Class Break Bulk, Portilog, Antwerp, 8 May 2014.

Figure 63. Evolution of average number of pool workers, hours of risk exposure and number of accidents, 1955-2011 (source: Gemeenschappelijke Dienst voor Preventie & Bescherming Haven van Antwerpen¹⁰⁴)



The Joint Prevention and Protection Service for the Port of Antwerp maintains detailed statistics on virtually every aspect of port health and safety, including, for example, on accidents by job category. This wealth of data is systematically reported in the Annual Reports of the Service.

According to Ceba / Medimar, today 80 to 85 per cent of port labour is of a light or semi-light nature, but at the same time it has become more specialised.

436. In 2010, in the port of Zeebrugge, there were 302 reported occupational accidents in the General Register, 19 in the Logistics Register and 3 involving mechanics.

The following table provides an insight into the evolution over the past decade and the frequency and severity rates.

¹⁰⁴ Gemeenschappelijke Dienst voor Preventie & Bescherming Haven van Antwerpen, *Annual Report 2011*, 11.

Table 12. Occupational accidents in the General Register of port workers in Zeebrugge-Brugge, with frequency and severity rates, 2001-2013 (source: CEWEZ)

Year	Number of occupational accidents	Frequency rate	Severity rate
2001	218	139.02	3.58
2002	181	118.98	3.46
2003	162	107.36	2.68
2004	132	79.66	1.88
2005	193	101.49	2.72
2006	230	111.35	2.98
2007	244	104.81	2.25
2008	255	112.09	2.48
2009	157	86.47	2.11
2010	302	139.42	4.00
2011	296	138.66	3.82
2012	237	117.01	2.94
2013	250	122.60	3.62

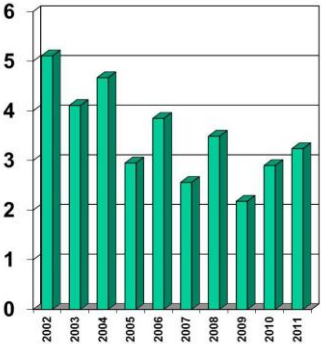
437. In 2011, 51 accidents occurred in the port of Ghent, 5 of which resulted in definitive incapacity (the figures for 2013 are 39 and 5 respectively). The exposure rate was 632,515 hours (2013: 600,615). The incidence rate of accidents in the port of Ghent was 80.63 (2013: 64.93) and the severity rate 3.24 (2013: 2.57).

Table 13. Incidence rate of occupational accidents in the port of Ghent, 2002-2013 (source: CEPG, Joint Safety Service, Annual report 2011 and update by CEPG)

	Year	Incidence rate
	2002	152.04
	2003	123.65
	2004	121.18
	2005	113.45
	2006	119.12
	2007	95.92
	2008	107.05
	2009	63.43
	2010	89.10
	2011	80.63

	2012	66.27
	2013	64.93

Table 14. Severity rate of occupational accidents in the port of Ghent, 2002-2013 (source: CEPG, Joint Safety Service, Annual report 2011 and update by CEPG)

	Year	Severity rate
	2002	5.11
	2003	4.11
	2004	4.67
	2005	2.95
	2006	3.85
	2007	2.56
	2008	3.49
	2009	2.18
	2010	2.90
	2011	3.24
	2012	2.09
	2013	2.57

438. For the port of Ostend, we could only collect statistics on the number of port workers involved in accidents and the period of incapacity between 2006 and 2009.

Table 15. Number of port workers involved in occupational accidents and days of incapacity in the port of Ostend, 2006-2013 (source: CEWO)

	2006	2007	2008	2009	2010	2011	2012	2013
Number of port workers involved in an occupational accident	7	9	7	2	1	0	1	2
Days of incapacity	368	166	120	187	53	0	4	9

9.1.6. Policy and legal issues

439. Despite the opinions expressed by learned authors such as Barton and Turnbull, who state that the Belgian port labour regime combines the benefit of direct long-term employment of workers with high flexibility and very high levels of labour productivity¹⁰⁵ and the undeniably high reputation of Belgian ports as amongst the most productive in the EU and probably in the whole world¹⁰⁶, together with some trade unions in other countries regarding the Belgian system as best practice¹⁰⁷, there remain a number of stakeholders and observers who consider the port labour system of the country largely inadequate.

The main issues are:

- (1) restrictions on employment;
- (2) legal uncertainty over the scope of the Port Labour Act;
- (3) the extension of the scope of the Port Labour Act to dry warehousing and logistics activities;
- (4) restrictive working practices;
- (5) health and safety issues;
- (6) training issues.

- Restrictions on employment

440. First of all, access to the Belgian port labour market is severely restricted, to an extent probably unique in the EU. It does not come as a surprise, then, that the Belgian port labour regime has on several occasions (but with varying success) been challenged before courts of law.

Below, we shall first identify a number of restrictions on employment. Next, we will analyse three cases where these restrictions were tested against EU and international law. Even if we do not intend to issue any judgment on the (in)compatibility of the system, we have dared to add a few personal observations.

¹⁰⁵ Barton, H. and Turnbull, P., "Labour Regulation and Competitive Performance in the Port Transport Industry : The Changing Fortunes of Three Major European Seaports", *European Journal of Industrial Relations* 2002, Vol. 8, No. 2, (133), 143.

¹⁰⁶ Historically, it appears that the port of Antwerp always managed to compensate a relatively high labour cost through outstanding productivity (see, for example, Vanfraechem, S., *Een sfeer om haring te braden. Arbeidsverhoudingen in de haven van Antwerpen 1880-1972*, Ghent, Academia Press / Amsab, 2005, 477).

¹⁰⁷ See *infra*, para 505.

441. To begin with, the existence of various restrictions on employment was expressly confirmed in the replies to our questionnaire; not all stakeholders concurred on the types of prevailing restrictions however.

The Federal Public Service for Employment, Labour and Social Dialogue mentions the following restrictions on employment:

- prohibition on self-handling (for example lashing and unlashing);
- exclusive rights for certain categories of workers;
- mandatory composition of gangs.

The Port Authority of Antwerp notes the following restrictions:

- prohibition on employment of temporary workers through employment agencies;
- prohibition on self-handling (for example for lashing and unlashing);
- mandatory use of port workers for non-port work;
- exclusive rights for certain categories of workers;
- mandatory composition of gangs;
- ban on multi-skilling or multi-tasking.

The Port Authority of Brussels ticked the following boxes:

- prohibition on employment of permanent workers;
- prohibition on self-handling.

The Antwerp port employers' association CEPA saw the following restrictions:

- prohibition on employment of permanent workers;
- prohibition on employment of temporary workers through employment agencies;
- prohibition on self-handling, for example for lashing and unlashing;
- exclusive rights for certain categories of workers;
- mandatory composition of gangs;
- ban on multi-skilling or multi-tasking;
- exclusive rights of trade union members (closed shop).

Finally, the list of restrictions submitted by the Royal Belgian Shipowners' Association includes:

- prohibition on self-handling;
- prohibition on employment of non-nationals or workers employed by employers from other EU or non EU-countries;
- mandatory use of port workers for non-port work;
- exclusive rights for certain categories of workers;
- mandatory composition of gangs.

Both the Antwerp Port Authority and CEPA believe that the identified restrictions are a serious competitive handicap. The Federal Service for Employment, Labour and Social Dialogue, the Port Authority of Brussels and the Royal Belgian Shipowners' Association deny that the restrictions have a major anti-competitive effect.

The Federal Service added that all restrictions on employment and also the restrictive working practices are laid down in laws and regulations which aim at ensuring health and safety of workers.

Responding to the questionnaire, none of the three unions identified any restriction on employment.

442. The Federal Service for Employment, Labour and Social Dialogue, the Port Authorities of Antwerp, Brussels and Ghent and the trade unions ACLVB and BTB all agreed that the rules on employment are properly enforced. ACV Transcom contested this, however, referring to the situation at industrial quays for inland barges in smaller ports.

443. In their replies to the questionnaire, the Port Authority of Zeebrugge and the trade unions BTB and ACLVB furthermore stated that in the absence of establishment, service providers from other EU countries are not allowed to offer port services in Belgian ports.

Conversely, the Federal Public Service for Employment, Labour and Social Dialogue, the Port Authorities of Antwerp, Ghent and Brussels, CEPA and ACV Transcom believe that EU service providers not established in Belgium, do have access to the market for port services in Belgian ports.

To our knowledge, Belgian law sets out no requirement for port service providers to be legally established in Belgium. Yet, they have to obtain a right of use over port land, which is in practice laid down in a land concession (*domeinconcessie*) granted by the local port authority, and they must join the local employers' association¹⁰⁸.

444. It seems beyond question that the freedom of employers in Belgian ports to engage workers of their choice is seriously restricted. Below, we shall identify no less than twenty different restrictions on employment which stem from the current regime of port labour in Belgium.

445. Firstly, only workers who are registered under the Port Labour Act may be employed legally. In addition, the scope of this exclusive right of employment is defined in extremely broad terms¹⁰⁹.

¹⁰⁸ See *infra*, para 392.

¹⁰⁹ See *supra*, paras 393-394.

446. The number of registered port workers can only be raised, not reduced, because the registration of a worker may only be withdrawn in specific cases¹¹⁰ and not for economic reasons. Several interviewees stated that, as a matter of principle, cutting back the register should be possible in periods of economic downturn. In Ostend, the closure of three ferry lines resulted in a serious excess workforce which has made the pool system economically unsustainable. In all ports, workers are said to enjoy a 'job for life' and substantially better conditions than their colleagues in the construction and transportation industries; not a few indeed exercise an undeclared secondary profession.

447. The whole registration procedure lacks elementary transparency. Candidates who satisfy all the conditions for registration set out in the Royal Decree of 5 July 2004 on the registration of port workers are only eligible for registration. In other words, they enjoy no right whatsoever effectively to obtain registration, let alone to be employed. What is more, the Royal Decree does not even clarify who is entitled to apply for registration (see Art. 4, § 4). It does not expressly allow an individual candidate to apply personally for registration (but neither does it prevent him from doing so). Practically speaking, all candidates for registration in Antwerp are nominated by employees' organisations, which limits the freedom of the employer to choose his staff even more. When an employer wishes to propose a candidate of his own, he or she is referred to a union in order to have his or her name included in the list. CEPA does not maintain a list of prospective port workers, but individual companies, especially the larger ones, do. Port employers have no access to the list of possible candidates maintained by the trade unions. Ultimately, candidates will be proposed based on union quota which reflect the respective representativeness of the three unions. Reportedly, in Antwerp the trade unions maintain unpublished lists of thousands of candidates, and select persons whom they will nominate in an entirely arbitrary manner or, rather, on the basis of kinship, length of union membership or even frequency of personal enquiries at the union's headquarters. In other words, no objective procedure for the selection of candidates for registration is followed. What is more, the applicable rules do not provide for regular check-ups whether port workers, once they are registered, continue to meet the conditions for registration.

448. The Belgian port labour pool can be considered a closed shop.

As we have explained¹¹¹, the level of unionisation in Belgian ports is between 90 and 100 per cent (which is considerably higher than the national average¹¹²).

¹¹⁰ See *supra*, para 403.

¹¹¹ See *supra*, para 416.

¹¹² Depending on the source, national trade union density is estimated at 50 percent, 52 percent or between 80 and 89 per cent (see Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial->

These findings do not come as a surprise as, practically speaking, candidates for registration as a port worker under the Port Labour Act must be nominated by a trade union. In the initial selection of proposed candidates, port employers have no say and are not even consulted. Practically speaking, even candidates nominated by employers have to join a union. The only means for employers and their organisations to influence the selection of candidates is the psychotechnical test. CEPA as well as individual terminals mentioned that ever more candidates have difficulties passing these tests.

These elements indicate that union membership is a factual prerequisite to become a port worker in Belgium. In response to our questionnaire, both the Port Authority of Brussels and CEPA expressly confirmed that such a factual requirement exists. The interviewed individual terminal operators unanimously endorsed this analysis. Other stakeholders, including in Zeebrugge, stated that a non-unionised worker would not be registered very quickly.

What is more, candidates for registration often join three different unions in order to improve their chances. CEPG reported that it has decided not to accept distribution arrangements among trade unions any longer, and that only workers who pass the tests will be registered.

Remarkably, the decisive role of union membership and family relations is overtly acknowledged in the provisions of the Antwerp Codex for the General Register, which provides:

Article 11

The following persons may at all times be registered as a port worker of rank B:

1. the sons of effective and acting members of the Joint Subcommittee;

[...].

Article 12

Where a port worker dies while he is entitled to a registration card, the son supporting the family may claim registration under the following conditions:

- the candidate has to fulfil all conditions for registration;

- where the father was registered as a port worker, the son may be registered as a port worker of rank B. If, on the other hand, the father died as a result of an occupational accident or disease, the son shall immediately be granted rank A.

Where the son of the deceased port worker is over 25 years old, he must apply for registration within 2 years after his father's death¹¹³.

Several other provisions of the Antwerp Codex for the General Register provide that in the case of dismissal, a permanent worker is entitled to registration into another professional

[Relations/Across-Europe/Trade-Unions2](#)). Another source, apparently based on OECD figures, mentions 55.8 per cent density.

¹¹³ In this respect, an issue of discrimination on the grounds of gender and descent may arise as well.

category on condition, *inter alia*, that he applies for it with the Administrative Commission through one of the official trade unions¹¹⁴.

Yet another provision obliges employers calling upon office staff on a rest day to inform the trade unions in advance¹¹⁵.

The Codex for the Logistics Register in the port of Antwerp expressly states that the registration dossier for logistics workers must be put together by an officially recognised trade union¹¹⁶.

Under the Codex for Mechanics in the Port of Antwerp, it is a precondition for registration as a mechanic that the candidate submits a document issued by a trade union certifying that the candidate was informed of his rights and duties by a trade union represented in the Joint Subcommittee for the Port of Antwerp¹¹⁷.

The existence of a closed shop in Belgian ports has been a well-known fact among legal and other commentators for many years¹¹⁸. What is more, the pressure that used to be exerted in the port of Antwerp to join the socialist dockers' union (*cf.* the slogan *rood of geen brood* or 'red or no bread') was referred to during parliamentary debates back in the 1920s, which resulted in the 1921 Act regarding freedom of association, which is still applicable today¹¹⁹. In the 1980s, the closed shop system and the priority for relatives were again the subject of some parliamentary debate. The competent Minister however preferred to ignore the problem altogether¹²⁰.

¹¹⁴ See, for example, Art. 308, 375, 395 and 434 of the Codex for the General Register in the port of Antwerp.

¹¹⁵ Art. 365 of the Codex for the General Register in the port of Antwerp.

¹¹⁶ Art. 11 of the Codex for the Logistics Register in the port of Antwerp.

¹¹⁷ Art. 7 of the Codex for Mechanics in the port of Antwerp.

¹¹⁸ See, for example, Engels, C., "The European Social Charter: Freedom of Association and Free Collective Bargaining. European and Belgian Implementation", in Blanpain, R. (Ed.), *The Council of Europe and the Social Challenges of the XXIst Century*, The Hague, Kluwer Law International, 2001, (169), 204:

In Antwerp harbour a dockworker is reported to be able to obtain employment only if he is the holder of a work card. These work cards are distributed by the National Joint Committee of the harbour of Antwerp. The trade unions control 90 per cent of them. This situation comes close to a closed shop situation.

See also Magrez, M., "La liberté syndicale des salariés en Belgique", in Max Planck-Institut, *Die Koalitionsfreiheit des Arbeitnehmers*, Berlin, Springer, 1980, (37), 99, para 125:

L'embauchage réservé aux syndiqués est également fort rare et le fait que l'on cite toujours les dockers du port d'Anvers est significatif.

Compare, however, the opinion of the then *Administrateur-Generaal* of the competent Ministry: Rombouts, J., "De toekomst van de regelgeving betreffende de havenarbeid", in Van Hooydonk, E. (Ed.), *Stouwers, naties en terminal operators*, Antwerp / Apeldoorn, European Institute for Maritime and Transport Law / Maklu, 2003, (103), 111-112. Peter Turnbull and David Sapsford confirm that, in Antwerp, "the unions effectively control entry", so that the employers must compete for the best workers (Turnbull, P. and Sapsford, D., "Hitting the Bricks: An International Comparative Study of Conflict on the Waterfront", *Industrial Relations* 2001, Vol. 40, No. 2, (231), 252).

¹¹⁹ See Van Isacker, K., *De Antwerpse dokwerker 1830-1940*, Antwerp, De Nederlandsche Boekhandel, 1963, 174 *et seq.*

¹²⁰ See *Parliamentary Questions and Answers*, Senate, 1 April 1986, Question no. 45 by Mr. Van Ooteghem.

Unsurprisingly, several Antwerp terminal operators complain about a situation of sheer nepotism which is aggravated by the dominant influence on joint decision-making of the mass of less productive casual workers reporting to the hiring hall, which is believed to serve as a power base for the almighty unions. One container handler employing mainly permanent workers mentioned, however, that the closed shop system is as such perhaps not a major problem. On the other hand, a competing container handler in Antwerp stated that, in the absence of the closed shop system, he would be able to find a much better workforce on the market. In Ghent, the employers' association and a major bulk handler concurred that thanks to family ties between workers, new entrants are well aware of real working conditions in the port and especially of the need for far-reaching flexibility, and that this kind of 'internal' recruitment within port worker families ensures a better workforce supply than the free market of temporary work agencies could ever offer. An employer at Ostend confirmed the existence of closed shop and nepotism situations and said that relatives and friends of union leaders or members are privileged.

A union representative pointed out that most logistics workers enter the labour market via a temporary work agency, not a trade union, even if subsequently they must pass through a union to obtain registration as a port worker. Interviewees from both employer and union sides added that some workers leave the union once they are registered. Another union representative added that the obligation to join a trade union is obvious, because port workers are regularly unemployed and need the administrative services of a union to receive their unemployment benefit, the alternative of collecting the benefit from the State agency being inefficient and unrealistic.

449. As we have explained¹²¹, all port employers must rely on the administrative services of a single local employers' association which is registered by the Government and enjoys a legally entrenched exclusive right to fulfil requirements under labour and social security laws on behalf of individual port employers. In fact, all these associations were registered on the basis of the mere fact that a majority of employers had joined it previously.

Reportedly, the creation of a legal monopoly was motivated by the wish to confirm a long-standing situation and to counter the emergence of a number of other social accounting secretariats for employers in the port of Antwerp¹²². Prior to the legislative confirmation of CEPA's exclusive right, some 15 employers in the port – particularly, a grain silo and a potash terminal operator – had not joined the association and remained outside the scope of the Port Labour Act. In Zeebrugge, the creation of a unique office window was also welcomed by the workers because previously they had to collect their wages from 4 different employers.

Legal doctrine argues that the registered employers' organisations are under an obligation to accept membership applications from all employers of port workers, because a refusal of

¹²¹ See *supra*, para 392.

¹²² See Beckers, J., "Werken tussen schip en kade", *Belgisch Tijdschrift voor Sociale Zekerheid* 1989, (1065), 1071, para 10.

membership would infringe freedom of commerce¹²³. The Port Labour Act does however not include any provision to the effect that registered organisations are obliged to provide their services to all employers. CEPA informed us that, in practice, the enforcement of its exclusive right does not give rise to problems; yet there are instances of a trade union complaining that an individual employer has not yet joined the organisation.

It has also been submitted that the scope of the legal monopoly granted to the employers' organisations goes beyond the original intention of the lawmaker¹²⁴.

The obligation to join the local employers' association as a precondition for the hiring of port workers is confirmed in express terms in the Codex of the port of Ghent (Art. 1.3).

A representative of CEWEZ explained that it would be practically impossible to manage a pool, ensure payment of pool workers and administer their qualifications if not all the employers were obliged to join it.

450. Port employers in Belgium are not free to employ workers under a long-term contract of employment for an indefinite period.

In Antwerp, such long-term employment is only possible for certain categories of port workers including dock drivers, crane drivers, container tallymen, office staff such as chief tallymen, assistant chief tallymen, dock supervisors and foremen, and logistics workers. For all other categories (today, still more than 4,000 workers), employment must legally take place on a daily basis (even if, in practice, 'repeat hiring' occurs frequently)¹²⁵.

Since the 1960s, the social partners, inspired by developments in the UK and the Netherlands, attempted to enhance permanency of employment¹²⁶. As a result, the number of permanently employed port workers has increased considerably.

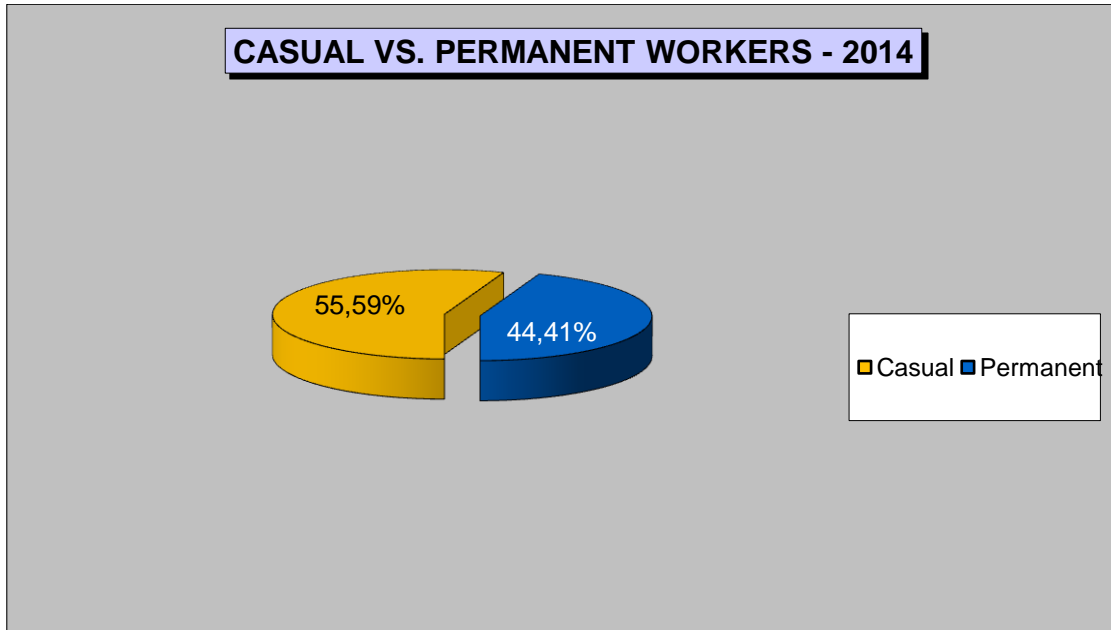
¹²³ Beckers, J., "Werken tussen schip en kade", *Belgisch Tijdschrift voor Sociale Zekerheid* 1989, (1065), 1071-1073; Rombouts, J., "Nieuwe regels bij de tewerkstelling van havenarbeiders", *Rechtskundig Weekblad* 1985-86, (1311), 1315.

¹²⁴ See Beckers, J., "Werken tussen schip en kade", *Belgisch Tijdschrift voor Sociale Zekerheid* 1989, (1065), 1071-1072, para 11.

¹²⁵ See especially Art. 51 of the Codex for the General Register in the port of Antwerp.

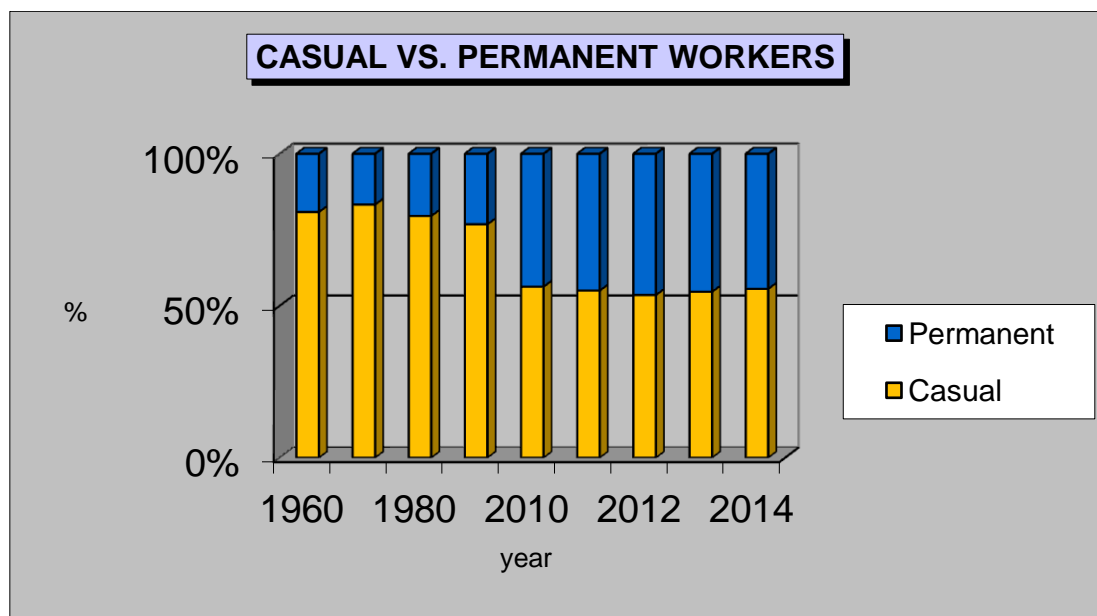
¹²⁶ See Vanfraechem, S., *Een sfeer om haring te braden. Arbeidsverhoudingen in de haven van Antwerpen 1880-1972*, Ghent, Academia Press / Amsab, 2005, 467 *et seq.* and 473; Van Isacker, K., *Afscheid van de havenarbeider*, Antwerp, De Nederlandsche Boekhandel, 1967, 193.

Figure 63A. Casual vs. permanent port workers in Antwerp, 2014 (source: CEPA¹²⁷)



¹²⁷ Vankrunkelsven, G., "Organisatie van de havenarbeid", Master Class Break Bulk, Portilog, Antwerp, 8 May 2014.

Figure 64. Casual vs. permanent port workers in Antwerp, 1960-2014 (source: CEPA¹²⁸)



Almost all interviewed breakbulk handlers in Antwerp stated their preference, if the legal framework would only allow it and provided that the general legal framework on temporary unemployment could be relied upon, to offer their regularly employed workers permanent employment. Under the current Codex, such employment is however not permitted.

Breakbulk operators believe that permanent employment would solve many problems. It would pave the way to multi-tasking, avoid the rigidities inherent in the classification into job categories, manning scales and shift hours, stimulate personal commitment, allow the introduction of productivity bonuses and reduce labour costs (especially contributions to the Subsistence Fund).

One shipping line operating con-ro vessels calling at Antwerp according to fixed schedules confirmed that in exceptional cases where it has to rely on casual pool workers, damage to rolling project cargoes tends to increase dramatically, suggesting that work performed by its regularly employed, experienced gangs is of a substantially higher quality. The quality issue was also mentioned by several breakbulk terminal operators.

In 2012, an agreement was reached on the possibility of employing all workers at Antwerp's container terminals, including general dockers and tallymen, on the basis of a permanent contract. But in other sectors the ban on fixed employment continues to apply. One container terminal operator does not see any benefits in permanent employment, because it must

¹²⁸ Vankrunkelsven, G., "Organisatie van de havenarbeid", Master Class Break Bulk, Portilog, Antwerp, 8 May 2014.

guarantee employment for these workers on 4 week days out of 5, which is unattractive as peaks often occur in weekends.

Moreover, several interviewed terminal operators complain that even permanently employed registered workers cannot be dismissed due to the inherent deficiencies of the sanctioning system¹²⁹.

In Zeebrugge, where a majority of workers are employed on the basis of semi-permanent timetables, some employers are in favour of fully permanent employment while others are not.

In Ghent, where the labour pool is much smaller and where currently only 2 liner services call, employers are not keen on a generalisation of permanent employment, because it would erode flexibility¹³⁰ and also because it would entail a considerable additional administrative burden on individual companies. This is not altered by the fact that a large majority of workers are re-hired by their employer without having to report to the hiring hall. Several interviewees would support permanent employment for crane drivers, however, because these workers, who operate expensive machinery, are in practice always engaged by the same employer. One major bulk operator in Ghent stated that, as such, the pool system is perfect, because it ensures maximum flexibility. Both (indeed extreme) alternatives of (1) maximum permanent employment enabling the operator to serve peak demands at all times and (2) relying on overtime work by a minimum of permanent workers would be less cost-efficient. A major general cargo handler in Ghent also expressed his support for the pool system, clarifying that temporary workers do not have the skills and safety training required to handle breakbulk. However, a system of occasional employment to serve peaks is urgently needed in Ghent, for example to form teams of 30 or 40 people to unload large car carriers. In addition, the current labour system is based on a number of absurd privileges such as payment of a bonus when workers have to move to another ship. According to this operator, it is very difficult to win contracts against the port of Flushing in the Netherlands. Not only is Ghent handicapped by a considerably longer maritime access route, but the labour cost difference is almost unsurmountable. The same company operates an inland port in Wallonia where workers also handle steel using heavy equipment, but where labour conditions are much more attractive, even if permanent employment has to be offered.

In Ostend, two major port employers confirmed that they would certainly welcome the possibility of offering permanent employment under normal labour law conditions.

451. The freedom to employ port workers is restricted by elaborate distinctions (1) in all Belgian ports, between the General Register and the Logistics Register; in addition, in the port of Antwerp, (2) between various professional categories of workers, who each enjoy their own exclusive right or 'sub-monopoly', or at least a preferential right, to perform certain types of

¹²⁹ On the latter, see *infra*, para 460.

¹³⁰ JLV, "Weinig animo in Gent voor vast dienstverband havenarbeiders", *De Lloyd* 21 February 2012.

port labour (for example, general workers, drivers and crane drivers, signalmen, tallymen, foremen etc.)¹³¹, and (3) between four daily hiring calls, each port worker being obliged (and entitled) to offer his services at one specific call only. In Antwerp, various additional restrictions apply, such as the exclusive right of hired gangs to perform overtime¹³² and the priority of engagement for workers who were employed on a Saturday to continue work on Sunday¹³³. Workers who have finished their job in one ship cannot be obliged to continue work at another ship¹³⁴.

These combined restrictions often result in labour supply not matching labour demand at all. It frequently occurs that while there is a shortage of labour for certain categories of workers, an excess supply of other workers remain unemployed. Also, shortages for a given shift cannot be balanced out by hiring excess workers belonging to another shift. Currently, Antwerp employers face serious difficulties in finding the necessary workforce for Saturday's afternoon shift, because weekend work remains voluntary. Some terminals also encounter problems finding sufficient workforce for day and night shifts. Statistics maintained by CEPA suggest that on the busiest days of the year, only four fifths of the workforce can be mobilised. Contrary to rules applicable under general unemployment law, unemployed port workers cannot be forced to accept other work (whereas they are entitled to the highest unemployment benefit). The classification into professional categories is reported to result in absurd rigidities, for example where a ship is being unloaded during a night shift but the workers are not allowed to open the terminal gate to let a container truck in. Another famous example is the impossibility for a forklift driver picking up a bag that fell off a pallet board, or unloading a lorry if he was hired for ship-related work.

A major Antwerp container handler stated that the introduction of multi-tasking and multi-skilling is perhaps the main priority for the port. For example, casually employed tallymen should be trained to perform general work as well. Today, tallymen and drivers cannot be obliged to perform other tasks; general port workers are not allowed to drive a forklift, etc. Another container handler agreed that multi-skilling should be an essential requirement because container handlers compete for workers of specific categories.

Yet another difficulty is that gangs have to be hired in advance, which leaves the employer with an expensive but unemployed workforce if the ship is delayed due to congestion or for any other reason. Also, due to a general prohibition laid down in general Belgian labour law¹³⁵, gangs of workers or even individual permanently employed crane drivers cannot be hired out to another terminal operator. But even within one company, exchanging members of lo-lo and ro-ro gangs gives rise to practical difficulties, especially when the new job differs from the one for

¹³¹ See especially Art. 125 of the Codex for the General Register in the Port of Antwerp and further category-specific rules in Art. 141, 152, 193, 231, 276, 293, 303, 372, 392, 412, 422 and 431.

¹³² Art. 68 of the Codex for the General Register in the Port of Antwerp.

¹³³ Art. 69 of the Codex for the General Register in the Port of Antwerp.

¹³⁴ See, for example, Van den Bossche, B., "Maritieme expeditie als ambacht", *De Lloyd* 31 January 2011.

¹³⁵ Art. 31 of the Temporary Work Act (Wet van 24 juli 1987 betreffende de tijdelijke arbeid, de uitzendarbeid en het ter beschikking stellen van werknemers ten behoeve van gebruikers / Loi du 24 juillet 1987 sur le travail temporaire, le travail intérimaire et la mise de travailleurs à la disposition d'utilisateurs).

which the workers were initially hired. The shift system results in even more inefficiency, for example in cases where after a shift has ended, several ro-ro ships try to leave port through the Kallo lock which is currently the only gateway to the Left Bank port area in Antwerp; as a result, the shift system negatively impacts on the smoothness of maritime traffic to and from the port. Breakbulk operators are increasingly handicapped by the shift system because vessel traffic services grant container ships priority and general cargo ships are as a result often delayed.

For all these reasons, CEPA and most if not all individual port companies conclude that the pool system is not functioning properly.

In Zeebrugge, rules on working times and shifts are considerably more flexible. Workers can be hired for all jobs, preferably in accordance with his or her specific professional qualifications. The task may even be changed (once) in the course of a shift¹³⁶. As the Codex furthermore does not impose mandatory minimum manning scales, the Register is relatively smaller than in other ports. On the other hand, Zeebrugge's Codex expressly reiterates the ban on exchanges of workers between employers¹³⁷.

In the port of Ghent, too, the Codex is more flexible than in Antwerp. As a rule, all non-permanent port workers are registered as workers for all tasks; they may however acquire an additional registration as an equipment operator, a foreman or a supervisor¹³⁸. Moreover, the Codex of Ghent allows for the conclusion of company-based agreements on flexible working hours¹³⁹. At the DFDS Tor Line terminal, for example, work may start at every full hour, day and night¹⁴⁰. Remarkably, similar agreements for paper traffic and Honda cars handled by Stukwerkers state that the specific working time conditions will have to be used as guidance for similar traffic at other places in the port, and that company agreements may never result in unfair competition¹⁴¹. In addition, Ghent has considerably fewer job categories. Employers in Ghent struggle with the voluntary nature of weekend work as well. Subcontracting by stevedoring companies to other firms is a common occurrence in Ghent.

452. On 21 November 2011 the Labour Court of Appeal at Antwerp annulled the refusal by the Administrative Commission of the port of Antwerp to register a diabetes patient as a container tallyman because she was found medically unfit to obtain registration as a port worker on the General Register. The Court decided that medical fitness must be examined in the light of the requirements that are specific to the job category at hand. The Court ruled that Council

¹³⁶ See Art. 9 and 20 of the Codex for the General Register in the port of Zeebrugge-Brugge.

¹³⁷ See Art. 26 of the Codex for the General Register in the port of Zeebrugge-Brugge.

¹³⁸ See Art. 7.1 of the Codex for the port of Ghent.

¹³⁹ Art. 6.99 of the Codex for the port of Ghent creates a general legal basis for such company-specific agreements.

¹⁴⁰ Collective Bargaining Agreement of 18 September 2006. Currently, this arrangement is not applied anymore because the sailing schedules now correspond with the port's shift regulations.

¹⁴¹ Collective Bargaining Agreements of 25 July 1995 (Art. 7) and 19 October 1995 (Art. 7) respectively. Another such agreement was reached with Kesteleyn, but it does not contain the competition clause.

Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation as well as national laws on non-discrimination require that candidates are only subject to the minimum requirements which are common to all job categories in the General Register¹⁴². The case is now pending before the Supreme Court of Belgium, but in the meantime candidates are being medically screened on a case-by-case basis.

453. The restrictions on access to the port labour market are reinforced by restrictions on access to the market for port training services. As we have explained¹⁴³, attending training courses is compulsory on all candidates for registration as a port worker.

In Antwerp, the exclusive right of OCHA is entrenched in the Codex for the General Register (Art. 5).

Recently, private training provider GPT encountered some reluctance by trade union BTB to accept it as a provider of training and certification services in the port of Ghent, and to grant it access to the local market for such services. Reportedly, this is due to the strong involvement of BTB in the Antwerp-based training provider OCHA which is acting as the provider of training services for general port workers in Ghent. However, the Ghent employers' organisation CEPG and trade union ACV Transcom see no problem whatsoever in cooperating with GPT. Interviewees from BTB replied that granting access to the Belgian market to GPT would amount to privatisation and that training should be a matter for the social partners, not commercial businesses.

454. Yet other restrictions on employment arise as a result of the mandatory composition of gangs¹⁴⁴ and the impossibility, especially in Antwerp, to hire workers for a limited duration only (less than a full shift).

Interviewees complained, for example, about the mandatory use of a tallyman, even when cargo does not have to be counted, the mandatory use of a tallyman for cargo transported by forklift, even in cases where the forklift driver can easily check and validate the cargo himself, and the mandatory use of an additional crane driver when cargo is loaded or unloaded by the ship's crew.

Simulations by CEPA suggest that due to manning scales, Antwerp is becoming increasingly unattractive for the handling of project cargoes, and that in order to reverse this trend, the labour cost should be reduced by 70 per cent.

¹⁴² Labour Court of Antwerp, 21 November 2011, NN. vs. VZW NN and Belgian State, A.R. 2010/AA/334.

¹⁴³ See *supra*, paras 398-399.

¹⁴⁴ See especially Chapter VI (Art. 491 *et seq.*) of the Codex for the General Register in the port of Antwerp.

What is more, a number of port worker categories, the employment of which is imposed through the rules on gang composition, are felt to be completely superfluous, such as a chief tallyman at container terminals or even at breakbulk terminals, where administrative work has long been computerised. In many cases even the jobs of ship supervisor (*ceelbaas*) and tallyman are considered costly anachronisms, for example where a homogeneous industrial cargo is discharged from an inland barge and no need whatsoever for a validation of the cargo arises. CEPA stated that the last major breakthrough on gang composition rules was achieved in the 1970s, when special rules for container terminals were agreed upon. BTB replied that employers have purposively eroded a number of classical tasks and gradually replaced chief tallymen and ship supervisors by cheaper office staff in order to create precedents. It declared its willingness, however, to discuss realistic adjustments of the rules. Already in 2009, ACV Transcom posted a background document on the erosion of the jobs of chief, assistant chief and ordinary tallymen on its website¹⁴⁵. One interviewed container terminal operator stated that the obligation to employ completely superfluous ship supervisors and chief tallymen is an obstacle to the introduction of new technologies such as OCR. It also pointed out that these functions simply do not exist in container terminals in the port of Zeebrugge.

An operator of terminals in several ports related that where it wants to use the automated weighing system of a mobile crane in Antwerp, he is obliged to hire, in addition to a crane driver and an on-quay tallyman, a second tallyman for the crane whose only task is to turn the key of the weighing machine. In point of fact, the latter act is part of the job description of neither crane drivers nor on-quay tallymen. For the rest of the shift, the second tallyman is free to be engrossed in newspapers and magazines.

Antwerp terminal operators unanimously complain that such restrictions cause considerable cost-inefficiencies and competitive distortions, and insist that it would be better if the whole gang system were abolished altogether. One interviewee mentioned that this would solve 80 per cent of all the labour cost problems in Antwerp. A major container handler in Antwerp drew attention to the rules on gang composition and shifts in the younger port of Zeebrugge, which are considerably more flexible; the latter port's Codex moreover allows for the conclusion of tailor-made arrangements for individual liner services.

Generally speaking, rules governing port work in Antwerp are considered substantially less flexible than in most other competing ports, including the Dutch port of Flushing. Some terminal operators pointed out, however, that workers at the latter port lose out on the specific expertise of the Antwerp docker which continues to be a necessity for many types of traffic.

As we have already mentioned¹⁴⁶, no rules on gang composition apply in Zeebrugge. Here, employers are reportedly never forced to hire workers whom they do not need. For example, the operators decide autonomously whether they need supervisors or foremen¹⁴⁷. Workers can

¹⁴⁵ "Dossier Markage", <http://acvtranscomwater.blogspot.be/2009/12/dossier-markage.html>.

¹⁴⁶ See *supra*, para 451.

¹⁴⁷ See Art. 9 of the Codex for the General Register in the port of Zeebrugge-Brugge.

be hired for half shifts on the basis of specific agreements. Repeat hiring is common and many workers are employed semi-permanently on the basis of individual timetables¹⁴⁸.

In Ghent, where gang composition rules are also less stringent than in Antwerp and where workers may be hired for half shifts¹⁴⁹, the private sector association VeGHO ('Vereniging van Gentse Havengebonden Ondernemingen' or Association of Port-Related Companies of Ghent) still complains about various instances of companies being forced to hire registered port workers for the sole purpose of complying with the port workers' monopoly, with no service whatsoever being rendered in return. For example, operations involving a self-unloading barge must be accompanied by two port workers who perform no work at all. Similar situations occur elsewhere in the port¹⁵⁰. Even in cases where a ship misses its ETA and operations cannot commence, the hired port workers must be paid. In some cases, for example where a gang has finished work at a ship and is then transferred to another activity (for example, to clean up the quay), a surcharge must be paid, without any objective justification. As a result, employers let the workers go home; otherwise they might in the future claim these extra tasks for the purpose of earning overtime. Also in Ghent, gangs and shifts cannot be combined. Where an employer hires a gang of 5, and one worker does not show up, he still has to pay for 5 workers; if on the next occasion he hires only 4 because it turned out that 4 workers are sufficient for the job, the workers will refuse to start work because still a full gang of 5 workers is needed. Finally, a foreman must always be hired for a full week even where he is only needed for one day. Another company related that on 10 to 15 days a year it employs specialised non-registered bulldozer drivers to handle wet sand unloaded from large sea-going dredgers; in order to keep industrial peace, it was forced to hire 1 registered port worker for a full year. The company considers this a practice worthy of the Mafia. It also referred to the obligation to hire workers for the loading of cargoes for a whole day, even if only one single lorry has to be handled; such rules of course deter new customers. Unions in Ghent retort that if something has to change, it will first have to be done in Antwerp, because Ghent is already much more flexible today.

455. There exists a ban on self-handling in Belgian ports¹⁵¹.

In exceptional circumstances where employment of non-registered workers is tolerated by employees' organisations, the employer still has to employ, or rather pay (idle) port workers, for the sole reason that the exclusive right of employment of the port workers must be adhered to at all times. Such situations are reported to occur in Antwerp where special purpose and especially heavy lift vessels are loaded and unloaded by the ship's crew. These operations require specific skills and experience which local port workers do not possess, and are, for

¹⁴⁸ See *supra*, para 450; on repeat hiring, see Art. 27 of the Codex for the General Register in the port of Zeebrugge-Brugge; on working hours, see Art. 33 *et seq.*

¹⁴⁹ See Art. 6.4 and 6.5 of the Codex for the port of Ghent.

¹⁵⁰ See *infra*, para 455.

¹⁵¹ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) *All longshore activities.*

(b) *Exception: Rigging of ship's gear.*

quality as well as safety reasons, best carried out by the ship's crew. Here, self-handling would be welcomed by the market, because it increases the quality of operations, raises the safety level and reduces the risk of cargo damage. Under the current rules, often a gang of 8 port workers stand about just watching as the crew of heavy lift vessels perform ballasting and loading operations.

A similar situation occurred at an industrial plant in the port of Ghent, where the management had decided to employ considerably cheaper non-registered, self-employed, workers for the unloading of containers from an inland waterway barge with a deck-mounted crane which could be operated by the self-employed skipper. The company was forced to hire a full gang of registered port workers who sat and watched as the barge was unloaded; at the next call of the barge, the port workers spent the shift sitting in their cars in the factory's car park; yet, they received full wages, for work not performed at all. As it appeared that the complaints were ill-founded and that the authority of the police and the harbour master to intervene was dubious, no further action was taken and the company now continues to handle container barges without registered port workers. In early 2012, the firm started up an additional barge traffic to supply wood pulp. These barges are unloaded by two self-employed workers, more in particular a shoreside crane operator and, towards the end of operations, a bobcat driver who both remain outside the scope of the Port Labour Act. For a while, the trade unions seemed to tolerate the new situation. In July 2012, however, the trade union BTB blockaded the factory and forced their way onto the premises in order to oblige the management to employ registered port workers supplied by a local stevedore, despite the fact that the firm had legally hired self-employed workers. After a 4 hours' negotiation, the manager of the factory gave in and the three hired registered port workers (one foreman, one crane operator and one bobcat driver) sat and watched as the barge was further unloaded by the self-employed workers; in addition, the factory had to be paid a night shift's wages because the unloading operations could only be concluded at 00h05. On 28 August 2012, exactly the same scenario unveiled. On 19 September 2012, the company obtained an order from the President of the Ghent Court prohibiting any further stoppages of discharging operations under forfeiture of a penalty of 2,500.00 EUR per person and per half working day and permitting the company to rely on the public force to remove any protester entering its premises. This did not prevent the unions of port workers from continuing their campaign and on 23 October 2012 they again entered the premises and forced the company to hire three extra registered workers during two shifts while the pulp barge was unloaded by the self-employed workers¹⁵². Meanwhile the company also terminated its membership of the port employers' association CEPG. To our knowledge, the self-handled container barge traffic is now left undisturbed.

¹⁵² See X., "Heibel rond lossing binnenschip bij Stora Enso Gent", *De Lloyd* 23 October 2012.

Figure 65. A paper mill in the port of Ghent – actually one of the biggest in the EU – legally hires self-employed workers to unload barges carrying wood pulp at its own quay. Yet, one port workers' union does not accept this practice and resorted in 2012 to industrial action to force the company to additionally employ registered port workers who however do not perform any work and merely watch as the self-employed workers carry out their tasks (photois by Stora Enso).



Figure 66. Photos of industrial action at the same paper mill in the port of Ghent in October 2012, when union members forced themselves a way onto the quay and insisted on the hiring of three registered port workers before operations by self-employed, non-registered, workers could resume (photos by Stora Enso)



A bulk terminal operator in Ghent confirmed that conditions for the handling of barges in the port are totally beside the point and that all inland shipping that can avoid operations in the port is doing so. It also recognised that barge traffic still accounts for a considerable workload for port workers, and that non-application of the Port Labour Act to barge traffic would have considerable effects on employment. On the other hand, other traffic flows might then return to the port area.

CEPA states that for safety and security reasons, terminal operators are not in favour of a general permission for crews to perform self-handling in ports. During interviews with terminal operators, self-handling was not mentioned as a priority concern of a general nature, but only for specific situations such as the handling of specialised project cargo vessels. If self-handling were allowed for all activities, it would jeopardise safety and quality of work and increase risks to persons, cargoes and equipment. One terminal manager admitted that self-handling would also go against the economic interests of the cargo handling companies. A major Belgian port operator confirmed this but explained that there is no scope for self-handling in the dry bulk sector, because (1) many ships are in a poor condition and manned by poorly performing officers; (2) as it is already difficult to exercise authority over port workers and impose safety measures on them, it will be nigh impossible to do so with unqualified

Phillipine crews; (3) price rates in shipping are very low so that accidents will inevitably occur; (4) transshipment using deck gear is considerably slower, while ports can offer sophisticated and pollution-preventing handling equipment; (5) crews will not care about environmental aspects, and ship-shore spillages of costly, often polluting, goods will be frequent. One ro-ro operator in Antwerp stated that self-handling for lashing operations is a non-issue, because the ship owner insists on high-quality work anyway.

Several stakeholders in the port of Zeebrugge stressed that self-lashing on board short sea ro-ro vessels would considerably strengthen the position of the port, especially in view of fierce competition by the Channel Tunnel. They reported that several shipping lines connecting Zeebrugge with British ports have lashing operations performed by their crews in the UK, while they are obliged to hire expensive registered port workers in Belgium. At a major car terminal at Antwerp, a *modus vivendi* was reached whereby lashing may be performed by the crew on condition that all stevedoring operations have been concluded and all port workers have left the ship. A representative of ACV Transcom pointed out that lashing on board ro-ro vessels performed by self-handling crew would entail considerable risks if port workers were simultaneously carrying out loading and unloading operations. However, he would be willing to accept self-handling to support smaller ports, inter-island traffic or Motorways of the Sea projects.

In Ostend, lashing on board ferries by registered port workers is imposed as a matter of principle as well, although the master can decide whether lorries must actually be lashed or not. In the English port of Ramsgate, the same ship owner is allowed to employ its own workers to carry out lashing operations.

None of the persons whom we spoke to advocated self-handling for the lashing of containers.

456. As a rule, the use of temporary work agency workers is not permitted. This ban is not based on any particular provision of the Belgian Temporary Employment Act¹⁵³ or regulations made thereunder¹⁵⁴, but its existence is inferred from the Port Labour Act and expressly acknowledged by the unions¹⁵⁵.

The Antwerp employers' association CEPA points out, however, that in some specific cases temporary port workers may be hired via job recruitment or employment agencies outside the pool. For the General Register, this is only possible in case of a shortage of workers. As for

¹⁵³ See the references *supra*, para 451, footnote.

¹⁵⁴ Art. 23 of the Temporary Employment Act authorises the King to impose a ban on temporary agency work for certain categories of workers or sectors. Such a ban was introduced, for example, for the sector of inland shipping, but not for port labour.

¹⁵⁵ See, for example, ABVV's *Sectorale Gids Uitzendarbeid 2011-2012*, http://www.abvv.be/web/guest/publications-ni?publications_WAR_tonsaiportlet_javax.portlet.action=viewall&publications_WAR_tonsaiportlet_publicationType=brochure&p_p_state=normal&p_p_col_count=1&p_p_id=publications_WAR_tonsaiportlet&p_l_id=10185&p_l_id=10185&p_p_lifecycle=1&p_p_col_id=column-1&p_p_mode=view&view=view-brochure&publicationType=brochure&themes=structtheme04, 50.

the Logistics Register, temporary agency workers may only be employed in the case of an exceptional increase of work and up to a maximum of 15 per cent of the number of logistics workers in the company; the employer must consult in advance with the Permanent Bureau¹⁵⁶.

Several individual employers stated that they would favour the opening up of the market for one, two or more temporary work agencies (one terminal suggested the selection of such agencies servicing all Flemish ports through an open tendering process). Some interviewees insisted, however, that proper training should remain a basic precondition. One terminal operator said that it is particularly implausible to impose an exclusive right for registered workers on safety grounds while all safety arguments vanish without a trace in the case of a shortage of workers, when operators are indeed free to use non-registered, completely untrained, auxiliary workers.

In Zeebrugge, enthusiasm for access to the market for temporary work agencies appears limited, mainly because CEWEZ maintains lists of well-trained occasional workers.

In Ghent, several interviewees from the employers' side confirmed that opening up the market to temporary work agencies would be a bridge too far and that the pool still has the advantage of being able to supply workers at almost any time. On the other hand, a clear need is felt to accept occasional workers in the port. Currently, Ghent has no occasional workers. It was also mentioned that following the criminal proceedings in *Becu*¹⁵⁷, temporary work agencies in Ghent are reluctant to accept assignments in the port area. Another operator who runs terminals in Antwerp, Ghent and Zeebrugge feels that the alternative to the current pool system of permanent employment for core personnel combined with a free market for temporary work agencies to meet peak demand would probably result in higher costs, because these agencies would have to employ highly specialised workers for whom there will often be no work.

A ferry operator in Ostend stated that temporary agency work would not meet their needs, because the agencies cannot guarantee permanent availability of workers and agency workers do not possess the necessary skills, for example to drive tugmasters. The current system offers flexibility but it becomes expensive because full shifts must be paid.

In 2008, a medical doctor politically linked to the extreme left posed as a temporary agency worker at a logistics company in Antwerp and reported on his experience and alleged substandard work conditions in a book¹⁵⁸. Interviewed by us, the employer concerned dismissed these stories as just hot air. Interviewees from ACV Transcom also referred to this publication and confirmed that employers in the logistics sector rely heavily on cheap and unskilled temporary agency workers who earn only 60 to 75 per cent of registered port workers. In the logistics sector of Zeebrugge temporary work agencies are reportedly active on a large scale too.

¹⁵⁶ Art. 59 of the Codex for the Logistics Register in the port of Antwerp.

¹⁵⁷ On this case, see *infra*, para 466.

¹⁵⁸ Van Bever, K., *Dokter in overall*, Berchem, EPO, 2008, 295 p.

Recently, a specialised commercial company was set up in order to perform cargo handling operations as a subcontractor, with an associated company providing temporary workforce. Currently, these firms only offer loading and unloading services at locations, including some inland terminals, that are outside the geographical scope of the Port Labour Act. Interestingly, their management said that they anticipate the collapse of the Belgian Port Labour Act and that the future will bring tremendous opportunities for temporary work providers in port areas¹⁵⁹.

Another recent development is the demand by the Belgian Federation of Temporary Work Agencies Federgon to open up the port labour market to its members, because the existing prohibition on engaging temporary workers cannot be justified on grounds of general interest within the meaning of Article 4 of Directive 2008/104/EC on temporary agency work¹⁶⁰.

In December 2011, the Belgian Government sent a report to the European Commission in pursuance of Article 4(5) of Directive 2008/104/EC, in which it reviewed restrictions and prohibitions on the use of temporary agency work. The Government referred, *inter alia*, to the special legal framework for port labour, a dangerous sector characterised by a very high frequency of occupational accidents. With a view to health and safety, only registered workers may be employed. The objective of the legal regime is to ensure that only qualified and trained workers are employed, who are aware of the specific risks inherent in their job. Remarkably, the Government added that applicable laws do not prohibit temporary agency work as such, but imply that temporary agency workers, too, must abide by them. In view of the objectives set and of the equal treatment of all permanent workers in the sector, the Government concluded that the said legal framework is not contrary to Article 4 of the Directive¹⁶¹.

Interviewed by us, Federgon commented that the Government has not proceeded to any in-depth review of the ban on temporary agency work in ports, as required by the Directive. Federgon also disputes that the prohibition in the port sector is necessary to protect workers and to ensure safety at work, as protection of workers is not a ground of general interest, temporary agency workers must be treated on an equal footing with other workers and the user undertaking is, in any case, responsible for safe working conditions.

457. The Port Labour Act turned out to be an obstacle to the creation of Employers' Alliances. Such entities, which have enjoyed a specific legal status since 2000¹⁶², act as non-profit labour pools for individual companies who decide, on a voluntary basis, to jointly hire specialised employees to meet peak demand. Eligible workers are the long term-unemployed and persons

¹⁵⁹ See "H & L Services: logistieke hand- en spandiensten met resultaatsverbintenis. Anticiperen op afschaffing "Wet op havenarbeid" ?", *De Vlaamse ondernemer*, 15 December 2011, 1 and 5.

¹⁶⁰ See, *inter alia*, the Federgon's *Annual Report for 2011*, <http://www.federgon.be/publicaties/jaarverslagen/>, 9. On Directive 2008/104/EC, see *supra*, para 225 *et seq.*

¹⁶¹ *Verslag namens de Belgische Staat aan de Europese Commissie aangaande de resultaten van de heroverweging van de nationale verbodsbepalingen en beperkingen op de inzet van uitzendarbeid Artikel 4(5) van de richtlijn 2008/104/EG betreffende uitzendarbeid*, December 2011, 32-33.

¹⁶² See Art. 186 *et seq.* of the Wet van 12 augustus 2000 houdende sociale, budgettaire en andere bepalingen / Loi du 12 août 2000 portant des dispositions sociales, budgétaires et diverses.

receiving financial help from public welfare institutions. The legal regime offers tax incentives and is supported by the European Social Fund¹⁶³. The Belgian Resource Centre of Employer's Alliances (Centre des Ressources des Groupements d'Employeurs, CRGE), which facilitates the establishment of these pools, informed us about an abortive project to create a pool for logistics workers in cooperation with a major logistics company in Antwerp. The project failed due to the exclusive rights of registered workers laid down in the Port Labour Act.

458. There are factual limitations on the deployment of registered port workers in other Belgian ports. This issue is of practical importance, as a number of employers operate terminals in more than one Flemish port.

In response to our questionnaire, the Federal Service for Employment, Labour and Social Dialogue said that workers are only transferred to another port on rare occasions, as they are, as a rule, registered in one port only. Theoretically it is possible to obtain registration in more than one port.

The Antwerp employers' organisation CEPA and the Port Authorities of Antwerp, Ghent and Brussels reported that it is not allowed to temporarily transfer port workers to another port. Where such temporary transfers between ports occur, they are said more often than not to entail administrative difficulties.

On the other hand, the Port Authority of Zeebrugge stated that port workers are frequently transferred to another port. The trade unions BTB, ACV Transcom and ACLVB confirm that port workers can be transferred temporarily to another port and also between employers. ACV Transcom informed us that, in order to fill shortages, the port of Ghent never relies on occasional workers but exclusively hires registered workers from other Belgian ports, because these workers are properly trained. Other sources mentioned that this is only possible in cases where the employer also operates a terminal of its own in the other port. Employers' association CEPG specified that between 2007 and 2011, employers and unions in Ghent accepted transfers of workers from other ports, but that no formal collective agreement could be reached on this matter¹⁶⁴.

A major Antwerp container handler mentions that in case of shortage of labour it regularly employs workers from Zeebrugge, where it also operates a terminal; Zeebrugge workers have priority over occasional workers from Antwerp. Such exchanges of workers are however hindered by differences between time schedules of hiring sessions, and lists of hired workers must be communicated in advance to the trade unions.

Several firms also complained that it is not allowed to exchange surplus workers between terminal operators within the same port. This restriction finds its basis, however, in general

¹⁶³ See *supra*, para 268.

¹⁶⁴ Reference was made to the document 'Inzetten havenarbeiders andere havens. Voorstel gezamenlijke werkwijze'.

Belgian law on the hiring out of workers¹⁶⁵. Yet, the supply by stevedoring companies of workers to other, especially industrial, companies is reported to be a common practice in the port of Ghent (apparently, it is legally based on subcontracting arrangements).

459. The daily hiring system appears to a large extent obsolete since most port workers are in practice almost always employed by the same employer. Recent statistics for Antwerp suggest that during 4 days out of 5, 72 per cent of non-permanent port workers are employed by the same employer. For an increasing number of job categories, workers have permanent contracts. As a result, a large majority of workers never report to the central hiring hall at all. Several terminal operators complain that at peak times no one is available in the hiring hall, and that workers showing up at the hall are all too often unwilling to perform any work whatsoever. One operator who called the situation 'dramatic', wonders where all the pool workers are when they are not available at the hiring hall and complains that workers cannot be exchanged between shifts.

In Zeebrugge and Ghent, where large majorities of workers always work for the same employer, only 15 to 20 per cent report more or less regularly to the hiring hall¹⁶⁶.

In Antwerp, both employers and workers complain that workers have to undertake time-consuming and, given severe traffic congestion on the motorways and especially at the river crossing, difficult journeys from their place of residence to the central hiring hall near the city centre; after the hiring session, they often have to travel tens of kilometres back to their actual place of employment, or, in the case of unemployment, back home. Finally, whereas the historic *raison d'être* of the central hiring hall is the prevention of workers being hired in the streets and in bars, we witnessed that the latter form of employment, which was apparently never really eradicated¹⁶⁷, continues to occur regularly today, with foremen entering the hall merely for the purpose of formally registering with the staff of the Employment Agency the workers already hired outside the building. Workers who hang around bars and near the hiring hall have better chances of getting jobs. It is a well-known fact that often registered workers not willing to work (which would appear, for that matter, to be just another historical constant¹⁶⁸) report at the hiring hall only to receive unemployment benefit. These workers are believed to have other informal jobs, for example in the construction industry. The trade union BTB in Antwerp says that employers are obsessed by a few shortcomings of the hiring system and insists that it offers extreme flexibility.

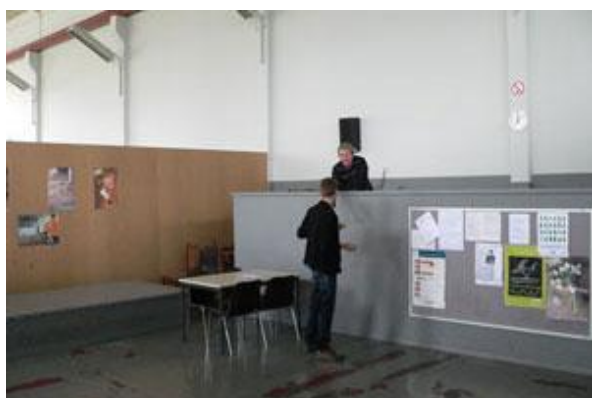
¹⁶⁵ See already *supra*, para 451.

¹⁶⁶ See already *supra*, para 450; see also X., "Naar een modernisering van de havenarbeid", *Portaal* April-May-June 2012, (4), 5.

¹⁶⁷ See Vanfraechem, S., *Een sfeer om haring te braden. Arbeidsverhoudingen in de haven van Antwerpen 1880-1972*, Ghent, Academia Press / Amsab, 2005, 125-126; Van Isacker, K, *Afscheid van de havenarbeider*, Antwerpen, De Nederlandsche Boekhandel, 1967, 20.

¹⁶⁸ See Vanfraechem, S., *Een sfeer om haring te braden. Arbeidsverhoudingen in de haven van Antwerpen 1880-1972*, Ghent, Academia Press / Amsab, 2005, 440 *et seq.* and 465 *et seq.*

Figure 67. The hiring halls at Antwerp (top) and Ghent (bottom). After hiring sessions, during which employer and worker can conclude a contract of employment for one shift by exchanging an employment note for a worker's card (left), unemployed workers queue at the counter of the Flemish Public Employment Office to receive a stamp in their workbook which entitles them to payment of unemployment benefit (right). A similar call stand exists in Zeebrugge. Employers consider the hiring system anachronistic, cost-inefficient and unnecessary and advocate its replacement by an electronic hiring system. Trade unions – albeit with varying vigour – defend the hiring halls (photos by the author).



In this regard, reference can also be made to a particular practice that exists in the port of Antwerp, where port workers performing a double shift or working on Saturdays and Sundays collect employment notes (*briefkes*) which they later on exchange for an extra day off. This informal or rather illegal system, which is endorsed by individual employers, sometimes results in planning difficulties, especially during holiday periods, and in unexpected claims for wages by the collectors of these notes¹⁶⁹.

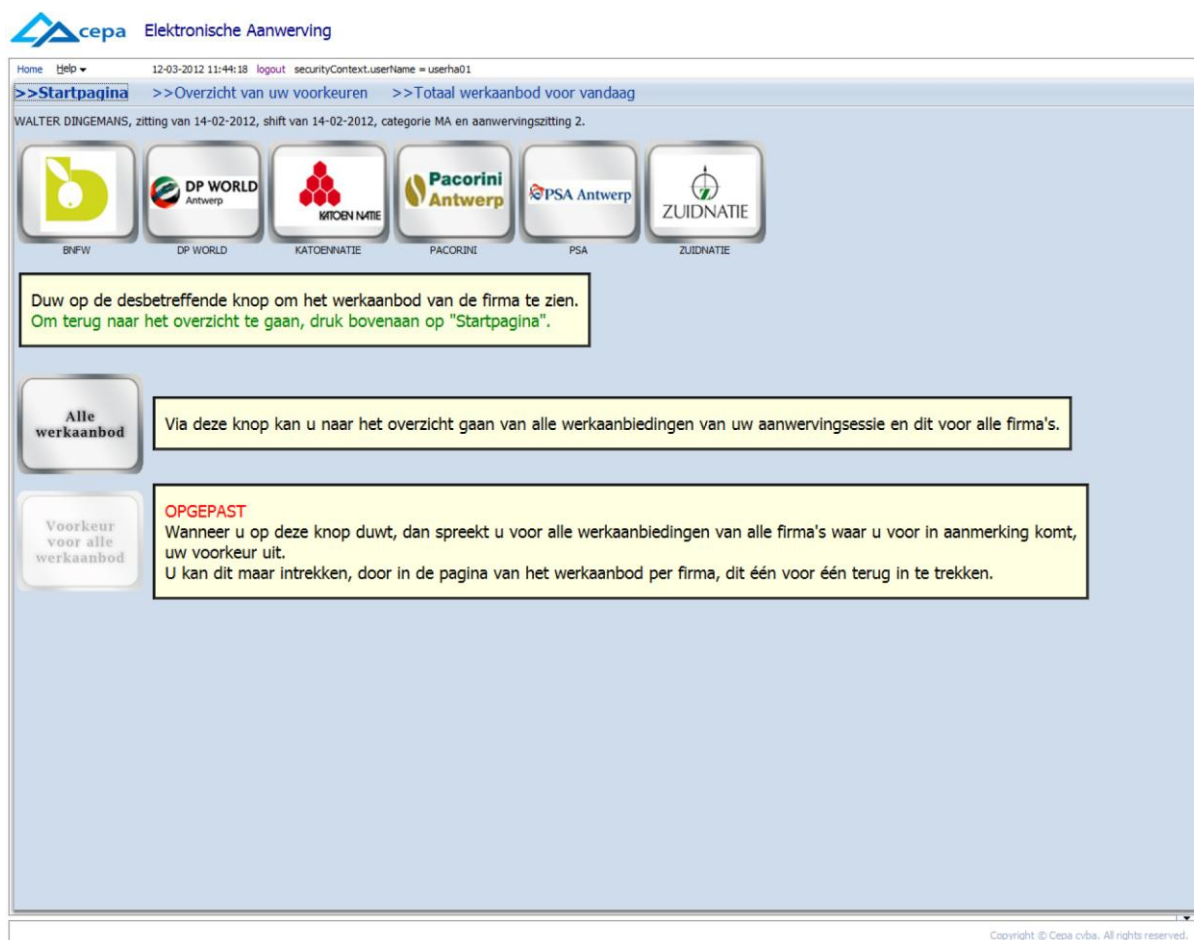
¹⁶⁹ On this practice, see also Barton, H. and Turnbull, P., "Labour Regulation and Competitive Performance in the Port Transport Industry: The Changing Fortunes of Three Major European Seaports", *European Journal of Industrial Relations* 2002, Vol. 8, No. 2, (133), 150.

Several terminal operators informed us that they maintain 'second circuit' lists of occasional workers whom they rely on in case no suitable workforce can be found in the hiring hall. These lists of occasional workers are not shared among employers though. A practical difficulty is that the timing of hiring sessions at the hiring hall often leaves only 45 minutes to find and engage occasional workers.

For a couple of years now, Antwerp's biggest container handler PSA has been using its own digital planning and communication platform which gives workers access to an e-portal and on-terminal computers kiosks. As a result, repeat hiring at the terminal is now largely automated.

Since 2009, CEPA has had concrete plans to introduce electronic hiring throughout the port. BTB believes that this would dampen the enthusiasm of workers and result in less productivity. When in July 2012 CEPA presented its proposals, the unions did not show up. CEPA stresses that its proposal is based on exactly the same principles as the current procedure at the hiring hall.

Figure 68. Demo screenshot of a step in the electronic hiring procedure proposed by the Antwerp employers' association CEPA in July 2012, which has not yet been accepted by the trade unions (source: CEPA)



In Zeebrugge, too, the employers would prefer to abolish the hiring hall, because it is expensive and anachronistic and generates costly and environmentally unfriendly road use. Yet, an IT solution still needs to be developed and the Federal Unemployment Agency has to agree. The local unions appear not fundamentally opposed to this change.

A major bulk handler in Ghent stated that the obsolescence of the entire hiring hall system is evidenced by the extremely limited number of workers who find a job there. A computer-based hiring system would be much more efficient and moreover give foremen easy access to data on the skills of individual workers. Another serious drawback of the current hiring system is that employers can be forced to engage unwanted workers. The principle of freedom of engagement

which is explicitly recognised in the Codex¹⁷⁰ apparently applies one way only. Yet, the Codex of Zeebrugge-Brugge expressly allows a company-specific ban (*wraking*) against an individual worker. In other ports such as Antwerp, the latter rule does not seem to apply however.

Also in Ghent, a company complained that some workers only want to work at the weekends, preferably during night shifts, which allows them to be absent during weekdays. As a result, it is sometimes difficult to find sufficient workforce on weekdays.

Another problem reported by terminals is that chances to obtain a job in the hiring hall are extremely limited and that the system is discouraging the workers. However, representatives of BTB in Ghent complained that the hiring system is not properly used by the employers and that the current hiring by telephone results in all kinds of messy practices by both employers and workers.

460. Employers from several ports stated that registration as a port worker is in practice only suspended or withdrawn on extremely rare occasions. Only exceptional cases of gross misconduct or criminal acts are sanctioned by a withdrawal of the registration. Many employers feel that alcoholism and drug abuse are not properly sanctioned. As a result, registered workers are in practice ensured a 'job for life'. A terminal operator related that it preferred to pay the day's wages of a drunk bulldozer driver totally unable to perform his job rather than to get into trouble with the unions. Another terminal operator stated that drink testing is not permitted unless the whole team is tested, which is unrealistic because operations would be seriously delayed and this rule is of course just a trick to sweep the whole issue under the carpet. Employers were unanimous in explaining the inefficiency of sanctioning mechanisms in that they are based on the principle of joint decision-making, which implies, of course, a right of veto for the unions. They said that misconduct which remains unpunished in the port would often lead to dismissal in any other sector and that the system is 'nefarious' and 'perverse'. A union representative from Zeebrugge and Ostend retorted that in many cases, immediately resorting to repressive measures is the wrong approach and that, to hold one's own, a port worker must have a strong personality anyway.

461. Interviewed employers in all ports unanimously complain about the current system of casual employment resulting in poor personal commitment by workers and in a very weak identification with their company. One container terminal operator stated however that the loyalty of semi-regular pool workers is stronger than that of permanently employed workers.

¹⁷⁰ Art. 5.3 of the Codex for the General Register in the port of Ghent.

462. Trade unions play an important role in the investigation, recording and sanctioning of infringements of the laws and regulations on port labour. The enforcement powers of trade union representatives are confirmed in express provisions of some Codices¹⁷¹.

As a matter of fact, employee organisations actively investigate breaches of, say, the exclusive right of employment of registered port workers or the manning scales. In Antwerp, these cases are then brought before a conciliation body, called the Permanent Bureau (Dutch *Bestendig Bureau*)¹⁷², which is composed of representatives of both the employers' association and the trade unions. The Permanent Bureau may impose serious financial sanctions on employers¹⁷³.

Recently, one major Antwerp employer sought advice on the legality of this system and lodged a written complaint with the Federal Agency for Employment, Labour and Social Dialogue. Reportedly, this company and its lawyers question, *inter alia*, the lack of a legal basis for the sanctioning system, the usurpation by the Permanent Bureau of jurisdictional competence vis-à-vis employers active in other sectors who are not members of CEPA, the dual role of the employee organisations as prosecutors and judges and the humiliating set-up of the sessions of the Permanent Bureau. Moreover, the cash flows generated by the imposition of fines upon employers are said to lack transparency, as the fines are drained to entities belonging to the trade unions themselves¹⁷⁴; as a result, the unions have a financial interest in *not* reconciling the parties and thus effectively sanctioning the employer who is allegedly in breach. Also, although this is a requirement of the Antwerp Codices¹⁷⁵, the unions often do not appear at the port terminal while the infringement can still be solved, but prefer to submit written complaints afterwards, in order to ensure that prosecution is effectively undertaken. Decisions by the Permanent Bureau cannot be appealed. If the employer does not pay the fine imposed, the unions consider industrial peace disturbed and are free to resort to any industrial action they

¹⁷¹ See, for example, Art. 1.5 of the Codex for the General Register in the port of Ghent.

¹⁷² The Bestendig Bureau was established through a Royal Decree of 1968 (Koninklijk Besluit van 26 november 1968 tot oprichting van een Bestendig bureau bij het Gewestelijk Paritair Comité voor de haven van Antwerpen, genaamd "Nationaal Paritair Comité der Haven van Antwerpen" / Arrêté Royal du 26 novembre 1968 instituant un Bureau permanent à la Commission paritaire régionale pour le port d'Anvers, dénommée " Nationaal Paritair Comité der Haven van Antwerpen). Today, it finds a basis in Art. 19 *et seq.* of Koninklijk besluit van 6 november 1969 tot vaststelling van de algemene regels voor de werking van de paritaire comités en paritaire subcomités / Arrêté royal du 6 novembre 1969 déterminant les modalités générales de fonctionnement des commissions et des sous-commissions paritaires. On the origin of the Bureau, see Vanfraechem, S., *Een sfeer om haring te braden. Arbeidsverhoudingen in de haven van Antwerpen 1880-1972*, Ghent, Academia Press / Amsab, 2005, 145. For Ghent, compare the details in Brugge, J., *"Die niet zuipt of koopt, wordt niet gerekend om te werken." Het sociaal overleg met betrekking tot de Gentse haven tijdens het interbellum (1919-1939)*, master thesis, Ghent University, 2008-2009, http://lib.ugent.be/fulltxt/RUG01/001/361/037/RUG01-001361037_2010_0001_AC.pdf, 119 *et seq.*

¹⁷³ See, for example, Art. 1 and 32 of the Codex for the General Register in the port of Antwerp. The prevention and settlement of disputes is regulated in Chapter XII (Art. 801 *et seq.*) of the Codex for the General Register in the port of Antwerp and in Chapter XI (Art. 201 *et seq.*) of the Codex for the Logistics Register in the port of Antwerp.

¹⁷⁴ See Art. 818 of the Codex for the General Register in the port of Antwerp which provides that the Joint Committee shall decide on the use of the money. Comp. Art. 46 of the Codex for the General Register in the port of Zeebrugge-Brugge.

¹⁷⁵ See Art. 956, a) of the Codex for the General Register in the port of Antwerp; Art. 275, a) of the Codex for the Logistics Register in the port of Antwerp.

deem fit¹⁷⁶. As a result, employers in practice always pay these fines, in order to avoid social unrest and especially a disruption of their operations.

According to the legal opinion, the whole sanctioning system goes against fundamental legal principles, including impartiality of judges. Additional factual and legal issues arise however. For example, terminal companies who adopt a hardline negotiating stance at collective bargaining, are often subject to very strict inspections of their daily operations by the unions. Also, fines imposed may be considered to be based on unreasonable penalty clauses that are illegal under the law of contract.

Recently, the Belgian Labour Minister clarified before Parliament that the Permanent Bureau is not a law court, that it finds a basis in existing regulations on collective labour relations, that fines imposed are only in the nature of recommendations and that the sums collected are jointly managed. Zuhail Demir MP concluded that even so the system lacks transparency¹⁷⁷.

463. As we have mentioned above¹⁷⁸, the collective labour agreements which regulate employment are brought together in elaborate port-specific Codices. Some observers consider the excessive detail in these Codices, especially the Antwerp ones, a restriction on employment in its own right.

464. As a twentieth and last restriction on employment, Belgian legislation still obliges weighers and measurers to take an oath before the Court of Commerce¹⁷⁹. Pursuant to the Port Labour Act, these sworn weighers and measurers also must be registered as port workers. Both requirements aim at ensuring professional skills of these workers. At Ghent, the sworn weighers and measurers are permanently employed by a commercial company, yet also fall under the Codex for port workers. Prior to 1994, the weighers and measurers enjoyed a legal monopoly based on French revolutionary laws and municipal regulations¹⁸⁰. Some sworn weighers and measurers also act as tallymen in the port. To our knowledge, no one ever complained about these particularities.

465. In the past, some restrictions on employment described above were challenged on legal grounds. Below, we shall briefly analyse (1) the ECJ's judgment in *Becu*; (2), the ensuing

¹⁷⁶ See Art. 817 of the Codex for the General Register in the port of Antwerp; Art. 217 of the Codex for the Logistics Register in the port of Antwerp.

¹⁷⁷ *Parliamentary Documents*, Chamber of Representatives, Commission for Social Affairs, Full Report, 8 May 2012, Afternoon, CRIV 53 COM 477, 1-4.

¹⁷⁸ See *supra*, para 380.

¹⁷⁹ See Art. 576 and also 601, 16° of the Procedural Code and Art. 11, 12 and 63 of the Inland Affreightment Act of 5 May 1936.

¹⁸⁰ See, *inter alia*, *Pandectes belges, verbis* Mesureur juré and Pesage et mesurage.

judgment of the Ghent Court of Appeal of 18 January 2001, delivered in the same case; (3) the judgment of the Brussels Labour Court of 11 January 2002, and (4) conclusions on the closed shop by the European Committee of Social Rights.

466. In the *Becu* case¹⁸¹, which was already mentioned in the introductory chapter on EU law above¹⁸², the ECJ looked into the compatibility of the Belgian port labour regime with the TFEU.

In the case at hand NV SMEG, a Belgian company, operated a grain warehousing business within the perimeter of the Ghent port area, as defined in Article 1 of the Royal Decree of 12 January 1973 and in Article 2 of the Royal Decree of 12 August 1974 establishing and determining the appointment, powers and numbers of members of Joint Subcommittees for port labour. SMEG's activities comprised, on the one hand, the loading and unloading of grain ships and, on the other, the storage of grain on behalf of third parties. Goods were transported to and from its premises by ship, rail or lorry. For work carried out on the quays, that is to say 'dock work' *stricto sensu*, such as the loading and unloading of grain ships, SMEG used registered dockers. For the other work, which takes place when the grain is in the silos, namely loading and unloading in the warehouse, weighing, moving, maintenance of the facilities, operations in the silos and on the weighbridge, and the loading and unloading of trains and lorries, it used not registered dockers but workers whom it employed itself or temporary workers made available to it by Adia Interim, a temporary employment agency established under Belgian law. At the material time, Mr Becu, then a director of SMEG, had certain duties in the Ghent port area performed by 8 non-registered workers. At the same time, Mrs Verweire, then a manager of the company NV Adia Interim, had certain tasks in the Ghent port area carried out by 5 non-registered workers. It was not disputed that dock work as defined in the aforementioned articles of the respective Royal Decrees was carried out on SMEG's premises. As a result, SMEG was subject to the Port Labour Act. It was likewise clear, and had not been disputed, that, during the period at issue, SMEG had certain operations carried out by non-registered port workers, despite the fact that, under the Port Labour Act, such work may be performed by registered port workers only. The Public Prosecutor brought criminal proceedings against Mr Becu and Mrs Verweire, and against their undertakings, on the ground that they had caused work to be carried out in the Ghent port area by non-registered dockers, in breach of the provisions of the Port Labour Act. However, the Criminal Court of Ghent acquitted the first two defendants and at the same time held that the undertakings managed by them had no case to answer. Upon appeal, the Court of Appeal referred the case to the ECJ for a preliminary ruling.

The Ghent Court noted the high wages of Belgian dockworkers. Non-registered workers employed by a cargo handler in the port of Ghent were paid an hourly wage of 667.00 BEF (about 16.50 EUR) whilst a registered dockworker's minimum hourly wage was 1,335.00 BEF

¹⁸¹ ECJ 16 September 1999, *Becu*, C-22/98, ECR 1999, I-5665. On this case, see also Deneve, C., "Aanduiding van de toepasselijke arbeidswetgeving. Arbeiden zonder grenzen of ondernemen zonder banden?" *Tijdschrift voor Sociaal Recht* 2004, (549), 585-589.

¹⁸² See, *inter alia*, *supra*, paras 197, 213 and 215.

(about 33.00 EUR)¹⁸³. In the opinion of Advocate-General Colomer, this wage disparity led to the imposition of unreasonable prices¹⁸⁴.

As the case was referred to the ECJ for a preliminary ruling on the compatibility of the Belgian regulations with EU competition law, the Court focused on the competition aspects of the Belgian port labour regime. First of all, the Court recalled that (current) Article 106(1) of the Treaty provides that in the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in (current) Article 18 and (current) Articles 101 to 109. The Court found that, by allowing only a particular category of persons to perform certain work within well-defined areas, the national legislation at issue granted to those persons special or exclusive rights within the meaning of (current) Article 106(1) TFEU. This was particularly true in view of the fact that the registration granted was valid only for the Ghent port area and was not automatically granted to all dockers satisfying the conditions for eligibility to seek such registration but was conferred according to labour requirements. However, the Court observed that the prohibition contained in (current) Article 106(1) TFEU is applicable only if the measures to which it refers concern “undertakings” (paras 23-24). It also recalled that the prohibitions laid down in (current) Articles 101 and 102 TFEU were, in themselves, concerned solely with the conduct of undertakings (para 31).

The ECJ found that the employment relationship which the registered dockers had with the undertakings for which they performed dock work was characterised by the fact that they performed the work in question for and under the direction of each of those undertakings, so that they had to be regarded as workers. Since they were, for the duration of that relationship, incorporated into the undertakings concerned and thus formed an economic unit with each of them, the dockers did not therefore in themselves constitute “undertakings” within the meaning of EU competition law. Even taken collectively, the registered dockers in a port area could not, according to the ECJ, be regarded as constituting an undertaking. The Court recalled that a person's status as a worker is not affected by the fact that that person, whilst being linked to an undertaking by a relationship of employment, is linked to the other workers of that undertaking by a relationship of association. In the *Becu* case, there was no indication that the registered dockers in the Ghent port area were linked by a relationship of association or by any other form of organisation which would support the inference that they operated on the market in dock work as an entity or as workers of such an entity (paras 26-29). As a consequence, the Belgian port labour regulations at hand could not be held considered contrary to competition law.

Next, the Court found that there is nothing in the actual provisions of the national legislation, or even in the observations submitted to the Court which would support the view that there is any discrimination on grounds of nationality as regards the right to take up and pursue the

¹⁸³ Opinion of Advocate-General Ruiz-Jarabo Colomer in ECJ 16 September 1999, *Becu*, C-22/98, ECR 1999, I-5665, para 15.

¹⁸⁴ *Ibid.*, para 28.

activity of registered docker. As a result, there was no question of the Port Labour Act being incompatible with the general non-discrimination principle contained in Article 18 TFEU.

However, the ECJ went on to suggest that, to the extent that a national port labour Act imposes the legal form of a contract of employment, it might be considered contrary to the free movement of workers and/or the freedom of services¹⁸⁵:

34. Furthermore, since the order for reference does not mention the question whether the obligation to have recourse, for dock work, to the services of recognised dockers such as those referred to in the 1977 Royal Decree is capable of constituting, for other recognised dockers and/or workers satisfying the conditions for recognition, a barrier for the purposes of [current Article 45 and/or current Article 56] of the Treaty, the Court has not been put in a position to rule on this issue. It is for the national court to determine, if necessary, whether that is the case.

35. In so doing, it may find it necessary to establish whether the national legislation at issue in the main proceedings, by requiring, for the performance of dock work, that recourse be had to recognised dockers who are 'workers', makes it mandatory for the relations between the parties to take the legal form of a contract of employment and thus in principle falls under the prohibition.

36. It follows from the judgment in Case C-398/95 SETTG v Ypourgos Ergasias [1997] ECR I-3091 that national legislation which, by making it mandatory for the relations between the parties to take the legal form of a contract of employment, prevent economic operators from one Member State from pursuing their activities in another Member State as self-employed persons working under a contract for the provision of services constitutes a barrier capable of falling within the ambit of the prohibition laid down in [current Article 56] of the Treaty.

In view of the wording of the order for reference, the Court did however not rule on the latter issues.

467. On 18 January 2001, the Court of Appeal of Ghent issued its final judgment in the Becu case¹⁸⁶.

First of all, the Court took note of the ECJ's judgment which had identified no infringements of treaty provisions on competition and free movement of workers and services, yet left a number of issues for the national Court to decide. The Court of Appeal saw no reason to refer the case again to the Court in Luxembourg.

The Court found that the suggestion by the ECJ that a ban on self-employment might be contrary to freedom to provide services (current Art. 56 TFEU) in port labour is irrelevant to the

¹⁸⁵ See *supra*, para 197.

¹⁸⁶ Court of Appeal of Ghent, 18 January 2001, Nr. 88678, Public Prosecutor vs. Jean-Claude Becu, Annie Verweire, N.V. SMEG and N.V. Adia Interim, unreported.

Belgian situation, because the Port Labour Act only applies to work performed under a contract of employment and does not lay a ban on self-employment in ports.

Next, the Court decided that the obligation to use registered port workers is contrary neither to free movement of workers (Art. 45 TFEU), nor to freedom to provide services (Art. 56 TFEU). The Royal Decree setting out the conditions for registration relates to 'functional' requirements only and does not exclude any worker on the ground of nationality or indeed in any other respect. The exclusion of workers registered in other Belgian or foreign ports and of prospective workers who meet the criteria but have not yet obtained registration, is justified on functional grounds as well. The requirement that workers must have attended safety training is not illegitimate, discriminatory or contrary to the relevant Treaty provisions either. As long as the conditions to access a profession have not been harmonised, the Member States are authorised to determine which knowledge and skills are required to exercise that profession.

The Court further reasoned that the conditions for registration as a port worker meet the criteria set by the ECJ to justify restrictions on the free movement of persons (*i.e.* no discrimination based on nationality; compelling reasons of public interest; proportionality). The training requirement is based on general interest considerations and compatible with the proportionality principle. The Ghent Court concluded that the Port Labour Act is not impeding free movement of workers or of services. The considerable differences between applicable minimum hourly wages are not a relevant obstacle, because all companies in the port area have to abide by these minima.

Trying another tack, the defendants argued that the Port Labour Act is contrary to the non-discrimination principle laid down in the Belgian Constitution (Art. 10 and 11) and asked for a preliminary ruling by the Constitutional Court (then still called Court of Arbitration). Here, the Court of Appeal retorted that not all differences in treatment amount to an unlawful discrimination. *In casu*, there is no discrimination at all, since the Act aims at ensuring safety, competence and reliability of all labour performed in ports. Next, it is only logical that all workers performing services as defined in the executive regulations must be qualified and registered, because it would be impossible to distinguish between the strict loading and unloading of vessels and other cargo handling activities. The Court also denied that the Royal Decree of 12 January 1973 had excessively extended the scope of the Act, beyond its initial intentions.

Finally, the Court decided that the temporary work agency was under a duty to verify whether the work intended at the user company was port work within the meaning of the Port Labour Act. The manager of the user company, who had been infringing social laws for many years, had, in the opinion of the Court, paved the way to distortion of competition and had harmed other companies who were obliged to pay substantially higher wages. The Court imposed substantial fines on Mr Becu and Mrs Verweire and held their companies civilly liable for these fines.

468. On 11 January 2002, the Brussels Labour Court issued a judgment in which the Belgian Port Labour Act was held contrary to the freedom to provide services (Art. 56 TFEU)¹⁸⁷.

In the case at hand, a Brussels-based port company was fined 55,000 BEF (approximately 1,375 EUR) for having employed 11 non-registered workers on the company's premises in the port area on 23 and 26 September 1996. The company lodged appeal before the Labour Court and argued that the Belgian port labour regime is incompatible with EU law and, more specifically, with the Treaty provisions on free movement of goods, free movement of persons, freedom to provide services and the rules on competition, as well as with Directive 77/178/CEE on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses.

In its judgment, the Court only looked into the compatibility of the Port Labour Act with the freedom to provide services.

The Court first examined the applicability of EU law and especially whether a cross-border situation existed. In this respect, the Court concluded, for three reasons, that port labour, more than any other service, was likely to be provided by companies established in other Member States. Firstly, waterways as well as activities in ports have an international character by nature. Secondly, the legislation under scrutiny applies to the whole Belgian territory and especially to the port of Antwerp, one of the largest ports in the world, where port operations obviously have an international character. Thirdly, the Court stated – erroneously – that the ECJ had acknowledged in *Becu* that the market for port operations constitutes a substantial part of the Common Market.

Importantly, the Court ruled that dock labour does not fall within the concept of (maritime) transport within the meaning of (current) Article 58 TFEU, and that, as a result, it is governed by the general rules on freedom to provide services within the meaning of (current) Article 56 TFEU¹⁸⁸. In other words, even in the absence of secondary EU rules on freedom to provide services in ports, the Belgian legislation on port labour can be directly tested against the general Treaty provisions on freedom to provide services.

The Court went on to scrutinise the mandatory use of the legal form of a contract of employment for port work. In this regard, the company argued, and the Belgian Government confirmed, that it is not possible to employ self-employed workers for this type of work. The Court ruled that by imposing the form of a contract of employment and by excluding self-employed workers, the Belgian port labour legislation is incompatible with the freedom to provide services.

The Court also looked into the legal requirement to employ registered port workers. In this respect, it identified three major issues. Firstly, in order to maintain his registration, a port worker is required to annually perform a certain number of tasks, which results in a factual obligation to reside in Belgium and in a discrimination of foreign port workers who would only

¹⁸⁷ See already *supra*, paras 197, footnote and 213.

¹⁸⁸ On this issue, see especially *supra*, para 200 *et seq.*, especially para 203.

perform a limited number of tasks in Belgium. Secondly, in order to be registered, a candidate has to demonstrate sufficient knowledge of the working language, which is likely to be less evident for foreign candidates. Thirdly, the obligation to obtain a registration implies a number of administrative formalities which result in an obstacle to free movement as well. For these reasons, the Court considered that the obligation to employ registered workers amounts to a restriction of the freedom to provide services.

Next, the Court investigated whether the restrictions at hand can be justified. In this respect, it recalled that four conditions must be met: the restrictions must be non-discriminatory, justified on overriding grounds of public interest, adequate to achieve the objectives set, and proportional to these objectives. In this respect, the Court accepted that the assessment of a candidate's professional skills may be justified in view of the tasks that have to be performed, and that the protection of workers' rights may indeed constitute an overriding reason related to the public interest.

The Belgian Government, relying on the Port Labour Act's *travaux préparatoires*, invoked the Act's main objectives, namely:

- the need for permanently available workers;
- quality of work performed by means of special equipment;
- the rationalisation of labour with a view to competition with foreign ports;
- job security for port workers;
- the prevention of occupational accidents;
- the need for professional training and information of port workers;
- ILO activities on the social repercussions of new methods of cargo-handling.

However, the Labour Court dismissed these justifications. Firstly, it held that the objective to enhance the competitiveness of Belgian ports is of an economic nature and can, for that matter, never justify a restriction on the freedom to provide services. Furthermore, it is questionable whether the Belgian port labour regime contributes anything at all to the achievement of this objective. The Court referred to *Becu* which had revealed that the salaries of registered port workers are twice as high as that of general workers performing the same tasks. Secondly, the risk of accidents, the need for information and training of workers and the use of specialised equipment also arise in other dangerous professions which are not subject to similarly stringent rules and where employment is not reserved for pool workers. In the opinion of the Court, the Belgian Government had failed to demonstrate the necessity and the appropriateness of the regulation in view of the objective invoked. Furthermore, over the past thirty years the accident risk caused by dangerous equipment has considerably decreased, even in sectors where such work is, as a rule, not organised through a closed pool. Thirdly, the need for permanent availability of workers constitutes an economic interest as well. What is more, the Belgian Government had failed to demonstrate in which manner the Belgian regulation could help satisfy this objective. As a matter of fact, most companies in the port of Brussels do not need a variable number of workers for short-term fixed tasks at all. On the contrary, these companies employ workers on a long-term basis. Their workers have to be able to operate equipment that is not used for the purpose of loading and unloading goods but for other tasks which are specific to each company. Fourthly, the Belgian Government did not

prove how the port labour regime could ensure job security. Furthermore, the Court could not see why in this respect port workers should be treated differently from other workers. Fifthly, the Belgian Government had not demonstrated that activities on the social repercussions of new methods of cargo handling undertaken by ILO thirty years ago were still relevant today.

On the basis of the foregoing, the Court concluded that the restrictions of the freedom to provide services can find no justification and that, as a consequence, the Belgian port labour legislation is incompatible with the Treaty.

Reportedly, the appeal procedure is, formally, still pending¹⁸⁹.

469. In 2003, the then Belgian Secretary of State commented as follows on the pending case and on the need for a harmonisation of conditions for registration¹⁹⁰ before the Chamber of Representatives:

Which issue should we all worry about ? It's the rules on free movement of persons. It is true that we have a case on free movement of persons pending before the Labour Court of Appeal of Brussels.

It's quite obvious that I do not intend to interfere with the judicial proceedings. Yet, the Belgian State lodged an appeal. I am convinced that we have the right arguments to defend our case.

[...] I already explained that we should not worry too much about non-discrimination issues. As regards competition, the Port Labour Act is not seriously under threat either. The big problem still relates to the free movement of persons. In that respect, two issues arise.

First, is there, at this moment, any reason to believe that existing legislation is an obstacle to free movement of persons ? One could argue that this is indeed the case. However, we could retort that, in the context of the general interest, we have all reasons to hold on to this. This is also accepted and endorsed by European regulations. But what is this general interest on which we are relying ? It all happens under the big denominator of safety. On the one hand, safety and health of port workers are involved. On the other hand, the safety of the port, the ship and the crew are at stake as well. Moreover, a third safety issue is the security of the port area.

These three arguments will be used in our legal case before the Court as well as in future debates. However, we considered the legal arguments insufficient, at this stage, to counter a possible, future threat. Indeed, what could such a threat mean ? The Directive was defeated – that's quite obvious – and it's not going to return. It may always happen that the European Commission launches a new initiative. However, I am quite confident that this is not going to happen in the coming years. Yet, the legal path may still open up possibilities.

¹⁸⁹ *Contra* the annotation of the judgment in *Chroniques de droit social - Sociaalrechtelijke kronieken* 2011, 291.

¹⁹⁰ Which was ultimately implemented in the Royal Decree of 5 July 2004: see *supra*, para 376.

Frank Vandenbroucke¹⁹¹ and I are of the opinion that we have to take one further step. For the purpose of defending the Port Labour Act, we must strive for uniform executive regulations. First of all, you must be able to justify that Act before Europe. When it comes to safety, we are in a weak position if safety is interpreted differently in Zeebrugge and in Antwerp. With a view to defending the safety argument as well as for the sake of transparency, we will issue uniform implementing regulations. For the rest, I cannot reveal too much, because we are still investigating how the Royal Decrees will be adapted. However, there is a great consensus to adapt them and the case has been checked informally too. It has been checked even before employers and workers decided whether they would be willing to take this step. There was a unanimous willingness.

The timing is particularly difficult. Three Royal Decrees would have to be changed¹⁹².

470. The closed shop issue was looked into by the European Committee of Social Rights, the body responsible for monitoring compliance with Item 5 of Part I of the European Social Charter, which deals with the right to freedom of association¹⁹³.

In its 1998 Conclusions, the Committee noted:

The Committee has sought clarification since its first conclusion (Conclusions XIII-3, p. 208) concerning the recruitment system in operation in certain sectors of the economy, under which quotas are allocated among the trade unions involved. The first report stated that such an arrangement is in the interests of workers and is, therefore, not considered incompatible with the right not to belong to trade unions which is set out in Section 1 of the Act of 24 May 1921 on freedom of association. The present report gives the example of the Port of Antwerp, where this system of recruitment is operated jointly between trade unions and employers. It states that, in practice, there is no need for a person to join a trade union in order to apply for work through one of the unions involved. Although subsequent affiliation seems to be assumed, the report clarifies that the worker cannot be compelled to do so and that their trade union status has no bearing on their recruitment. The Committee requests clarification of the legal basis, including any relevant case law, upon which a person may refuse to join a trade union following recruitment in such circumstances. It further asks whether a trade union can refuse to include a non-member's name on its list of candidates for recruitment and, if this occurs, whether the person concerned enjoys any legal protection¹⁹⁴.

In 2000, the Committee reported that Belgium had not responded to the 1998 request for clarification. The Committee noted:

¹⁹¹ The then Minister for Labour and Pensions.

¹⁹² *Parliamentary Documents*, Chamber (Commission for Social Affairs), Full Report, 10 December 2003, CRIV 51 COM 097, 6-7.

¹⁹³ See *supra*, para 232.

¹⁹⁴ European Committee of Social Rights, *Belgium. Conclusions XIV-1 Volume 1*, 1998.

As regards the right not to belong to a trade union, the report does not contain the information requested in the previous conclusion concerning the recruitment system in operation in certain sectors of the economy, under which quotas are allocated among the trade unions involved. The Committee insists that this information be contained in the next report¹⁹⁵.

In 2003, however, Belgium did respond to the request for clarification. The Committee reported as follows:

With respect to the right to freedom of association, the Committee previously deferred its conclusion pending clarification of recruitment on the basis of trade union membership in certain sectors, in particular the port of Antwerp. The report indicates that the system of recruitment of dockworkers at Antwerp was fundamentally changed by a Royal Order of 19 December 2000, in accordance with which recruitment is to be on the sole basis of technical knowledge of the work involved and work safety. This change enables the Committee to consider the situation in conformity with the Charter in this respect¹⁹⁶.

It can be doubted whether the information provided by the Belgian Government to the European Committee for Social Rights was indeed correct. There is no indication whatsoever that the Royal Decree of 19 December 2000 intended to change or indeed did change the factual requirement of trade union membership in order to be registered as a port worker.

In any case, the currently applicable Royal Decree of 5 July 2004 on the registration of dockworkers still stipulates that candidates who meet the qualification criteria are only *eligible* for registration. As we have explained¹⁹⁷, candidates who meet all the criteria enjoy no right to be registered whatsoever, but must await nomination by a trade union, membership of which remains a factual requirement.

471. As a third and final part of our analysis of prevailing restrictions on employment, we shall attempt to further clarify a few legal aspects and revisit the initial justifications of the Port Labour Act of 8 June 1972.

472. Firstly, the description of existing restrictions in the judgment of the Brussels Labour Court of 11 January 2002 would appear to need an update.

We respectfully submit that neither the restriction consisting in the mandatory use of a contract of employment, nor a ban on engaging self-employed port workers, finds a basis in the text of

¹⁹⁵ European Committee of Social Rights, *Belgium. Conclusions XIV-1 Volume 1*, 2000.

¹⁹⁶ European Committee of Social Rights, *Belgium. Conclusions XIV-1 Volume 1*, 2003.

¹⁹⁷ See *supra*, para 447.

the Port Labour Act, Article 1 of which clearly refers to port work performed under a contract of employment¹⁹⁸. Long before the adoption of the Port Labour Act, self-employed workers were held to remain outside the scope of collective agreements on port labour¹⁹⁹. As we have seen²⁰⁰, the Court of Appeal of Ghent held in 2001 that the Port Labour Act applies to work under a contract of employment only. Recently the question was raised in the Belgian Parliament whether self-employed bargees may perform port labour in a port area²⁰¹. The representative of the Minister replied that if the bargee is self-employed, the Port Labour Act does not apply. It was observed, however, that it is technically impossible for a self-employed bargee to perform port labour on his own and that the bargee will need employees to whom the Port Labour Act does apply. Yet, recent incidents at the port of Ghent suggest otherwise²⁰². Whatever the case, in view of this official statement, it cannot be reasonably maintained that Belgian law imposes the use of the legal form of a contract of employment.

Of course, this does not detract from the Court's conclusion that the freedom to provide services was also restricted in other respects. From this perspective, the often-heard argument that the Brussels judgment was invalidated by the since adopted Royal Decree of 5 July 2004, does not sound particularly convincing.

Indeed, a prospective port undertaking established in another EU Member State wishing to perform cargo handling activities in a Belgian port is required to employ port workers registered in Belgium. An English port service provider, for example, is not allowed to unload a ship in the port of Antwerp using English workers who are not registered in Belgium, even if these employees unload ships on a regular basis in English ports. This is not altered by the provision in the Royal Decree of 5 July 2004 stating that workers possessing qualifications in other EU Member States shall not be not subject to Belgian requirements²⁰³, because these workers will still need to be registered first, and registration is only granted following a particularly intransparent procedure²⁰⁴. Furthermore, candidates will have to prove sufficient knowledge of the working language (unless one would accept that this requirement is also met in the case that a full gang of English-speaking workers is hired, who can safely communicate with the terminal's management and the ship's officers and crew; indeed, one wonders whether a general requirement to use the Dutch language in ports in Flanders would be proportional to the objective, which is supposed to be efficiency and safety of work). Next, in order to be registered, candidates from other EU Member States will have to fulfil a number of administrative formalities in Belgium, which can also be considered a barrier to free movement. Also, registered workers from other countries will still have to annually perform a minimum

¹⁹⁸ Art. 1 of the Port Labour Act provides:

Niemand mag in de havengebieden, havenarbeid laten verrichten door andere werknemers dan erkende havenarbeiders (emphasis added).

¹⁹⁹ See, as regards the port of Ghent, Brugge, J., "*Die niet zuipt of koopt, wordt niet gerekend om te werken.*" *Het sociaal overleg met betrekking tot de Gentse haven tijdens het interbellum (1919-1939)*, master thesis, Ghent University, 2008-2009, http://lib.ugent.be/fulltxt/RUG01/001/361/037/RUG01-001361037_2010_0001_AC.pdf, 125.

²⁰⁰ See *supra*, para 467.

²⁰¹ See *Parliamentary Documents*, 2010-11, Chamber of Representatives, Commission for Social Affairs, CRIV 53 COM 154, Question by Zuhail Demir, no. 2212.

²⁰² See *supra*, para 455.

²⁰³ See *supra*, para 400.

²⁰⁴ See *supra*, para 447.

number of tasks in a Belgian port, failing which their registration may be withdrawn. Because workers from other EU Member States posted in Belgian ports are less likely to meet these minimum performance requirements, the latter can be considered a barrier to free movement in their own right.

Furthermore, a large number of other restrictions prevail, such as the prohibition on employing certain categories of workers under a contract for an indefinite term or a long-term contract.

In principle, these considerations are equally relevant in the context of the free movement of persons.

Finally, whereas it was established in *Becu* that registered port workers in a port area cannot be considered an undertaking within the meaning of Treaty provisions on free competition and (current) Article 106(1) TFEU, it remains true that all port employers are by law obliged to rely on an employers' association for the fulfilment of a number legal obligations (Art. 3*bis* of the Port Labour Act). These associations enjoy an exclusive right and a dominant position within the meaning of Articles 106(1) and 102 TFEU respectively, and are fully subject to competition law. In addition, the port operators are of course also undertakings whose behaviour may be tested against competition law²⁰⁵.

473. To conclude, it is worth revisiting the original policy arguments which underpinned the legislative confirmation of the exclusive right of employment of registered port workers, as they were presented to Parliament during the debate on the Draft Port Labour Act in the early 1970s²⁰⁶. The Act was passed at the initiative of the then Labour Minister Louis Major, former chairman and at that time still honorary chairman of the leading Antwerp dockers' union BTB²⁰⁷. The Minister succeeded in rushing his draft Port Labour Act through Parliament at unprecedented speed, leaving no archival record of its preparation behind²⁰⁸.

First, the Minister invoked safety of shipping. This justification, however, does not seem very pertinent with regard to an exclusive right of employment for port workers. The Minister's arguments in relation to port workers' safety are contradicted by the fact that the absence of a legislative confirmation of the exclusive right never led to safety problems in the past and by his own statement before Parliament that occupational accidents had *not* increased as a result of the recent trend towards mechanisation. Moreover, the Minister did not explain why he opted for a criminally sanctioned exclusive right of employment rather than a (less far-reaching) public regulation of port safety and labour conditions. After all, the Port Labour Act provides nothing at all on either safety, labour conditions or training. Up till now, it has never been

²⁰⁵ See *supra*, para 215.

²⁰⁶ See *Parliamentary Documents*, Chamber of Representatives 1971-1972, paras 78/1 and 78/2; *Parliamentary Documents*, Senate 1971-72, no. 364.

²⁰⁷ See Van Isacker, K, *Afscheid van de havenarbeider*, Antwerpen, De Nederlandsche Boekhandel, 1967, 119.

²⁰⁸ Vanfraechem, S., *Een sfeer om haring te braden. Arbeidsverhoudingen in de haven van Antwerpen 1880-1972*, Ghent, Academia Press / Amsab, 2005, 503.

explained why an exclusive right of employment was not introduced in other, similarly dangerous sectors such as the construction industry. Another possible criticism of the safety argument is that the Port Labour Act equally applies to logistics and warehousing activities within port areas, where safety issues are much less of a concern (which has since been corroborated by the introduction of less stringent training and language requirements for logistics workers). Finally, under the Port Labour Act various categories of non-registered workers are allowed to perform port work, such as self-employed port workers, occasional port workers (such as, typically, students in holiday periods, who in many cases receive no training at all) and port workers at numerous terminals that remain outside the geographical scope of the Port Labour Act and where nonetheless large sea-going vessels and/or short-sea vessels are serviced, at a much cheaper labour cost. Incidentally, the Port Labour Act is no longer complied with in the port of Nieuwpoort, and very imperfectly in Brussels, although these ports still are within the Act's geographical scope. All these persons work in perfectly similar labour conditions and are exposed to identical safety risks. Yet, they do not have to be registered as port workers, and moreover they are not trained as port workers (at least not within the specific port labour training framework described above)²⁰⁹. Even if safety of work would be accepted as the legislator's chief historical concern, one cannot but conclude that today the Port Labour Act does not offer an adequate protection to all workers employed in the same circumstances, and that, from this perspective, not only does the safety argument seem to lack consistency, but serious discrimination and possibly liability issues arise as well.

Next, the Draft Port Labour Act was justified in Parliament on the basis of 'specialisation' and 'mechanisation' of port work. Here again, one wonders why these characteristics, which can also be found in other industry sectors where access to the labour market is not restricted, should result in a criminally sanctioned exclusive right of employment. Moreover, many of our interviewees in Belgium and other EU Member States fundamentally questioned the often-heard assertion that port work has specific technical characteristics which warrant a legal regime that departs from general labour law.

Further, the Minister referred in Parliament to the need to enhance job security. However, in its 2002 judgment, the Brussels Labour Court²¹⁰ could see no reason why port workers, through their exclusive right of employment, should enjoy a greater job security than workers in other sectors. Moreover, job security can in many cases be better protected through normal contracts of employment, the conclusion of which is however not permitted in the port sector, at least not for a large number of worker categories.

Another justification put forward during the parliamentary debates on the Draft Port Labour Act was the need for guaranteed availability at all times of a sufficient workforce. However, a similar exclusive right does not exist in many other EU ports where the demand for port workers is equally unstable. Next, the exclusive right does not as such guarantee the employer a continuous availability of workers at all. As we have already explained²¹¹, mismatches of

²⁰⁹ Already in 1954, the use of inexperienced occasional workers was considered to result in less productivity and safety risks (see Helle, H.J., *Die unständig beschäftigten Hafentarbeiter in den nordwesteuropäischen Häfen*, Stuttgart, Gustav Fischer Verlag, 1960, 26).

²¹⁰ See *supra*, para 468.

²¹¹ See *supra*, para 451.

labour supply and demand frequently occur. On the other hand, a large majority of port workers are employed by a single employer. As a consequence, many port companies see no need to maintain the system and would prefer to employ their regular staff on a permanent basis.

Defending his Draft Act before Parliament, the Minister also referred to the need to strengthen the competitive position of Belgian seaports. As the Brussels Labour Court pointed out in its aforementioned judgment of 2002, the soundness of this argument is dubious; it is moreover of an economic nature and as such unable to justify a restriction of the fundamental freedoms. In competing ports in other Member States, no similarly restrictive labour arrangements exist. Furthermore, references to the competition aspect before Parliament remained vague and unsubstantiated. As we will explain below²¹², some stakeholders have serious concerns that the current labour regime in Belgian ports weakens rather than reinforces the competitiveness of these ports. Another argument put forward by the Minister was the need to comply with the forthcoming ILO Dock Work Convention, which was at that time still in preparation. However, this does not lend the competition argument any additional credibility, because at that stage no one could anticipate which other countries would ratify the new Convention and which not. Furthermore, a comparison of the Belgian Port Labour Act and ILO Convention No. 137 (which was in the event not ratified by Belgium) suggests that the Port Labour Act goes in fact beyond what would be required under the ILO Convention. More in particular, the latter instrument does not require that registered port workers enjoy an exclusive right of employment, only priority of employment. Neither does the ILO Convention require the imposition of criminal or administrative sanctions. Incidentally, the general practice to hire occasional workers such as students or temporary agency workers in case of shortages, is, to the letter, contrary to Article 1 of the Port Labour Act which leaves no room for any deviation from the exclusive right of registered port workers whatsoever (except, possibly, under general criminal law justifications such as *force majeure* or necessity – a dubious argument which was, to our knowledge, never tested in court).

Yet another policy argument was the need for training and information of port workers. The Brussels Labour Court rejected this justification as well, because it is difficult to understand why an exclusive right of employment does not exist in other sectors where comparable training and information needs arise. Neither was it explained before Parliament why it had become impossible to meet training and information needs through the collective bargaining process. Finally, as mentioned before, the Port Labour Act says nothing about training and information at all, but merely restricts access to the labour market.

To summarise, the initial policy arguments put forward to justify the Port Labour Act during the parliamentary debates back in the early 1970s seem, in the light of current implementing regulations and daily practices, open to question.

Within the Belgian Council of Ministers, the issue was raised whether the tabled Port Labour Act would not amount to a legislative confirmation of "a kind of corporatism that had emerged through the years in Antwerp", while it was observed that the sole aim of previous Acts of

²¹² See *infra*, para 504 *et seq.*

Parliament that had regulated access to certain professions was always to lay down professional qualifications (implying, of course, that the draft Port Labour Act rested on no such objective)²¹³. Similar concerns over the real objectives of the Act were voiced during the debates in the legislative Chambers²¹⁴.

Earlier legal doctrine concluded that the main effect of the Belgian Port Labour Act of 1972 was to confirm the secluded nature of the environment of ports²¹⁵.

The corporatist tendencies in the port labour arrangements in Belgium are further highlighted by the existence of a registration system for mechanics in the port of Antwerp, which does not rest on the Port Labour Act but on contractual arrangements and an overt closed shop system²¹⁶. Here, no safety or training needs were invoked at all, but employers and unions nevertheless decided to copy the registration system for dockworkers to regulate an activity which bears no technical or operational resemblance to port labour whatsoever.

Reportedly, the Port Labour Act and especially its particularly far-reaching implementing decrees were originally accepted if not supported by the Antwerp port employers united in the employers' organisation CEPA because these instruments could help strengthen their collective control of the local cargo handling market and render it more difficult for outsiders to penetrate into it. It should be noted, however, that in the early seventies the number of port employers was considerably higher. Today, the on-quay cargo handling market in Antwerp is controlled by some 15 groups, in most cases only one or two leading employers per subsector (3 container terminal operators, 1 dry bulk operator, 1 fruit handler, 1 forest products handler, 2 ro-ro operators, 8 handlers of breakbulk including iron and steel). Statistics by CEPA show that the largest 6 companies (MSC Home Terminal, PSA, DP World, Mexiconatie, BNFW and NHS) generate approximately 50 per cent of all labour tasks in the port.

474. In the preamble to a Royal Decree of 2000, the Government stated that the more stringent conditions for registration imposed on port workers of the General Registers are compatible with free movement, especially free movement of workers. These conditions were said to be justified by the general interest consisting of the rational management of ports and safety of workers. The conditions were moreover stated to be proportional to this objective. Further clarification on this justification was not provided however²¹⁷.

²¹³ The original passage reads as follows:

De Raad gaat over tot een gedachtenwisseling, waarbij de vraag wordt gesteld of het wel opportuun is een wettelijke basis te geven aan een soort corporatisme dat in de loop der jaren ontstaan is te Antwerpen. Het gaat hier trouwens om een precedent, daar de wetten welke in het verleden tot stand kwamen om de toegang tot bepaalde beroepen te regelen alleen voor doel hadden bekwaamheidsvoorwaarden voor te schrijven.

(Minutes of the Council of Ministers of 11 February 1972, 34, www.arch.be).

²¹⁴ See *Parliamentary Debates*, Senate 31 May 1972, 930.

²¹⁵ Beckers, J., "Werken tussen schip en kade", *Belgisch Tijdschrift voor Sociale Zekerheid* 1989, (1065), 1077, para 18.

²¹⁶ See *supra*, paras 380 and 448.

²¹⁷ Report to the King on the Royal Decree of 19 December 2000.

- *Legal uncertainty over the scope of the Port Labour Act*

475. Interviewed terminal operators unanimously complain that the current legal framework for port labour does not offer sufficient legal certainty.

The scope of the Port Labour Act, in particular, is a source of endless debate between employers and trade unions. Employers and unions, for that matter, struggled over the scope of the exclusive right of employment of port workers long before the Act was adopted²¹⁸.

In its reply to our questionnaire, the Antwerp port employers' organisation CEPA also argues that the current port labour regime does not provide legal certainty for logistics activities and that a company that establishes itself in the port zone does not know in advance whether a specific activity will be considered as a logistics activity or not. The position of logistics activities will be considered separately below²¹⁹.

476. As we have explained above²²⁰, the notion of port labour is defined by the Royal Decree of 12 January 1973 establishing a Joint Committee for ports. This Decree also circumscribes in detail the port areas to which the Port Labour Act applies. The relevant provisions of the implementing decrees were, for good measure (but, from a legal perspective, quite unnecessarily), literally transcribed into the local Codices²²¹.

Nonetheless, it is not always possible to determine with certainty whether an activity within the port area constitutes port labour or not. Trade unions tend to defend a broad interpretation of the notion of port labour whereas employers, for obvious reasons of cost efficiency, prefer to remain outside the scope of the Port Labour Act.

²¹⁸ See Vanfraechem, S., *Een sfeer om haring te braden. Arbeidsverhoudingen in de haven van Antwerpen 1880-1972*, Ghent, Academia Press / Amsab, 2005, 501 *et seq.*; compare, on the port of Ghent, Brugge, J., "Die niet zuipt of koopt, wordt niet gerekend om te werken." *Het sociaal overleg met betrekking tot de Gentse haven tijdens het interbellum (1919-1939)*, master thesis, Ghent University, 2008-2009, http://lib.ugent.be/fulltxt/RUG01/001/361/037/RUG01-001361037_2010_0001_AC.pdf, 119 *et seq.*

²¹⁹ See *infra*, para 483.

²²⁰ See *supra*, para 393.

²²¹ See, for example, Art. 2 and 3 of the Codex for the General Register in the port of Antwerp; Art. 3 and 4 of the Codex for the Logistics Register in the port of Antwerp; Art. 1, 2 and 4 of the Codex for the General Register in the port of Zeebrugge-Brugge; Art. 1, 2 and 4 of the Codex for the Logistics Register in the port of Zeebrugge-Brugge; Art. 1.2 and 1.4 of the Codex for the port of Ghent; Art. 1, 2 and 4 of the Codex for the ports of Ostend and Nieuwpoort.

477. Since the 1980s, a number of employers in the ports of Brussels and especially Ghent were prosecuted, and effectively fined, because they had refused to employ registered dockers for cargo handling activities at industrial plants²²² (for example, the cleanup of the holds of a dry bulk ship berthed at a chemical plant²²³ and of a coal ship at a power station²²⁴). In a number of cases, it appears that in the past these operations had been carried out by general workers and not by registered dockers. Before Court, some employers relied on acquired rights, but to no avail. The unions strived to compel all industrial companies handling goods in the port of Ghent to rely on registered dockers only²²⁵. In an early case, however, an employer was acquitted on the basis of the specialised nature of crane driving work and the unavailability of qualified workers²²⁶ (a most peculiar outcome indeed given the common explanation of the registered port workers' monopoly which revolves around the unique specialised know-how of these workers²²⁷). Interestingly, for the purposes of our study, acquittal was also granted in a case where the implementing Decree and statements by the Minister had induced the defendant into mistake of law: contrary to the law, yet reasonably, the employer had assumed that it was allowed to employ general workers for the unloading of dry bulk from the ship's hold, not onto the quay, but directly into a concrete factory²²⁸. A company storing, screening, crushing and washing coal at a dry bulk terminal in Ghent was held to fall under the Port Labour Act despite the fact that washing and crushing are not mentioned in the legal definition of port labour²²⁹.

In 1998, a major orange juice terminal in the port of Ghent which had started operations back in 1982 and always employed its own freely chosen staff, was all of a sudden forced by the unions to hire registered port workers. The company now has to hire one foreman who performs no service whatsoever. It dubbed this practice, which costs between 75,000.00 and 100,000.00 EUR a year, "legally permitted theft" (*wettelijk toegelaten diefstal*). The operator – who has not joined CEPG, thus has to rely on the services of a member stevedoring company who of course adds his profit margin to the dockers' wages – related that one bored yet entrepreneurial registered docker working at the same plant set up, between the terminal buildings, a temporary car polishing shop where he offered his services to his colleague port workers. Also, bored workers demanded the provision at the terminal of a special workshop to build miniature boats and airplanes, a proposal which was rejected by the employer however. After difficult negotiations, the employer now obliges foremen to report every two hours at the terminal, which implies that, during night shifts, they cannot go home and now have to wake up every

²²² For a good, but incomplete, overview or relevant case law on the scope of the Port Labour Act, see especially Beckers, J., "Werken tussen schip en kade", *Belgisch Tijdschrift voor Sociale Zekerheid* 1989, (1065), 1067-1069, paras 6-7. This paper was also published in *Rechtsleer vanuit de rechtszaal*, Paris / Brussels, De Boeck & Larcier, 1998, 193-205.

²²³ Criminal Court of Ghent, 18 June 1984 (Rhône-Poulenc), unreported; Court of Appeal of Ghent, 20 March 1985 (Rhône-Poulenc), unreported.

²²⁴ Criminal Court of Ghent, 27 June 1991 (Electrabel), *De Gentenaar* 17 September 1991; Court of Appeal of Ghent, 20 February 1992, *De Gentenaar* 30 March 1992.

²²⁵ See Hermans, R., "Zo heeft Louis Major het gewild", *Knack* 21 mei 1986.

²²⁶ Court of Appeal of Brussels, 31 October 1979 (Moelans), unreported.

²²⁷ See *supra*, para 473.

²²⁸ Criminal Court of Ghent, 18 May 1981 (Readymix), *Rechtskundig Weekblad* 198-83, 816, annot. Simons, A., "Het arbeidsmonopolie van de havenarbeiders in het havengebied", www.juridat.be. The reported, abridged, version is quite misleading however.

²²⁹ Labour Court of Appeal of Ghent, 26 January 2009, A.R. no. 176/05, unreported. This case did not concern an infringement of the Port Labour Act but a dispute with the Compensation Fund of the Fuel Traders' sector.

two hours. Still the same company mentioned that at Zeebrugge, the same fruit juice ships do not have to use any port worker whatsoever. According to yet another anecdote from an adjacent site in Ghent, a registered worker regularly spending the shift in his car complained that the smoke of his cigarettes polluted the interior of the car and demanded the erection of a smoking shack on the terminal. Very similar situations were reported at a cement handling terminal, where the operator, who rents specialised manned cranes, yet has to hire 3 registered port workers: 1 crane operator, 1 signalman and 1 bobcat driver. Only the bobcat driver is performing any work. The crane operator is not even able to operate the crane, and the signalman is completely useless as the cranes are equipped with cameras. This did not prevent the Belgian Social Inspectorate from opening a file against the crane rental company in 2010, which is still pending.

In order to widen the scope of the dockers' monopoly, the limits of the port area of Ghent were extended to the Moervaart area which is situated along an inland waterway. Here, we were informed that a waste management company received a modal shift subsidy from the Flemish Government in order to construct a quay wall for barges, which was conditional upon the realisation of a minimum traffic volume, following which the Federal Government decided to bring the area within the geographical scope of the Port Labour Act; consequently, the company chose to rather transport its cargoes by road in order to avoid the hiring of registered port workers. For the same reason, a soil treatment plant in the Moervaart area now relies on transportation by lorry. When the latter company considered hiring a non-registered crane driver, it received threats that its crane would be vandalized (this was commented upon by a third party as an illustration of 'Mafia' practices). If the crane is manned by a non-registered worker, the company reportedly has to hire one registered crane driver and one foreman anyway, who sit and watch as operations go on. A union representative explained to us that this problem is caused by crane rental companies refusing to rent cranes without a crane driver and that if a company wishes to do business in the port, it simply has to abide by the rules that govern port labour. Several other port companies, situated in the same area, reportedly now rely as much as possible on road transportation.

The inland canal called Ringvaart was included in the Ghent port area as well, but only up to the lock at Evergem, but the Royal Decree leaves unclear whether an inlet dock connecting to this canal is inside or outside the port area. Here, several industrial companies operating a barge quay encountered considerable difficulties with the dockers' monopoly as well. Handling barge traffic without registered port workers by one steel factory along the Ringvaart is tolerated after a complaint by a union failed before court on procedural grounds. At another industrial quay along the same canal, a union continues to take action against a company that refuses to hire port workers. VeGHO points out that everywhere else across the country, barges can be, and actually are, unloaded by general manual workers or crane drivers, in many cases by one single worker who is not supported by a foreman, a tallyman or a whole gang of port workers. Several interviewees in Ghent identified legal uncertainty as one of the most pressing issues.

In the ports of Bruges and Zeebrugge, considerable tracts of land were included within the port area as defined for port labour purposes where the Port Labour Act has never been complied

with at all (especially the industrial zone of Blauwe Toren, the Bruges-Ostend Ship Canal, where a waterfront concrete factory is located, the Bruges-Ghent Ship Canal, and even the Bruges-Damme Ship Canal, which cannot be accessed by ships or barges of any type). Stakeholders interviewed by us termed this situation "nonsensical".

Further evidence of the utter arbitrariness in the application of the Port Labour Act is provided by the case of a major extractor of marine sand who operates terminals in three coastal ports. In Nieuwpoort, this firm is the only remaining handler of commercial cargo; despite the inclusion of Nieuwpoort in the scope of the Port Labour Act, the latter is not complied with anymore in this port, and the company employs its own, freely chosen staff. In Ostend, where the Port Labour Act still applies, the company is allowed to employ its own non-registered workers as well; here, it is, in other words, *de facto* exempt from the obligation to hire port workers. In Bruges, which is also within the scope of the Port Labour Act, the same company is however obliged to rely on registered port workers, at least to operate bobcats. In Brussels, the company is not using registered port workers either. For fear of consequences, the company declined to comment further.

Reportedly, a distinction was also proposed on the basis of the ownership of the goods: on that basis, companies handling self-owned goods would not be obliged to rely on registered port workers. Of course, the question arises whether such a criterion is relevant in view of the policy purposes underlying the Port Labour Act.

Also in the port of Ostend, it is accepted that components of off-shore wind farms are handled by non-registered crane drivers, because this type of work requires specialised skills. Here, we should perhaps again recall that the need to make available specialised workers was initially put forward as a major policy objective of the Act²³⁰.

478. It regularly occurs that an opinion on the scope of the Port Labour Act (formally, on the respective jurisdiction of the Joint Committees concerned) is sought from the Federal Public Service for Employment, Labour and Social Dialogue. As these opinions are not made public and moreover do not always seem fully consistent, they contribute little to legal certainty. Furthermore, it often takes the Federal Public Service several months before an opinion is given. In the meantime, investment projects within the port area are often postponed or in some cases abandoned altogether.

479. Reportedly, practices that are not in conformity with the provisions of the Port Labour Act are in some cases tolerated by the trade unions. Some companies were granted *de facto* exemptions on an individual basis, without any clear justification, while others have to abide by

²³⁰ See *supra*, para 473.

a very strict interpretation of the scope of the exclusive right of employment of registered port workers.

It is widely known that negotiations with trade unions over the scope of the Dock Labour Act are often protracted and deter new investors.

In 2000, a terminal operator in Antwerp abandoned a new project for the switching and loading of trailers with the help of a road haulier. Even if no direct ship-related operations were involved, the main trade union BTB insisted that the work be performed by drivers registered as port workers²³¹.

An import and export company wishing to move its current warehouses from Antwerp city centre to a major warehousing and logistics complex which it intended to erect in the port area and who was confronted with fundamental legal uncertainty and difficulties with regard to the registration of his existing workforce as port workers, decided to abandon his project and move to Zeebrugge.

In another case, a company providing industrial and maritime packaging services especially in view of the transportation of project cargoes is allowed to employ non-registered industry workers in closed warehouses within the port area of Antwerp, because their activities are considered of an industrial nature. A large part of maritime packaging services is however carried out in a location outside the port area. Employing registered port workers would be prohibitive for this company.

Further, we have knowledge of several road hauliers against whom the unions lodged complaints because their lorry drivers had loaded and unloaded containers on their own premises, especially at parking and maintenance facilities located within the port area.

Still in Antwerp, De Post and DHL are mentioned as essentially logistics providers who are exempted from the obligation to employ registered port workers.

In the port of Ghent, shoreside cranes at a steel factory where considerable volumes of dry bulk are handled are manned by the factory's own staff, while workers on the quay are registered dockers supplied by a stevedoring company, and further handling at the storage areas is again performed by factory workers (unless the factory, on a voluntary basis, hires port workers). As the workers work under different collective agreements and have joined different unions, their breaks do not coincide, which results in the work being stopped for 30 minutes instead of 15 minutes²³². Another exceptional situation in Ghent occurs at a concrete factory, where a non-registered crane driver also composes aggregates for the construction of tiles. A similar situation is tolerated at a ship recycling plant in the port. At a major sand and

²³¹ Baete, B., "1973-2004. Een getuigenis", in Vanfraechem, S. and Baete, B., *100 jaar Havenarbeidersbond Antwerpen. Van dokwerker tot havenarbeider*, Ghent, Amsab, 2004, (105), 126-127.

²³² A port trade union blames this on the lack of flexibility on the part of the steel workers. It was also mentioned that port workers are in the majority and that steel workers should adapt themselves to the rules governing port work.

gravel terminal in Ghent, the unions tolerate the operator's own crane being manned by an employee, on condition, however, that, in addition, a registered crane operator is hired, who, depending on the source, enjoys the scene sitting on a chair in his slippers, engrossed in a men's magazine, or trying to solve sudokus. The same firm relates that it has to hire a foreman and a conveyor man to operate automated conveyor belts at a state-of-the-art sand terminal which are operated with two switches: on/off and left/right. The company concurred with many other operators that nothing can be done about these excesses because any attempt would be met by the immediate stoppage of all work and because complete omertà reigns in the port area.

Also, a famous case is reported in Antwerp where logistics work is performed by workers employed as administrative staff under the collective bargaining agreements for office workers (office workers or Dutch *bedienden* / French *employés* vs. blue collar workmen or Dutch *arbeiders* / French *ouvriers*) in order to avoid the application of the Port Labour Act.

In Ostend, finally, registered port workers sometimes carry out mooring and unmooring services which are outside the scope of the Port Labour Act and should indeed be reserved to certified mooringmen who, pursuant to the Flemish Pilotage Decree²³³, also enjoy an exclusive right. However, this practice is considered only logical from the perspective of rational work organisation.

480. In a number of cases, employers and trade unions reached written agreements on the delimitation of the scope of the Port Labour Act.

In Antwerp, some of these agreements were inserted into the Codex. A specific provision of the Codex elaborates at length on the position of road haulage activities to and from the port, within the terminal and between different locations within the port area, with intricate distinctions based on the type of vehicles used. The provision sets out specific and quite severe financial sanctions for infringements²³⁴. One Antwerp dry bulk handler operating various terminals in Antwerp related that lorries transporting cargoes from a quay to a port-based warehouse across a public road must be driven by registered port workers since the unions consider both pieces of land part of the same terminal concession, whereas transportation to warehouses elsewhere in the port is not considered port labour. As a consequence, this terminal operator decided to deviate its ships to another dock. Other companies reportedly order lorry drivers to make considerable detours through the port area in order to avoid the hiring of registered port workers for quay-warehouse transportation. The situation is said to be further complicated by a third company offering services that are performed by registered port workers. Our interviewee complained about serious competitive distortions.

²³³ Decreet betreffende de organisatie en de werking van de loodsdienst van het Vlaamse Gewest en betreffende [de brevetten van havenloods en bootman / Décret relatif à l'organisation et au fonctionnement du service de pilotage de la Région flamande et relatif [aux brevets de pilote de port et de maître d'équipage (Art. 19*bis*).

²³⁴ Art. 174 of the Codex for the General Register in the port of Antwerp.

Further Articles of the Antwerp Codex specify the cases where cargo control and survey services, removal services and container repair must be considered port labour²³⁵. A provision in the Codex for Logistics clarifies that the handling of dry petrochemical derivatives and non-liquid petroleum products is a logistics activity which must be performed by registered warehouse workers²³⁶.

Already by 1976, a number of such joint agreements – labeled 'decisions' – had been reached on the non-applicability of the Port Labour Act in specific situations, such as the employment of operators of special equipment on the quays of industrial plants, of handlers of goods in plants and distribution centres not engaged in import or transit of goods, or of crane drivers by the Antwerp Port Authority²³⁷. With regard to the Antwerp Port Authority, two thirds of its crane drivers are contractual workers who would appear to be fully governed by the Port Labour Act. Yet, they are not registered as port workers²³⁸.

A company-specific agreement was signed on the obligation on a major Antwerp ro-ro terminal operator to employ registered port workers to drive terminal minibuses with which dockers board ro-ro vessels. In 1998, the terminal operator started hiring non-registered workers (it even considered hiring taxi drivers). Trade union BTB feared that this initiative would result in a loss of 2,300 tasks for registered dockers. Referring to the adage *accessorium sequitur principale*, it insisted that the work at issue fell within the scope of the Port Labour Act. After BTB had resorted to industrial action, whereby port workers refused to use the buses and went on foot, a company agreement decided that the minibuses must indeed be driven by registered port workers²³⁹.

An overview by CEPA dated 1 March 2011 inventories no fewer than 38 decisions by the Permanent Bureau²⁴⁰ on individual companies, reached between 27 October 1988 and 21 December 2010. These decisions deal with obligations to use registered port workers for certain activities; permissions, for other specified activities, to use logistics workers or non-registered workers; manning scales; shift rules; bans on overtime work; wages; and the obligation to submit nominative lists of workers employed under these exceptional rules to the Joint Subcommittee. The decisions also cover, for example, landside activities at container terminals such as the manning of gates and the handling of lorries by straddle carrier drivers and container checkers.

The Codex for Zeebrugge-Brugge (Art. 2, 4°) contains practical guidance (Dutch *Praktische toepassing*) on its scope, especially in relation to fresh fish originating from fishing vessels but conveyed by trucks or in containers (no port labour), lashing and securing (port labour, but

²³⁵ See Art. 964, 965 and 969 of the Codex for the General Register in the port of Antwerp.

²³⁶ Art. 48 of the Codex for the Logistics Register in the port of Antwerp.

²³⁷ See the Excerpt from the Report of the meeting of the Joint Subcommittee of 29 March 1976, inserted into the legislative section of the Antwerp Codex for the General Register.

²³⁸ One third of these crane drivers are civil servants (*statutair personeel*). We pass over whether such workers should be considered port workers within the scope of the Port Labour Act.

²³⁹ On this case, see Baete, B., "1973-2004. Een getuigenis", in Vanfraechem, S. and Baete, B., *100 jaar Havenarbeidersbond Antwerpen. Van dokwerker tot havenarbeider*, Gent, Amsab, 2004, (105), 126.

²⁴⁰ On this Office, see *supra*, para 462.

exemptions may be granted with a view to attracting new traffic and/or activities and on the basis of a special motivation – which reportedly only happened once in the past), the driving of port vehicles (as a rule, this is port labour as well; occasional workers must in all cases be paid through CEWEZ), the handling of pallets (bringing these 'to production' is port labour, other handling is not), sampling (port labour where the cargo owner or the freight forwarder relies on a stevedore), second tallies (port labour only if there has been tallying before)²⁴¹.

The Codex of the port of Ghent mentions that cranes operated by the local Port Authority must not be manned by registered port workers (in practice, however, the Port Authority no longer operates cranes of its own). The same Codex states that the Joint Subcommittee may always grant exemptions from the exclusive right of the registered workers for exceptional and specialised operations as well as for activities at the quays of industrial plants (Art. 1.6). In practice, exemptions were not recorded in formal decisions however.

For Ostend and Nieuwpoort, a collective agreement of 1999 which was declared generally binding²⁴² stipulates that lashing and securing on board of seagoing vessels may only be carried out by registered port workers (Art. 2). The agreement contains a further definition of the notion of lashing and securing (Art. 3).

Apparently, such agreements and decisions offer a degree of legal certainty to the individual parties concerned, but it is very doubtful whether legally such formal or informal arrangements can determine the scope of a criminally sanctioned Act of Parliament, the subject-matter of which is essentially beyond the reach of contractual arrangements between private parties.

In 1998, a Member of the Senate observed that the derogations granted by the Joint Subcommittees are very diverse and that it is impossible to derive a general rule from them. Asked whether she was aware of exemptions granted to individual companies and how these can be justified, the Minister replied that she had no knowledge of such situations²⁴³.

Interviewed by us, the trade union BTB mentioned the possibility of concluding company-specific agreements on deviations from the Codex as a proof of flexibility. One breakbulk terminal operator vigorously denied this and regards these agreements as distortions to keep the anachronistic system more or less workable.

²⁴¹ Compare also more or less similar guidance in Art. 2, 4° of the Codex for the ports of Ostend and Nieuwpoort.

²⁴² Koninklijk besluit van 12 november 1999 waarbij algemeen verbindend wordt verklaard de collectieve arbeidsovereenkomst van 15 juni 1998, gesloten in het Paritair Subcomité voor de havens van Oostende en Nieuwpoort, betreffende het kuipers- en schoorderswerk aan boord van zeeschepen in het havengebied Oostende-Nieuwpoort / Arrêté royal du 12 novembre 1999 rendant obligatoire la convention collective de travail du 15 juin 1998, conclue au sein de la Sous-commission paritaire pour les ports d'Ostende et de Nieuport, relative à l'accorage et à l'arrimage des marchandises à bord de navires de mer dans la zone portuaire d'Ostende-Nieuport.

²⁴³ *Parliamentary Documents*, Senate, 19 februari 1998, 4444.

481. The legal uncertainty over the applicability of the Port Labour Act in cases of self-employment of port workers was already discussed above²⁴⁴. Despite recent confirmation by the Minister for Employment that self-employed workers remain outside the scope of the Act, collective labour agreements continue to impose restrictions in this respect²⁴⁵.

482. According to many interviewees, the fundamental legal uncertainty over the precise scope of the Port Labour Act (and its implementing provisions, including collective agreements), the inconsistencies and discrimination inherent in the definition of the Act's territorial scope and the inefficiency and arbitrariness with which delimitation issues are solved impact negatively on the competitive position of port service providers within and outside Belgian port areas.

One interviewee from Ghent declared that industrial companies even hesitate to invest in automation because "you never know whether the trade unions will not impose the hiring of registered port workers". He believes that legal uncertainty is perhaps the biggest issue of them all, because the port labour system is based on unpredictable *ad hoc* negotiations and agreements with the unions and particularly opaque local usages.

- *Extension of the scope of the Port Labour Act to dry warehousing and logistics activities*

483. The Royal Decree of 12 January 1973 establishing a Joint Committee for ports circumscribes the port areas where the Port Labour Act applies. These delimitations comprise large tracts of land behind the waterfront. As a result, the port labour regime also applies to dry warehousing and logistics activities that bear little or no relation to maritime transportation.

The inclusion of logistics within the scope of the Port Labour Act may seem somewhat surprising, because the Minister insisted before Parliament that the Act would only cover shoreside activities²⁴⁶. In addition, nothing in ILO Convention No. 137 or the preparatory studies related thereto²⁴⁷ – which were nonetheless invoked as justifications for the Port Labour Act – suggests that the Convention was intended to cover dry warehousing activities or logistics services. The extension of the scope of the regime beyond the initial intention of the legislator was also noted by Belgian Courts of law²⁴⁸.

²⁴⁴ See *supra*, para 472.

²⁴⁵ See *supra*, para 410.

²⁴⁶ See, for example, the assurance by the Minister that the Act would only protect work connected with the loading and unloading of vessels in the ports" (*Parliamentary Documents*, Chamber of Representatives, 1971-72, no. 78/2, 2).

²⁴⁷ See especially Evans, A.A., *Technical and social changes in the world's ports*, Geneva, ILO, 1969, 1-2 en 44-45.

²⁴⁸ See Labour Court of Bruges, 13 February 1981, *De Paepe vs. Belgische-Engelse Vennootschap Ferry-Boats*, A.R. 24721, unreported.

At the request of logistics companies in the port of Antwerp who were obliged to employ port workers for various 'tertiary' activities such as value added logistics, industrial subcontracting and physical distribution, which resulted in a labour cost allegedly 2 to 3 times higher than for non-port workers, a separate register of logistics workers for the port of Antwerp was established in 1999²⁴⁹. A similar register was also introduced in the ports of Zeebrugge and Ghent²⁵⁰. Although different rules and conditions apply to these workers, the logistics workers are still registered as port workers and continue to be governed by laws and regulations on port labour. The conditions for registration differ however: port workers of the Logistics Register do not have to demonstrate language skills; neither must they pass a psychotechnical test²⁵¹.

Even so, the application of the Port Labour Act results in a competitive distortion between logistics activities within the port area (which are subject to the less flexible and more costly port labour regime) and logistics activities outside the port area (which are subject to the more flexible labour regime of the logistics sector). Reportedly, this situation incited several logistics companies to relocate outside the Antwerp port area, in some cases to other ports²⁵². Moreover, the geographical delimitation between warehousing areas within and just outside the port perimeter is deemed quite arbitrary and distortive of competition.

In Zeebrugge, the distinction between general port labour and logistics caused considerable difficulties as well. The Port Authority, employers and union representatives unanimously confirm that no genuine legal certainty can be offered. It is a well-known fact that several transportation companies decided not to locate in the port. Because of competitive effects, the employers often do not agree among themselves on delimitation issues. To a limited extent, the Port Authority can help solve these issues through its land concession policy. In 2009, the unions forced a cold storage and frozen logistics company located in the port area of Zeebrugge to hire port workers on the General Register, because it loaded and unloaded trucks and containers within that area²⁵³. Reportedly, in the Zeebrugge Transport Zone, a dry logistics area which was nonetheless included in the port area, the Port Labour Act is not complied with at all, with companies employing neither general port workers, nor logistics port workers. Recently, the Chairman of the Zeebrugge Port Authority complained that he is unable to offer companies situated in the Zeebrugge Transport Zone the opportunity to expand in the port's

²⁴⁹ Royal Decree of 9 March 1999, annulled by the Council of State on 8 November 1999 (judgment no. 83.345). The logistics register was reintroduced by Royal Decree of 19 December 2000 on the conditions and modalities of the registration of port workers in the Antwerp port area. The latter Royal Decree was repealed by Royal Decree of 5 July 2004, which however maintained the Logistics Register. On the need for a separate legal regime for logistics workers, see also *Parliamentary Documents*, Chamber of Representatives, Commission for Social Affairs, 31 March 1999 and *De Lloyd*, 25 March 1997. The first breakthrough was the introduction of a special status for 'warehouse workers B' (*magazijnarbeiders B*) in 1990 (see more in Baete, B., "1973-2004. Een getuigenis", in Vanfraechem, S. and Baete, B., *100 jaar Havenarbeidersbond Antwerpen. Van dokwerker tot havenarbeider*, Ghent, Amsab, 2004, (105), 132 et seq.).

²⁵⁰ The employment of these workers is governed by a separate collective agreement (Collectieve arbeidsovereenkomst van 8 mei 2000 tot vaststelling van het statuut van havenarbeider van het aanvullend contingent aan de haven van Gent).

²⁵¹ See *supra*, para 399.

²⁵² Two relocation cases where labour conditions were a major factor are Schenker (now at Willebroek: see http://www.imustbe.be/mmm/jq/files/660/pdf_00000474nl.pdf) and Efico (now Seabridge, in the port of Zeebrugge).

²⁵³ See <http://acvtranscomkusthavens.blogspot.be/>.

Maritime Logistics Zone in the inner port, because in the latter, the Port Labour Act is enforced, which is an unsurmountable obstacle for these companies²⁵⁴.

Figure 69. The Zeebrugge Port Zone (foreground) is a dry logistics area adjacent to the port which was included in the port area as defined for port labour purposes. Yet, the Port Labour Act is not complied with here – one of the many grey areas in the Belgian regime of port labour (copyright: Zeebrugge Port Authority / Fotografie Henderyckx).



In Ghent, virtually all logistics activities are concentrated at the Skaldenstraat area which is just beyond the limits of the port area and where employers are not obliged to rely on the Logistics Register of the port. One company established a warehousing complex just to the East of the Kennedylaan in the port of Ghent, which serves as a boundary of the port area, and baptised its warehouses, not without sarcasm, the 'Rojam' complex, because they remained just outside the scope of the 'Major' Act. The only substantial exception to the geographical separation of logistic activities is DSV, which invested in a plant near the Volvo factory within the port area only to discover afterwards, much to its dismay, that it had to use port workers of the Logistics Register.

²⁵⁴ Mintiens, G., "'Meer begrip nodig voor logistiek'. Havenarbeid zet rem op groei Maritieme Logistieke Zone in Zeebrugge", *De Lloyd* 7 August 2012.

In a promotional brochure, the Port Authority of Ostend assures prospective investors that the Belgian Port Labour Act is fully compatible with all EU regulations²⁵⁵. Yet, the Port Authority stated that the regime of logistics work is not really attractive and that it does not amount to anything much.

In Brussels, all logistics workers are registered as workers of the General Register who have voluntarily opted for work in the logistics sector (*havenbedrijfsarbeiders* or 'port company workers').

Practically speaking, the employment of logistics workers must in each individual case be authorised by the trade unions. In accordance with the Royal Decree of 5 July 2004, employment of logistics workers is only allowed on locations where goods, in preparation of their subsequent distribution or forwarding, undergo a transformation which indirectly leads to a demonstrable added value²⁵⁶. However, the criteria of 'transformation' and 'added value' are particularly vague and give rise to substantial legal uncertainty, which in turn deters investment²⁵⁷. The Antwerp Codex on the Logistics Register expressly provides that permissions to employ logistics workers are taken by consensus (Art. 7), which of course results in a right of veto for the trade unions. Reportedly, permissions to employ logistics workers were granted in cases where no 'transformation' takes place whatsoever²⁵⁸. A BTB representative for the coastal ports explained that the 'added value' criterion can be interpreted in two different ways: it may be held to refer either to a positive effect on the employment of port workers on the General Register, or to the creation of an added value of the goods concerned. A difficulty with the first criterion is that, after a lapse of time, goods originally supplied by seagoing ships may be delivered by lorries. The second criterion is not without problems either: intricate interpretative problems may arise, for example, in relation to plastic wrapping of paper rolls, putting workbooks in new cars, or blending coffee.

Once permission is granted, the employer may engage logistics workers freely on the labour market. In Antwerp, all logistics workers are employed on the basis of a permanent contract. Reportedly, the level of wages for logistics workers is approximately 66 to 75 per cent of that for regular port workers²⁵⁹, and logistics workers enjoy fewer bonuses. Some sources added that registered logistics workers earn substantially more than workers performing exactly the same type of job outside the port area, but other interviewees denied this.

Statistics maintained by CEPA suggest that approximately 40 per cent of all non-water-related tasks in the port of Antwerp – for example, unloading container trucks, opening container doors, stuffing and stripping containers or just labeling crates – are still performed by port

²⁵⁵ X., "Oostende - Gateway to Western Europe. Unique Logistic Concept - Tailor Made Warehouses", <http://www.portofoostende.be/agho/logistics%20in%20oostende-Engels.pdf>, 8.

²⁵⁶ See *supra*, para 396; see, for example, http://acvtranscomkusthavens.blogspot.com/2009_06_01_archive.html.

²⁵⁷ The initial clarification that logistics activities are ancillary cargo handling activities including (re)packing and unstuffing of unit cargoes in warehouses helps little (see Report to the King on the Royal Decree of 19 December 2000).

²⁵⁸ Such as a distribution centre for Evian mineral water.

²⁵⁹ One source mentioned that in Antwerp, the percentage is in most cases 75, in Zeebrugge only 66.

workers on the General Register. Individual terminal operators added that port-specific safety issues are completely irrelevant in this respect. Trade union BTB however stresses that a distinction must be made between light types of logistics work (for example, order picking) and more strenuous jobs (for example, the handling of paper rolls with heavy forklift trucks).

CEPA also highlights that the number of workers in the Logistics Registers sees no growth, while logistics activities are expanding elsewhere in Belgium and across Europe; this indicates a loss of market share for the port. CEPA argues that the scope of the Port Labour Act should be limited to the handling of waterborne cargo up to the 'first place of rest', and that all consecutive operations should remain outside its scope and be governed by general labour law.

A dry bulk handler related that awkward situations can arise where coals are mixed by a team composed of general port workers of the pool who unloaded a ship and logistics workers managing the storage area. While the latter are less well paid, the employer exercises stronger authority over them.

- Restrictive working practices

484. In its reply to our questionnaire, the Federal Public Service for Employment, Labour and Social Dialogue mentions limited working days and hours in Belgian ports as a restrictive working practice, but again does not label this as a major competitive problem.

The Antwerp port employers' association CEPA mentions the following restrictive working practices, and adds that they result in a major competitive handicap:

- inadequate duration of shifts;
- late starts and early knocking off;
- overmanning;
- inadequate composition of gangs²⁶⁰;
- limitations on use of new techniques.

With the exception of the latter restriction, this statement was endorsed by the Antwerp Port Authority.

CEPA is of the opinion that these restrictive working practices are a major competitive handicap for the port.

As regards limitations of new techniques, CEPA clarified that the introduction of new technologies is subject to a joint procedure which consists of (1) a risk analysis by the Joint Service for Prevention and Protection, (2) a discussion within the Joint Committee for

²⁶⁰ See already *supra*, para 454.

Prevention and Protection, and (3) a trial period. As a result, the trade unions have a say in this matter; allegedly, their policy is to delay the introduction of new technologies as long as possible, referring to possible risks and various other aspects such as the impact on work enjoyment. Still according to CEPA, adapting rules on gang composition can take considerable time as well.

Interviews with individual terminal operators revealed dissatisfaction with the general practice of leaving the workplace 15 to 30 minutes early. Extra time (and wages) allowed by applicable rules to position shoreside cranes and park rolling stock is not being used in practice. It is practically impossible for employers to exercise normal authority.

A classical restrictive working practice is leaving work as soon as all work on a given ship or hatch is completed (known as the *gedaan-gedaan* rule)²⁶¹.

In Ghent, one terminal operator related that foremen often incite crane operators to take it slowly in order to gain overtime work.

Replying to the questionnaire, the Royal Belgian Shipowners' Association confirmed the restrictive working practice of limited working days and hours but does not regard this as a major competitive issue.

In their replies, the trade unions identified no restrictive working practices.

485. Some restrictive working practices are imposed by the local Codices. As we have explained²⁶², the excessive detail in these Codices, especially of the Antwerp Codex, can be considered a restriction in its own right.

486. Another difficulty is that in Antwerp, pursuant to general health and safety regulations, all work must be interrupted for a break of 20 minutes as soon as the temperature reaches a certain level which is determined on the basis of data provided by three port-based weather stations²⁶³.

²⁶¹ See also *supra*, para 121.

²⁶² See also *supra*, para 463.

²⁶³ See Van den Bossche, B., "Maritieme expeditie als ambacht", *De Lloyd* 31 January 2011.

- *Qualification and training issues*

487. In Antwerp, occasional workers who may be employed in the case of shortage of labour receive no training. At best, the regulations require medical fitness²⁶⁴, or a shortened training course is provided, as in Zeebrugge. In some cases, the individual employer organises basic training, for example for tallymen.

488. As we have mentioned above²⁶⁵, the Antwerp port training centre OCHA recently scaled down its activities and reduced the number of trainers, and employers are reluctant to rely further on a training institution which they perceive to be dominated by trade union representatives.

However, trade union BTB has so far refused to grant market access to commercial training and certification provider Global Port Training, because it would result in competition with OCHA and pave the way to privatisation of training services. BTB insists that the quality of port training provided by OCHA is internationally beyond compare.

One interviewed employer stated, however, that union-controlled OCHA delivers personnel unsuited for the real job, and that his company attaches far greater importance to personality, commitment and social skills. Other interviewees referred to the high cost of training at OCHA.

Whatever the case, a major terminal operator in the container business mentioned that proper training and language skills remain of utmost importance. Another container handler agrees that OCHA is performing well, at a relatively high cost however.

489. One container terminal handler who decided to rely, in agreement with the unions, on additional occasional workers, and organised induction training for these workers, encountered opposition from the unions, as the company threatened to become too independent of the hiring hall. The unions complained that the occasional workers were trained on the spot while registered workers were still available at the hiring hall, accusing the employer of illegally employing unregistered workers.

490. An ACV Transcom representative wondered why training of port workers receives no attention from official educational institutions. In view of the importance of logistics to the Flemish economy, one would expect technical and professional schools to offer specific training for port workers, similar to programmes for, say, lorry drivers.

²⁶⁴ See *supra*, para 402.

²⁶⁵ See *supra*, para 419.

One Antwerp breakbulk operator concurred that the provision of training should not be a matter for the sector, but for official schools.

ACV Transcom and BTB stressed the essential role of communication (especially language) skills.

- Health and safety issues

491. First of all, most respondents, including the Federal Service for Employment, Labour and Social Dialogue, the Port Authorities of Antwerp, Zeebrugge, Ghent and Brussels, CEPA, BTB and ACLVB, confirmed that Belgian rules on health and safety applicable to port labour are satisfactory and properly enforced.

492. Also in response to our questionnaire, the Federal Public Service for Employment, Labour and Social Dialogue stated that, applicable rules and precautions notwithstanding, port labour remains a dangerous profession and that unsafe working conditions continue to prevail in Belgian ports.

This statement would seem to find ample support in the official statistics on occupational accidents provided above²⁶⁶ which show that the frequency of fatal accidents is high and that port labour is by far the most dangerous profession in the Belgian economy.

493. We have no information on how the national statistics on occupational accidents are analysed and interpreted and whether they have led to policy initiatives. The inherent risks of the job, the high volumes of general cargo shipped through Belgian ports, especially at Antwerp, rules on manning scales and job classification, and personal attitude and culture may all come into play. In our opinion, the absence of a thorough policy-oriented analysis of the quite alarming statistics on accident rates in port labour may be considered an issue in its own right.

494. In recent years, fatal accidents in Belgian ports frequently hit the headlines.

²⁶⁶ See *supra*, para 434 *et seq.*

In 2011, five dockworkers were killed in the port of Antwerp. On 13 January 2011, a dockworker was crushed by a container at the MSC Home Terminal²⁶⁷. On 17 January 2011, a dockworker died as a result of a fall in a bulk carrier. On 19 February 2011, a dockworker died after falling down from a straddle carrier. On 27 April 2011, yet another Antwerp dockworker died in an accident²⁶⁸.

On 28 January 2012, two port workers died in the port of Antwerp while unloading a cargo of China clay. The workers were crushed when the deck they were standing on collapsed under the weight of a bulldozer²⁶⁹. On 28 February 2012, two Antwerp port workers died when a cargo of steel tubes started to shift in the hold of a general cargo vessel²⁷⁰. In the course of 2012, a mechanic employed at the maintenance station of a company renting forklifts died. In August 2012, the Labour Inspectorate informed us that, in total, 6 port workers had died in the course of that year.

However, statistics maintained by CEPA indicate that in the past decades, the safety record of the port of Antwerp has significantly improved and that the incidence rate is considerably lower among permanently employed workers²⁷¹.

²⁶⁷ On this accident, see the unreported judgment by the Labour Court of Antwerp of 20 September 2011 (summary proceedings), 11/3893/A. In the case at hand, following the fatal accident of 13 January 2011, the Belgian Social Inspection imposed a number of far-reaching safety measures at the terminal. However, the terminal operator challenged these measures in court. The Labour Court decided that the measures had not been appropriate. In August 2012, the Labour Inspectorate informed us, however, that, nonetheless, new preventive measures are being implemented.

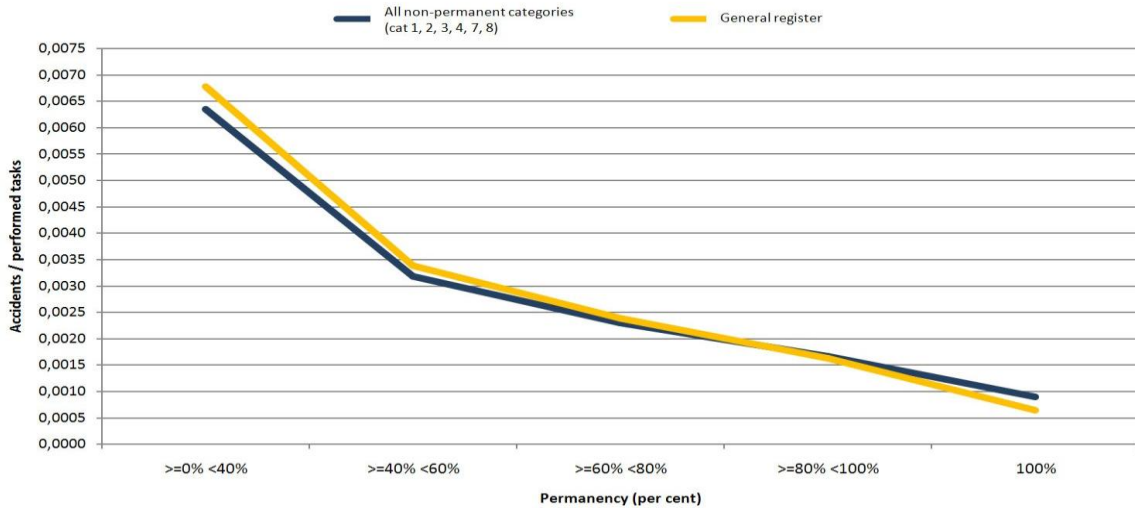
²⁶⁸ See *Transcom Info*, 02/2011, 03/2011 and 05/2011, <http://acv-transcom.acv-online.be>.

²⁶⁹ "Twee havenarbeiders verpletterd in scheepsruim", *De Standaard* 30 January 2012, http://www.standaard.be/artikel/detail.aspx?artikelid=DMF20120129_021.

²⁷⁰ Dekeyser, A.-S., "Zonder een portie geluk red je het niet", *De Standaard* 3-4 March 2012, <http://www.standaard.be/artikel/detail.aspx?artikelid=BQ3N0AL5>; Sertyn, P., "Alweer een zwarte start", *De Standaard* 29 February 2012, <http://www.standaard.be/artikel/detail.aspx?artikelid=UQ3MQKEH>; Van Damme, D., "Collega's komen samen om in ruim vrachtschip", *Gazet van Antwerpen* 29 February 2012, 3; Verbraeken, P., "En toch is de haven veiliger geworden", *Gazet van Antwerpen* 29 February 2012, 4; Verbraeken, P., "Korte actie na dodelijk ongeval op ABES-terminal. Dokwerkers protesteren sereen", *Gazet van Antwerpen* 2 March 2012, 51.

²⁷¹ See also X., "Naar een modernisering van de havenarbeid", *Portaal* April-May-June 2012, (4), 5.

Figure 70. Incidence rate of accidents vs. permanency of employment in Antwerp, 2010 (source: CEPA)



CEPA also found that especially the 100 per cent permanent workers encounter far fewer accidents and take less sick leave. Also, these workers are slightly older than the average worker (aged on average 44 as opposed to 41 years).

The better health and safety record of permanent workers is explained by their personal commitment and identification with their employer, greater familiarity with the work and the workplace, and social pressure to perform better.

One terminal operator stated that accident statistics and especially figures on inability to work are distorted as a result of workers being obliged to perform work assigned to his or her job category. Employers cannot offer workers another job. This also increases the cost of occupational accidents. Another terminal stressed that over the past 30 years, the safety culture in ports has improved considerably.

495. In an interview, a representative of the Belgian Labour Inspectorate in Antwerp confirmed that port workers have excellent training but that the safety record of the port remains unacceptable and that indeed not a single other industry is performing so poorly. This cannot be explained, however, by the specific characteristics of the profession, as in the port exactly the same dangers occur as in other comparable industries such as steel, power and chemical plants. For example, steel beams handled in the port are also handled at their land-based

points of origin and destination, while a lower frequency and severity of accidents than in ports is recorded at steel mills. There is no other industry where at least one fatal accident occurs per year, while in Antwerp, 2011 and 2012 saw 5 or 6 such accidents. A main cause is that the employers' association focuses on the protection of individual workers whereas risk analyses at individual terminals are often insufficient. Other contributing factors include the obsolescence of handling technologies, excessive manning levels and the difficult joint decision-making process where any change is seen as a threat. Lack of discipline ('machismo') of workers still exists but the situation is improving. Our spokesman also confirmed that the detailed prescriptive provisions of the General Regulations concerning Protection at Work, which inspectors continue to rely on if useful, are inevitably outdated but that this is not the main issue. A more serious problem of a legal nature is that general laws and regulations on occupational health and safety only allow inspectors to serve injunctions upon individual companies, not upon professional associations.

496. Many interviewed terminal operators complained about the lack of safety discipline among port workers, who refuse to take even basic safety precautions and ignore the employer's safety policies and standards. It is, for example, not infrequent that port workers neglect to wear safety helmets. It is almost impossible to enforce rules and policies on alcohol and drugs²⁷². Several employers referred to the 'machismo' of workers and complain that safety initiatives by individual terminal operators are often thwarted because safety is the sole remit of the Joint Committee for Safety and Prevention.

497. In an interview, the Port Authority of Antwerp said that safety rules should be laid down at sectoral level in order to avoid distortions of competition. Where occasional workers are employed, or double shifts are performed, safety all of a sudden appears to be much less of a concern to the workers and their unions. Several employers pointed out that the excessive composition of gangs in maritime ports significantly increases the risk to health and safety. There is a wide belief that safety arguments are often abused and that the unions are unwilling to support unpopular enforcement actions.

498. One terminal operator in Antwerp who is very strict on safety measures complained that some casual workers prefer to work for another terminal where safety is much less of a concern.

²⁷² These issues are covered by specific provisions however: see, for example, Chapter XVII (Art. 970) of the Codex for the General Register in the port of Antwerp. See already *supra*, para 460.

499. The trade union BTB is extremely worried about the recent rise in the accident statistics in the port of Antwerp. It admits, however, that some dockers are insufficiently aware of safety risks and ignore safety precautions out of professional pride, a competitive attitude vis-à-vis other gangs and foremen and respect for traditional practices.

500. In 2010, BTB organised a seminar on the dangers posed by fumigated containers where experts asserted that no less than 20 per cent of import containers contain harmful substances of which 95 per cent are not properly labelled²⁷³. Recently, CEPA and the Belgian Safe Work Information Centre (BeSWIC) paid specific attention to the handling of fumigated containers in ports. BeSWIC also disseminates guidance documents on its website²⁷⁴.

501. According to trade union ACV Transcom, applicable rules on labour arrangements and health and safety are not always properly enforced. There is little or no inspection of workplaces in port areas by the Labour Inspection. Moreover, the union refers to communication problems with regard to health and safety rules and asserts that, in some cases, performance overrules safety. At company level, the use of personal protective equipment should be better enforced. ACV Transcom also referred to the situation at inland ports which so far remain outside the scope of the Port Labour Act.

²⁷³ See Kempeneers, E., "Gassen in containers. Rol arbeidsgeneesheer - EDPBW", 5 February 2010; Melckmans, B., "Fumigations. Conférence-débat UBOT", Soete, H. et al., "Gifcontainers maken duizenden ziek, ook consumenten", 10 May 2010, <http://www.dewereldmorgen.be/video/2010/05/10/gifcontainers-maken-duizenden-ziek-ook-consumenten>.

²⁷⁴ See <http://www.beswic.be/nl/sector/distributie-en-transport/gassen-containers/>.

Figure 71. On 5 July 2012, an inland barge capsized on the Canal of Louvain as bricks were unloaded onto the quay. At this inland terminal, the Port Labour Act does not apply (source: Alain Trappeniers, De Standaard / Het Nieuwsblad).



502. In a recent interview for an ITF magazine, individual workers said that health, safety and job security are issues which are discussed on a daily basis among young workers and that many youngsters experience considerable stress on the job²⁷⁵.

503. Finally, we should stress that Belgium continues to be bound by ILO Convention No. 32, which has long been considered outdated by the ILO.

²⁷⁵ X., "GNT Interview", *GNT Bulletin*, May 2012, <http://www.itfglobal.org/files/extranet/-1/34415/MAY%20GNT%20BULLETIN%208%20New%20GNT%20Bull.pdf>, 1.

9.1.7. Appraisals and outlook

504. As we have mentioned before²⁷⁶, the current Belgian port labour regime is today probably the most 'classical' pool regime within the entire EU. Unsurprisingly, it is perhaps also the most controversial one. Whatever its initial justifications, many stakeholders and observers deem it fundamentally outdated. Many of its difficulties are typical of classical pool systems. Issues such as control of nominations by trade unions (closed shop), job-creating restrictive rules and practices, hiring outside hiring halls, the near impossibility of dismissing registered workers, the weak commitment of port workers, *etc.* also arose in the heyday of, say, the UK's National Dock Labour Scheme, and some of them continue to beset more or less modernised or deregulated pool systems as can be found today in ports in Italy, Portugal and Spain. Even if the safety level has improved over the past decades, national statistics continue to indicate that port labour in Belgium is a particularly dangerous profession, where the risk of serious occupational accidents is apparently the highest of all sectors of the economy.

505. As we have noted above, some rare foreign scholars consider the Belgian regime a best practice. Harry Barton and Peter Turnbull, who are convinced that maintaining "institutionally saturated patterns of labour regulation" can be more efficient than the deregulation policies of the European Commission and many individual Member States, stress that the Antwerp system of labour regulation takes wages and conditions of employment 'out of competition' through the Codex. The result is that operators must compete predominantly on the basis of service and productivity, rather than (labour) costs. Put differently, the system of labour regulation imposes a 'productive constraint' that promotes innovative behaviour by port operators, who strive to develop service quality, operational flexibility, reliability, high vessel-handling rates, and rapid turnaround in order to compete. These are precisely the factors that shipping lines and other port customers cite as the most important determinants of their choice of port of call²⁷⁷. In another paper, Peter Turnbull and David Sapsford argue that the countries with the most effective dock labour schemes, principally the northern European ports and the West Coast of the United States, are also those with the lowest strike incidence and the highest productivity rates. They again cite Antwerp as "the most efficient port in Europe"²⁷⁸.

506. It is also worth recalling the Recommendation on EU Ports Policy which was adopted in 2007 by the Flemish Ports Commission²⁷⁹. This Commission is an official consultative body

²⁷⁶ See *supra*, para 390.

²⁷⁷ Barton, H. and Turnbull, P., "Labour Regulation and Competitive Performance in the Port Transport Industry: The Changing Fortunes of Three Major European Seaports", *European Journal of Industrial Relations* 2002, Vol. 8, No. 2, (133), 152 and 153.

²⁷⁸ Turnbull, P. and Sapsford, D., "Hitting the Bricks: An International Comparative Study of Conflict on the Waterfront", *Industrial Relations* 2001, Vol. 40, No. 2, (231), 239.

²⁷⁹ *Aanbeveling van de Vlaamse Havencommissie over het in voorbereiding zijnde Europese havenbeleid*, 5 July 2007, <http://www.serv.be/vhc/publicatie/advies-van-de-vlaamse-havencommissie-over-het-voorbereiding-zijnde-europese-havenbel>.

under the Flemish Government in which the four main port authorities and the social partners are represented.

In its Recommendation, the Flemish Ports Commission advocated the adoption at EU level of minimum standards on health and safety in dock work. The Recommendation mentions that not all Member States have ratified ILO Conventions 137, 145 and 185 (the employers' representatives in the Commission, however, did not agree with this reference to ILO instruments).

Next, the Flemish Ports Commission stated that training of port workers is a matter that should be left to the Member States or local authorities.

Finally, it declared that an EU-wide rule allowing self-handling would be unacceptable. Specific rules can only be introduced following negotiations at national or local level.

507. Replying to our questionnaire, the Federal Public Service for Employment, Labour and Social Dialogue labelled the current port labour regime in Belgium satisfactory and moreover stated that it offers sufficient legal certainty. The system is said to have a positive impact on the competitive position of Belgian ports. The agency adds that Belgian port workers are known for their productivity, flexibility and vocational skills. Any future change in the system should be supported by the social partners.

508. Conversely, the Port Authority of Antwerp believes that the current port labour regime is unsatisfactory and that it impacts negatively on the competitive position of the port. It mentions the following priority needs: a stricter definition of port labour (port labour properly vs. logistics activities, activities at intermodal terminals *etc.*); more permanent labour relations; a reasonable flexibility (composition of the gangs, duration of shifts, *etc.*); safeguarding continuity (*cf.* capacity problems in holiday seasons due to the rigidity of the port labour organisation); comparable regimes within and outside port areas for comparable activities. Asked whether the degree of legal certainty is sufficient, the Port Authority declared itself more concerned about the broad definitions, lack of flexibility, operational uncertainty and absence of a level playing field.

Earlier, Antwerp's port alderman Marc Van Peel stated that work should be performed (1) when there is a demand for it and not in function of fixed shift times and (2) by people and gangs who are really needed for the particular job²⁸⁰. Antwerp should have a Codex similar to the one in Zeebrugge²⁸¹. In an interview with us, he confirmed this position. CEO Eddy Bruyninckx added that, to a large extent, the work could and should be organised at company level. The

²⁸⁰ PL, "Van Peel: 'Werken als er werk is'", *Gazet van Antwerpen* 27 December 2010.

²⁸¹ Van den Bossche, B., "Havenbedrijf blijft toekijken op havenarbeid", *De Lloyd* 17 December 2010.

Port Authority mentioned several 'dysfunctions', for example where registered port workers must be hired to clean up a dry bulk quay after unloading operations.

509. In its response to the questionnaire, the Port Authority of Zeebrugge stated that, as ports are parts of the global logistical chain, continuity, efficiency, productivity and total costs are important issues in the decision making process. As a result, bottlenecks have to be removed.

510. In its written reply to the questionnaire, the Port Authority of Ghent described the current port labour regime as satisfactory. However, the Port Authority also stated that the current port labour regime has a direct negative impact on the competitive position of the port. In this regard, reference was made to the fact that port labour is cheaper in a neighbouring port in the Netherlands.

Further interviews with the Ghent Port Authority revealed that the legal uncertainty over the scope of the port labour regime, the arbitrary geographical delimitation of the port area and the unreasonable rules on the composition of gangs, especially for the handling of inland barges, are considered extremely serious issues, which negatively affect the attractiveness of port areas for investments in logistics centres and inland navigation terminals. The pool system is still believed to be quite acceptable in itself, but its practical implementation is inadequate.

511. In an interview, the Port Authority of Ostend essentially concurred with these observations. It noted that flexibility is made impossible by mandatory manning scales. In some cases, registered port workers do not want to carry out certain functions but complain as soon as third workers are hired. The unions are extremely powerful but if they refuse to accept changes, the whole system will be jeopardised.

512. The Port Authority of Brussels thinks that the current port labour regime has a positive impact on the competitive position of the port. It does not consider the reported restrictions a major competitive disadvantage. The Port Authority notes a certain flexibility in the composition of gangs and mentions that, in Brussels, half shifts can be ordered.

513. Given the large number and the serious impact of prevailing restrictions on employment and restrictive work rules – and the excellent productivity of the average port worker notwithstanding – the Antwerp port employers' association CEPA feels that the current port

labour regime has a negative impact on the competitiveness of the port of Antwerp. Spokespersons at CEPA stated that the main difficulties are:

- the extension of the notion of port labour to all kinds of activities which have no bearing on the loading and unloading of ships, including logistics;
- the inadequate and arbitrary definition of the port area and the non-application of the Port Labour Act to a number of ports;
- legal uncertainty, for example in relation to the definition of logistics work;
- the opacity of the registration procedure;
- the excessive detail of the rules governing the organisation of work, which are not tailored to the needs of individual companies;
- imbalances between labour supply and demand;
- the impossibility of offering permanent employment for all workers;
- the lack of flexibility;
- the closed shop system which results in 'jobs for life' and a poor labour ethos.

CEPA also mentions problems related to starting hours, job classifications, the voluntary nature of weekend work and the accident rate.

514. In an interview, the Port Authority of Zeebrugge and the port employers' association CEWEZ said that the current port labour regime, which is substantially more flexible than the system in Antwerp and Ghent, operates reasonably well and that the Port Labour Act can be maintained as such, but that, nevertheless, some issues need to be addressed urgently, mainly the legal uncertainty over the scope of the rules on port labour, especially with a view to the attraction of logistics activities and the removal from the port area of zones where no genuine port labour is performed.

515. CEMPO stated that Brussels will probably be the first port which will be removed from the scope of the Port Labour Act, because the pool is too small and its operation is financially hardly sustainable. The number of registered workers represents only a small fraction of total employment at the port.

516. In interviews, countless individual companies complained about a sheer lack of legal certainty, the absence of the rule of law and 'Mafia practices', based on brute force and the continual threat to down tools. For these reasons, many interviewed operators asked to remain anonymous while others even refused to speak to us or to provide photographic evidence of abuses for fear that their company would be immediately targeted by the unions. One terminal operator referred to the extraordinary power of internationally organised unions who can paralyze the economy of the entire EU, and added that the European Commission will stand no chance against them. However, the same operator also expressed his deep respect for those

union leaders who are aware of the negative competitive impact of current rules and practices and also acknowledged the skills of registered port workers.

517. According to trade unions ACLVB and ACV Transcom, however, the current Belgian port labour regime has a positive impact on the competitive position of Belgian ports. ACLVB notes that the stable social climate has resulted in strike-free ports (with the exception of the Ports Package episode). ACV Transcom highlights the considerable flexibility of the current regime.

518. The Royal Belgian Shipowners' Association, too, considers the current Belgian port labour regime satisfactory. However, the regime is said to have a negative impact on the competitive position of Belgian ports. In this regard, reference is made to the price of cargo handling services and to various restrictions on employment and restrictive working rules. The Royal Belgian Shipowners' Association does not, however, consider these restrictive rules and practices a major competitive disadvantage.

519. After a 2010 study trip to Belgium, the Netherlands, Canada and the United States, the trade union Maritime Union of Australia concluded that the Belgian port workers' training model was the best that they had come across by a long way, and that it is the model to be strived for in terms of world's best practice²⁸².

520. Further, the Federal Public Service for Employment, Labour and Social Dialogue considers the current relationship between port employers and port workers and their respective organisations satisfactory. It notes that, as in other industries, employers and employees disagree on a number of issues, but these should be solved through social dialogue.

521. The Port Authority of Brussels believes that the relationship between port employers and port workers is excellent.

522. According to the Antwerp port employers' organisation CEPA, the relationship with trade unions is satisfactory as far as industrial peace and productivity are concerned. However, it

²⁸² Maritime Union of Australia, *Report Stevedoring Training, Qualifications, Licensing and Automation Research and Study Trip. Toward Best Practice in Occupational Health and Safety on the Waterfront, 18th - 22nd October 2010*, 16.

cannot accept the reluctance of unions to improve flexibility and to agree on changes of the labour organisation or the introduction of new cargo handling technologies.

523. The trade union ACV Transcom believes that the current relationship between port employers and port workers and their respective organisations is excellent. According to BTB and ACLVB, the current relationship between port employers and port workers and their respective organisations is satisfactory. A BTB representative for Zeebrugge and Ostend confirmed that relations with employers are good. ACLVB saw a certain deterioration of the relationship after the rejection of the EU Port Packages. Representatives of ACV Transcom in several ports regret that their colleagues from BTB, whose main membership are port workers, do not apply a long-term view while a number of essential issues need to be addressed in order to safeguard the competitiveness of Belgian ports and to modernise existing rules and practices. BTB, however, insisted that it is always willing to discuss improvements in labour conditions, and suggested that in the recent past employers failed to take any initiative and rejected reasonable compromises, for example on the hiring for half shifts in Antwerp.

524. The Royal Belgian Shipowners' Association considers the relationship between port employers and port workers and their respective organisations satisfactory. In this regard, it notes a constructive dialogue between employers, workers and unions.

525. Both unions BTB and ACLVB believe that the Belgian port labour regime can be considered a best practice. The Royal Belgian Shipowners' Association, on the other hand, considers the UK to be the preferable model.

526. It hardly needs to be noted that the replies to our questionnaire on the merits and especially the competitive impact of the current Belgian port labour regime were not wholly consistent.

We cannot avoid the impression that some replies to the questionnaire were purposively worded in a very careful manner. Also, some important stakeholders conspicuously either made no reply to the questionnaire or no comment on policy issues.

Interviews and our own analysis of policy and legal issues above point to a number of serious problems.

Individual interviews with virtually all major Antwerp cargo handling companies confirmed a deep malaise and – the widely acknowledged world-class productivity of the majority of

Antwerp port workers notwithstanding – utter despair over the competitive position of Antwerp as a breakbulk port. The port employers are divided however, with container terminals controlled by foreign groups and/or major global shipping lines being more concerned about the risk of industrial action which may disrupt sailing schedules²⁸³. One harshly critical (and, according to BTB, *mala fide*) interviewee said that the whole regime is identical to the mediaeval guild system (an opinion shared by several other employers); that it is "rotten to the core" and that all employers in Antwerp are fed up with it; that after 35 years, progress on port labour arrangements in Antwerp has been zero; that the system does not aim at the protection of workers but at the preservation of the power base and privileges of trade unions; that CEPA is only looking after its own interests as an organisation; and that the only solution is automation which makes workers superfluous. Most other breakbulk operators were slightly less bellicose, but unanimous in their belief that continuing the current system – called a 'straightjacket' by one handler – is not an option. One employer caricatured the casually employed pool workers – who only represent a minority of approximately 20 per cent of workers, the others performing quite well – as archetypal civil servants. The workers are incited by the unions to fanatically enforce all kinds of anachronistic rules and regulations. Our interviewee concluded that an entirely new type of port worker is needed. A container handler said that in their sector real progress has been made, but that it had taken much too long and that further improvements should be adopted quickly. Another container terminal stated, however, that current labour conditions continue to erode the competitive position of the port and that recent changes had been insignificant.

A manager of an internationally controlled container terminal at Zeebrugge stated that the Port Labour Act and the pool system are very useful in that they allow new companies to start up, but that, due to the port's timetable system, bigger competitors threaten to monopolise the labour pool, and that more flexibility of employment is needed for less specialised jobs such as lashers and tallymen, as smaller firms are unable to exchange timetable workers between terminals. Our interviewee also stated that more multi-skilling is needed in relatively labour-intensive ports such as the Belgian ones, that in inter-port competition, the regime of port labour is an important, but probably not a decisive factor, that the delimitation between port labour proper and logistics remains seriously inconsistent, and that in the course of the next decade traces of nepotism and corporatism are set to disappear anyway.

The manager of an industrial plant in Ghent where barges are handled by self-employed persons stated that should he again be obliged to employ registered port workers to handle these barges, he would rather shift his entire cargo flow to road. In other words, handling pure inland waterway traffic within port areas is considered totally uneconomic. This statement was endorsed by representatives from port authorities as well as unions.

A dry bulk operator in Ghent stated that the pool system is still the best way to ensure flexibility in a tramp port such as Ghent and that the Codex in Ghent is more attractive than the regulations in Antwerp but that, ultimately, terminals could also be operated with general workers. Therefore, the many unrealistic restrictions, including the anachronistic hiring system,

²⁸³ Comp. Mintiens, G., "Witte rook is dunne sliert", *De Lloyd* 26 November 2010.

must be addressed as a matter of urgency. Another major port operator with terminals in three Belgian ports confirmed his support for the pool system but insisted that the productivity of ports is seriously affected by the Codices and fears that the current fundamentalist approach of the Antwerp leadership of the trade union BTB is threatening to kill the entire port system. Representatives of all sectors concerned, including unions, indeed affirmed that relations between employers and unions are workable, with the exception of the intransigent leaders of BTB in Antwerp, which represents the majority of port workers in Belgium, plays a dominant role at national level and, according to several interviewees, tries to export Antwerp's restrictive labour conditions to other ports.

Several stakeholders also fear a growing distortion of competition between ports governed by the Port Labour Act on the one hand, and ports, terminals and dry logistics centres outside its scope on the other. Earlier²⁸⁴ and recent²⁸⁵ attempts by trade unions to introduce similar rules for all Belgian port areas including barge ports along rivers and canals failed however. Interviewees from the employers' side suggested that barge traffic be entirely removed from the scope of the Port Labour Act.

527. Several instances of shifts of cargo flows to ports in other countries were reported in the media.

Over the past years, the port of Antwerp lost a considerable volume of general cargo, especially forest products and non-ferrous metals, to the Dutch port of Flushing. Many observers, including union representatives, ascribe these losses to the fundamental differences in labour arrangements (even if, according to some interviewees, overall port call costs and in particular pilotage and the unavailability of modern equipment contributed as well).

In the container sector, too, where Antwerp is believed to be one of the highest-performing ports in term of quality and productivity in the world, employers believe that the labour organisation still needs improvement. They also stress that labour problems are fundamentally different in the container, dry bulk and breakbulk sectors.

In the port of Ostend, the main ro-ro and container terminal, which had recently been bought by a shipping line, closed down in 2009 after a fierce dispute with trade unions over the requirement to hire registered dockers for lashing and securing operations²⁸⁶. The terminal was vacated, and today it is being converted into a semi-industrial site serving the off-shore wind sector, where only very little work is left to registered port workers. Interviewees provided us

²⁸⁴ On "river and canal labour", see, for example, Christelijke Centrale van Vervoerarbeiders, *Samen naar de 20.000. Nationaal Congres 20 maart 1976*, Antwerpen, 1976, 296-297.

²⁸⁵ Recently, a proposed extension of the scope of the Port Labour Act to the Flemish part of the Brussels-Scheldt Maritime Canal was reportedly rejected by employers' organisations.

²⁸⁶ See, for example, <http://btb-btbkust.blogspot.be/2009/04/cobelfret-wil-in-oostende-werken-zonder.html>; <http://btb-btbkust.blogspot.be/2009/04/terminalco-cobelfret-kiest-voor-de.html>; <http://acvtranscomkusthavens.blogspot.be/2009/04/stand-van-zaken-bij-terminalco-in-de.html>; <http://acvtranscomkusthavens.blogspot.be/2009/04/oostendse-havenarbeiders-verwerpen.html>.

with different explanations however. Some suggested that the shipping line's only intention was to drive a competitor out of the market, while others did not rule out that it wanted to create a self-handling precedent for its terminals at Zeebrugge. The Port Authority specified, however, that the ship operator had been confronted with serious traffic losses due to the economic crises of 2008 and needed to cut costs, which was only possible by assigning part of the lashing operations to the ship's crew. As the unions opposed this, the company had no other choice than to close down the smaller of its two port terminals and shift its entire cargo flow to the terminal at Zeebrugge.

In 2010, the port of Ostend lost a recently acquired traffic of export fruit and vegetables which returned to the Dutch port of Flushing where it had been handled previously. According to media reports, the Dutch handling company had posted port workers from Flushing to train their colleagues in Ostend, which was not accepted by the trade unions of Ostend who insisted that first unemployed local dockers be used and that the Belgian Port Labour Act be fully complied with²⁸⁷. The media concluded that the unions can make or break a port traffic²⁸⁸. A union representative informed us that the Dutch stevedore only intended to use Ostend temporarily anyway. The Port Authority clarified that the local forklift drivers had no experience in the handling of this type of cargo and were causing serious damage. For this reason, training by GPT was planned. The Port Authority insists that the stevedore had serious long-term plans in Ostend and that the closing down of the traffic due to the labour dispute was a terrible disappointment.

As we have explained above, a number of logistics companies decided not to invest in port areas or else to relocate to other places²⁸⁹.

Finally, the broad dissatisfaction with the current port labour regime, at least in Antwerp and Ghent, is highlighted by the fact that over the past years, it was repeatedly challenged before law courts and also before the Federal Public Service for Employment, Labour and Social Dialogue. Reportedly, a number of cases are still pending. On the other hand, it is striking that cargo handlers in Antwerp, which is Belgium's largest port, have so far hesitated to start legal proceedings in order to challenge the current system radically.

528. CEPA explained to us that the closed shop should be abolished and that the preferred alternative is for the Government to grant registration to every worker who meets a number of objective criteria, and to allow every employer to freely choose its workers among the registered persons. In this scenario, the Port Labour Act does not even have to be altered. Its scope should however be limited to the 'first place of rest'²⁹⁰.

²⁸⁷ X., "Oostende verliest groenten- en fruittrafiek", *De Lloyd* 17 December 2010.

²⁸⁸ Mintiens, G., "Havenbonden onder druk gezet", *De Lloyd* 22 December 2010.

²⁸⁹ See *supra*, para 483.

²⁹⁰ See already *supra*, para 483.

In the Antwerp private sector periodical *Portaal*, CEPA CEO Paul Valkeniers recently clarified further that the Port Labour Act as such is not the main problem, because port labour should continue to be reserved for well-trained workers operating in safe conditions. However, the current Codex is far too rigid. The port of Antwerp is missing opportunities in the logistics sector. Also, port workers should be available for weekend work. Workers should be hired via electronic communication means. Classifications of workers according to job categories, hiring sessions and shifts should be improved, because it is unacceptable that at a given session, there is a shortage of workers for one job while there is an excess supply in other categories. Examples in other ports show that port workers can be trained for different skills²⁹¹.

529. A 2011 Strategic Plan for the port of Ghent published by the local private sector organisation VeGHO stresses the need for a more flexible and cost-efficient organisation of port labour. VeGHO argues that while handling technologies have evolved, the organisation of labour has remained almost unaltered since 1970. VeGHO has inventoried numerous problems and 'aberrations' in the current regime. It also points out that port labour is an obstacle to a modal shift towards inland navigation²⁹².

Interviewed by us, VeGHO elaborated that the definition of port labour is inconsistent, because the handling of petroleum products is excluded from it, while various intrinsically identical liquid bulk types may only be handled by registered port workers. It explained that the scope of the Port Labour Act should perhaps be limited to maritime traffic, but in that case the distinction between vessel types may give rise to new difficulties. Areas along inland waterways (Moervaart and Ringvaart) should be removed from the port area. Proposals to this end were never formally launched, because the trade unions would never accept them within the Joint Subcommittee, which has to issue a formal advice in such matters. Also, VeGHO believes that many restrictive rules and practices should be solved through local negotiations between social partners, and that, in normal circumstances, Belgian authorities should not intervene, nor should it even be considered that the EU would have any role to play. VeGHO thinks that there should be more room for tailor-made agreements at company level.

Several members of the private sector port community in Ghent pointed out that changing the current system is particularly difficult because major international industrial plants such as Volvo and Arcelor Mittal cannot afford any disruption of their operations, as port labour issues represent only a marginal cost element to them.

CEPG and several of its members mentioned that most employers consider that the Port Labour Act is not so bad in its essence. Excessive restrictions should be lifted however, and port labour should be made more efficient and cheaper. Sticking to unrealistic rules, for example in

²⁹¹ Valkeniers, P., "Naar een havenarbeid 2.0", *Portaal* April-May-June 2012, 3.

²⁹² Vereniging van Gentse Havengebonden Ondernemingen (VeGHO), *VeGHO-traject naar de tweede zeesluis. Strategisch Plan. Proactieve Acties*, Gent, s.d., http://m.voka.be/media/4952394/vegho_strategisch-plan-2011-finaal.pdf, 25.

relation to manning scales and inland shipping, might become the deathblow to the Act. This analysis was endorsed by individual union leaders.

530. During a public debate in 2012, port workers in Ghent dismissed all complaints about the high cost of port labour because it is the stevedoring companies who are inflating prices, by abusing their monopoly for the handling of vessels in port²⁹³. Even if this statement was refuted by employers²⁹⁴, one interviewee operating a major industrial plant in the port of Ghent confirmed that stevedores do indeed demand excessive prices and that handling performed by non-port service providers using non-registered workers is considerably cheaper.

531. Of late, several attempts have been undertaken in order to introduce more flexibility in the Belgian port labour regime.

In 1999, for example, a distinction between general workers who perform transshipment operations and warehouse workers who only work in warehouses located in the port area was introduced. This reform, which eventually gave rise to a separate regulation on Logistics Registers, is believed not to have brought about sufficient flexibility²⁹⁵.

In an attempt to anticipate a possible intervention by the European Commission²⁹⁶, common conditions for registration for all Belgian ports were laid down in a new Royal Decree of 5 July 2004.

In 2010, some restrictions affecting general cargo handling in Antwerp (especially in the coaster, project cargo and heavy lift trades) were removed through collective bargaining, but employers deem these measures largely insufficient²⁹⁷.

In 2012, employers and unions agreed on the possibility of permanent employment of port workers and tallymen in the Antwerp container business.

Talks between Antwerp port employers and employees on a more far-reaching deregulation in particular the breakbulk sector have been going on in Antwerp since 2007 but have been unsuccessful so far.

²⁹³ "Havenwerkgevers maken havenarbeid duur", http://acv-transcom.acv-online.be/water/nieuws/detail/havenwerkgevers_maken_havenarbeid_duur.asp.

²⁹⁴ See JLV, "Weinig animo in Gent voor vast dienstverband havenarbeiders", *De Lloyd* 21 February 2012.

²⁹⁵ See *supra*, para 483.

²⁹⁶ See *supra*, para 469.

²⁹⁷ See Mintiens, G., "Overleg havenarbeid te licht bevonden", *De Lloyd* 5 January 2011; Van den Bossche, B., "Stapje naar flexibeler havenarbeid", *De Lloyd* 5 January 2011.

By the end of 2012, a merger of the Joint Subcommittees for Ostend, Nieuwpoort and Zeebrugge is expected, with Zeebrugge's Codex becoming applicable to both other coastal ports. Employers at Ostend are, however, not convinced that this is the right approach because a merger with the better staffed employers' association CEWEZ would considerably increase overhead costs for them.

532. In its 2011 coalition agreement, the new Belgian Government announced a modernisation of the port labour regime in collaboration with the parties involved (employee and employers' associations, social mediators and port authorities).

This important political development indicates a growing awareness that many stakeholders consider the current Belgian port labour regime unsatisfactory and that the competitive position of Belgian ports is at stake.

In 2012, the Minister for Employment Affairs announced before a Parliamentary Committee that, in a first phase, all stakeholders will be consulted on issues such as the definition of port labour and the delimitation of port areas, and that problems relating to the application of the Codices will be inventoried. She identified the delimitation of port areas, the definition of the notion of port labour and the introduction of more diversity of ethnicity and gender as major issues²⁹⁸.

Asked about the frequency of fatal accidents in the port of Antwerp, the Minister stated that the main responsibility to ensure compliance with safety rules lies with the social partners and that all accidents need to be investigated²⁹⁹.

An increasingly topical issue is the harmonisation of the currently very diverse labour conditions across the Belgian port system. Stakeholders in Zeebrugge and Ghent fear that the unacceptable rigidities of the Antwerp regime will be transposed to their port. Moreover, several observers point out that each port has different characteristics and that the types, volumes and patterns of traffic vary considerably. Some employers would welcome harmonisation at national level on condition that it would result in increased flexibility in all ports.

533. Responding to our questionnaire, the Port Authority of Antwerp stated that it expects government action on the reform of port labour to produce results by 2014.

One ACV Transcom representative for Ghent and the coastal ports said that the passage in the coalition agreement is only relevant to the port of Antwerp.

²⁹⁸ *Parliamentary Documents*, Chamber of Representatives, 2011-2012, CRIV 53 COM 376, 26-27.

²⁹⁹ *Parliamentary Documents*, Chamber of Representatives, 2011-2012, CRIV 53 COM 487, 1-2.

534. Interestingly, an Antwerp politician advocated the introduction of EU rules on social protection of dockers as long ago as in 1998³⁰⁰.

Replying to our questionnaire, the Port Authority of Antwerp stated that EU action, respecting the subsidiarity principle, could stimulate a European level playing field and remove unreasonable and ineffective barriers in port labour. From that perspective it endorses the global premises set out earlier by DG MOVE: (1) nobody should be prevented from hiring qualified workers because of market restrictions; and (2) employment of workers who do not possess the necessary qualifications should not be admitted.

In Zeebrugge, we were told that the European Commission could usefully send a message to Belgian Government that a number of serious issues must be addressed.

The Port Authority of Ghent stated that there is a need for harmonisation of the legal framework in the EU.

Similarly, the Antwerp port employers' association CEPA feels that there is a need for EU action. It proposes the following measures:

- prohibit *numerus clausus* systems for port work and abolish closed shop systems;
- focus on multi-tasking and multi-skilling to enhance employability of dockworkers;
- remove all barriers to access to the labour market in the port sector.

Interviewees at CEPA added that they prefer an EU-wide approach rather than EU action directed against individual Member States. Some individual terminal operators expressed support for an EU initiative to ensure free competition as well.

Interviewed by us, VeGHO expressed doubts about the added value of any action at EU level. There is no point in opening up the port labour market and its corporatist structures for, say, Polish workers, because "the only thing that will happen is that you will get unionised (red or green) Poles", and issues such as the inadequate geographical delimitation of the port area will not be solved by applying EU principles on free movement of goods or services.

The trade unions BTB, ACLVB and ACV Transcom do not believe that there is any need or scope for EU action in the field of port labour. ACV Transcom notes that self-handling by crew members, encouraged by ship owners or stevedoring companies, is a threat to the 'traditional docker', not only to his job but also to his life, due to a lack of standardized operational procedures. In an interview, ACV Transcom representatives supported the adoption of EU-wide minima for training of port workers, which would allow an exchange of workers between Member States. Another ACV Transcom spokesman said that port labour is not expensive and that it should not be an issue for the EU to tackle. BTB confirmed its willingness to participate in a European Social Dialogue on safety and training issues. One ACV Transcom representative

³⁰⁰ Tuerlinckx, K., "'Veeg wet-Major niet zomaar van tafel'. SP'er Marcel Batholomeeussen pleit voor Europese oplossing voor statuut havenarbeider", *Gazet van Antwerpen* 8 July 1998.

had no objection to the inclusion in the Social Dialogue agenda of talks on the organisation of employment. ACLVB stressed the importance of the subsidiarity principle.

At a conference of EU dockworkers' unions convened by Antwerp's leading trade union BTB in Antwerp on 15 June 2012, BTB secretary Marc Loridan declared that a deregulation of port labour through EU action would result in social dumping similar to conditions prevailing in the sector of road transportation. BTB is ready to discuss safety and health as well as training issues in the context of the EU Social Dialogue on ports, but only if it is based on best practices. BTB is opposed to any initiative to establish EU certificates for port workers or to erode the protection and labour conditions of dockers. In a newspaper interview, Marc Loridan specified that there can be no question of admitting, say, Bulgarian dockers to perform dock labour in the port of Antwerp³⁰¹. BTB referred to accident statistics for Antwerp which show a totally unacceptable fatality rate.

The Royal Belgian Shipowners' Association believes that there is a need for action but that it will not be easy to change the current regime because industrial action could be anticipated.

535. A Commission Staff Working Document of 30 May 2012 on Belgium's recent national reform and stability programmes mentions:

In the field of transport, a more competition-driven policy should be pursued to enhance further the functioning of the internal market for transport. [...] Modernisation of port labour legislation would also make it possible to enhance the efficient functioning of the internal market for transport in Belgium³⁰².

In 2012, the European Commission launched a Pilot Project on the Belgian port labour system in preparation of a possible infringement procedure.

³⁰¹ Verbraeken, P., "Het gaat heimelijk weer over zelfafhandeling", *Gazet van Antwerpen* 15 June 2012; see also X., "Europese havenarbeidersconferentie waarschuwt Europa !!!!!!!!!", http://www.btb-abvv.be/index.php?option=com_content&view=article&catid=29%3Ahaven&id=2197%3Aeuropese-havenarbeidersconferentie-waarschuwt-europa-&Itemid=202&lang=nl.

³⁰² European Commission, *Commission Staff Working Document, Assessment of the 2012 national reform programme and stability programme for BELGIUM Accompanying the document Recommendation for COUNCIL RECOMMENDATION on Belgium's 2012 national reform programme and delivering a Council opinion on Belgium's stability programme, 2012-2015* {COM(2012) 314 final}, SWD(2012) 314 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0314:FIN:EN:PDF>, 22.

9.1.8. Developments between January 2013 and September 2014

535A. The current study, the first edition of which was presented at an international seminar at Ghent University on 14 May 2013, attracted considerable media attention which focused on both employment restrictions and safety issues.

535B. Since the publication of the first version of the present study, Belgian social partners took several modernisation initiatives, including:

- an agreement between the social partners at national level, signed on 26 March 2014 and providing for important additional safety and employment measures and a framework for future negotiations (but leaving unaffected the Port Labour Act, its scope of application Act and the local codices, and various restrictive rules and practices);
- a testing phase for an e-employment tool MyCepa in the port of Antwerp, launched in May 2014 with 100 port workers participating;
- a new policy and plan on safety at work published by CEPA in September 2014³⁰³.

535C. On the other hand, several stakeholders continued to criticise essential features of the port labour system.

For example, in September 2013 the Ghent port private sector umbrella and the private sector organisation VOKA issued a joint press release in which they advocated a reform of port labour arrangements. In October 2013, the Antwerp cargo handlers' grouping KVBG insisted that the Government provide full legal certainty over the legal definition of logistics as distinguished from other activities. When a new catamaran barge service opened on the Scheldt and the Albert Canal in June 2014 the ship operator complained that he would not be able to call at the port of Antwerp due to the monopoly of the local dockers³⁰⁴. In March 2014, unions demonstrated at a concrete factory in the port of Ghent where they interrupted the unloading of a barge by a self-employed skipper. However, the public prosecutor could identify no infringement of the Port Labour Act³⁰⁵. In May 2014, the Flemish Ports Association and VOKA-VEV (which are Flemish private sector umbrellas) jointly stated that the scope of the Port Labour Act should be revised in order to create a level playing field with logistics zones outside port areas³⁰⁶. In the same month, the chairman of VOKA / Chamber of Commerce of East Flanders stated that the abolition of the Port Labour Act would be conducive to the performance and attractiveness of the port of Ghent and a better modal shift.

³⁰³ See more details and documents on <http://www.cepa.be/werkgevers/berichten/veiligheid-is-topprioriteit-voor-de-haven-van-antwerpen>.

³⁰⁴ Verbraeken, P., "Catamarans vol bakstenen op Schelde en Albertkanaal", *Gazet van Antwerpen* 27 June 2014.

³⁰⁵ JLV, "Actie tegen lossing binnenschip zonder dokwerkers", *Flows* 12 March 2014.

³⁰⁶ Heinen, K., "'Vlaanderen kan nummer 1 in logistiek zijn, mits...'", *Flows* 7 May 2014.

The discontent culminated in 8 companies lodging formal complaints with the European Commission in the course of 2013 and 2014, which were reportedly all based on alleged violations of the TFEU and other international obligations.

535D. The lack of fundamental progress towards a modernisation of the port labour system continued to attract the attention of the Commission in the context of the European Semester³⁰⁷.

On 29 July 2013, EU Commissioner Kallas responded as follows to a question on port labour in Belgium by Philippe De Backer, MEP:

The Commission agrees with the Honourable Member, that port labour arrangements should not be used to prevent suitably qualified individuals or undertakings from providing cargo-handling services, or to impose, on employers, workforce that they do not need, since this could under certain circumstances fall foul of the Treaty rules on the internal market, and in particular of Article 49 on freedom of establishment.

The 'Study on Port Labour, health, safety and qualifications' referred to by the Honourable Member provides an overview of the current port labour practices in the Member States(1). However it should be stressed that the legal analysis contained in the report reflect the own views of its author and not the ones of the Commission. An updated version of the study, including possible corrections and a description of the situation in Croatia, will be available before the end of 2013.

In the case of Spain, the Commission has referred to the Court of Justice certain provisions of the Spanish Port Labour regime that were brought to its attention following a complaint regarding abusive labour practices. A letter of formal notice was addressed to Spain in this respect in 2011 and in 2012 a reasoned opinion was adopted by the Commission.

As regards Belgium, the Commission has recently engaged in a preliminary exchange of information with the Belgian authorities. Once all the required information on this matter is gathered, the Commission will consider appropriate action. In case the Commission comes to the conclusion that the Belgian port labour system is in breach of the Treaty's rules, it may send a letter of formal notice to the Belgian authorities, in accordance with Article 258 TFEU³⁰⁸.

535E. On 31 March 2014, the European Commission sent a letter of formal notice to Belgium in which it highlighted the following six breaches of the freedom of establishment (which is guaranteed by Art. 49 of the TFEU):

³⁰⁷ See esp. European Commission, Commission Staff Working Document 'Assessment of the 2013 national reform programme and stability programme for BELGIUM Accompanying the document Recommendation for a COUNCIL RECOMMENDATION on Belgium's 2013 national reform programme and delivering a Council Opinion on Belgium's stability programme for 2012-16', {COM(2013) 351 final}, 33 and 41.

³⁰⁸ OJ C 56 E, 27 February 2014.

- the ban on the employment of non-registered workers and the obligation to employ workers of the general register;
- the limitations on the use of long-term employment contracts;
- the strict rules on the composition of gangs;
- the strict rules on job categories;
- the obligation to hire workers of the logistics register³⁰⁹.

To date, no reasoned opinion was issued.

³⁰⁹ Even if the procedure should be confidential, the letter is publicly available at http://ptb.be/sites/default/files/documents/2014/04/07/140407_brief_ec_nl.pdf.

9.1.9. Synopsis

536. SYNOPSIS OF PORT LABOUR IN BELGIUM³¹⁰		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 4 main ports • Landlord model • 224m tonnes • 4th in the EU for containers • 13th in the world for containers • Appr. 190 employers (50 regular) • Appr. 10,988 port workers • Trade union density: 90-100% 	<ul style="list-style-type: none"> • <i>Lex specialis</i> (Port Labour Act, 1972; Port Labour Regulations) • No Party to ILO C137 • National and port-wide CBAs • Important role of local usages • Exclusive right of employers' associations • Exclusive right of registered port workers • 3 categories of port workers: <ol style="list-style-type: none"> (1) Registered port workers (2) Registered logistics workers (3) Occasional workers • Joint management • Hiring halls • Criminal sanctions 	<ul style="list-style-type: none"> • Exclusive right of registered workers and their employers • Closed shop • Opacity of registration procedure • Ban on permanent employment • Strict subclassification of workers (ban on multi-tasking) • Mandatory manning scales • Inefficient hiring procedures • Ban on self-handling • Ban on temporary agency work • Restrictive working practices • Legal uncertainty • Scope extended to logistics • Low acceptance of system • Differences between ports • No major reform to date • EU infringement procedure
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Jointly managed port-based training centres 	<ul style="list-style-type: none"> • Compulsory training for all candidate port workers • No national certification system 	<ul style="list-style-type: none"> • Mixed appraisal of Antwerp training centre • No market access for private training providers
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Detailed statistics available • Highest accident frequency and severity rates in the economy 	<ul style="list-style-type: none"> • Specific national Safety Regulations for ports • No Party to ILO C152 • Jointly managed port-wide safety arrangements 	<ul style="list-style-type: none"> • Extreme accident rates despite strict regulation and improvement in last decades • Criticism by Labour Inspectorate • Outdated national Safety Regulations • Still bound by outdated ILO C32

³¹⁰ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.2. Bulgaria

9.2.1. Port system³¹¹

537. Bulgaria has two major seaports located on the Black Sea: Varna and Burgas. These are multi-purpose ports handling all types of cargo, including dry bulk, containers, ro-ro and general cargo.

In 2012, the gross weight of seaborne goods handled in Bulgarian seaports was about 26.0 million tonnes³¹². As regards container throughput, Bulgarian ports ranked 22nd in the EU and 103th in the world in 2011³¹³.

Ruse and Lom are the major Bulgarian ports along the Danube River. At Ruse-East, river-sea vessels can be accommodated.

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

The Executive Agency 'Maritime Administration' (EAMA) exercises the regulatory and control functions of the State in the field of, *inter alia*, ports³¹⁴. The Bulgarian Ports Infrastructure Company (BPIC) manages the infrastructure of the public transport ports of national importance.

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.

539. Despite repeated efforts, we were unable to obtain data or appraisals from private sector associations such as the Bulgarian Chamber of Shipping or from individual port authorities, port service providers or port users.

³¹¹ For information on Bulgaria's main ports, see www.port-varna.bg, <http://port-burgas.bg/en/> and www.port-balchik.com. For statistics, see <http://www.nsi.bg/otrasalen.php?otr=58> and http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

³¹² See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

³¹³ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/PublicationsLibrary/rmt2013_en.pdf, 179.

³¹⁴ In 2008, the Port Administration was integrated into EAMA.

9.2.2. Sources of law

540. The management of Bulgarian ports is governed by the Act of 28 January 2000³¹⁵ on Maritime Areas³¹⁶, Inland Waterways and Ports of the Republic of Bulgaria³¹⁷ which also contains basic provisions on cargo handling and port labour.

Some aspects of port labour are further regulated by Ordinance No. 9 of 17 October 2013 on the Requirements for Operational Suitability of Ports³¹⁸ (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 (Art. 111 and 111b), 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.

541. The Bulgarian Labour Inspection Act of 28 November 2008³¹⁹ devotes specific attention to the enforcement of health and safety rules in ports³²⁰.

In addition, Ordinance No. 12 of 30 December 2005³²¹ specifically regulates occupational health and safety in loading and unloading operations.

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 2006³²².

542. Bulgaria has not ratified ILO Conventions No. 137 or No. 152. However, it is still bound by ILO Convention No. 32, which it ratified on 29 December 1949.

³¹⁵ This is the date of adoption by the National Assembly.

³¹⁶ The Bulgarian Maritime Administration prefers to translate this as 'Maritime Spaces'.

³¹⁷ Закон за морските пространства, вътрешните водни пътища и пристанища на Република България, обн. ДВ. бр. 12 от 11.02.2000 г., посл. изм., ДВ. бр. 53 от 13.07.2012 г.

³¹⁸ Наредба № 9 от 29.07.2005 г. за изискванията за експлоатационна годност на пристанищата.

³¹⁹ Закон за инспектиране на труда.

³²⁰ See *infra*, para 560.

³²¹ Наредба № 12 от 30.12.2005 г. за осигуряване на здравословни и безопасни условия на труд при извършване на товарно-разтоварни работи.

³²² Разпореждане № 91 от 5.09.2006 г. относно изискванията и процедурите за безопасно товарене и разтоварване на кораби за насипни товари.

543. An ILO report from 2009 mentions that port labour in Bulgaria is governed by a nationwide collective agreement for the transport sector and by collective agreements signed at port level, including at Burgas, Varna, Vidin, Ruse and Lom³²³.

The Federation of Transport Trade Unions in Bulgaria (FTTUB) confirmed that collective labour agreements were concluded in all port companies and that there is also a sectoral collective labour agreement for the whole transport sector.

The collective labour agreements deal with wages, the organisation of work, health and safety and training of port workers.

We were able to consult the collective agreement concluded at the state-owned company Port of Varna EAD³²⁴. It regulates, *inter alia*, recruitment, working time, holidays, wages, health and safety, trade union activity and the settlement of labour disputes.

9.2.3. Labour market

- Historical background

544. The modern ports of Burgas and Varna were constructed at the beginning of the 20th century.

After WW 2, the ports were nationalised, and in the 1990s first steps were taken to liberalise the sector.

One of the main objectives of the Act of 28 January 2000 on Marine Areas, Inland Waterways and Ports of the Republic of Bulgaria, which also contains basic provisions on cargo handling and port labour, was to attract private investment in order to modernise the outdated ports infrastructure. To that end, the Act was further adjusted in 2004 and lastly in 2012. The opening up of access to the now separately identified port services market was inspired by EU port policy developments³²⁵.

³²³ See X., "The report on the results from the study of the national independent expert In the Framework of project "Strengthening the social dialogue in the restructuring process of Bulgarian ports and private sector participation in that dialogue", http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158936.pdf, 31-34.

³²⁴ To be precise, we consulted the agreement concluded by Port of Varna EAD with SPO Confederation Varna East, SPO Confederation Varna West, SS "Support" and the Dockers' Syndicate on 12 January 2010 which expired however on 31 December 2011.

³²⁵ See X., "The report on the results from the study of the national independent expert In the Framework of project "Strengthening the social dialogue in the restructuring process of Bulgarian ports and private sector participation in that dialogue", http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158936.pdf, 6.

Since 2005, a number of port concessions were effectively granted to port operators. The process of privatisation through concessions is still ongoing³²⁶.

- Regulatory set-up

545. The Act of 28 January 2000 on Marine Areas, Inland Waterways and Ports of the Republic of Bulgaria contains a definition of the term 'port' (Art. 92) and a basic classification of ports according to their function (Art. 93).

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" (Art. 103(1)).

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)).

The Executive Agency 'Maritime Administration' (EAMA) and port operators make suggestions and participate in activities related to the implementation of international and European standards for quality and safety, environmental protection and port personnel requirements by Bulgarian standards under the terms and conditions of the National Standardisation Act (Art. 104(3)).

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 Bulgaria³²⁷ (Annex No. 2). As a rule, cargo and passenger-related port services may only be provided in public transport ports (Art. 116(5) of the Act).

³²⁶ See OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>, (239), 239-240.

³²⁷ Наредба № 19 от 9 декември 2004 г. за регистрация на пристанищата на република България.

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 (Art. 117(1)).

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)).

Port operators shall be entered into a special register by EAMA (Art. 117(4)).

The Act also regulates the provision on other, ancillary, port services by concessionaires (Art. 116a).

A separate section of the Act (Art. 117a *et seq.*) regulates free market access to port services and for the granting of port concessions (Art. 117c and 117d). These provisions seem inspired by the earlier proposals for an EU Port Services Directive but do not touch upon port labour.


Infringements are criminally sanctioned (see Art. 121).

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).

546. 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 (Art. 2(2) and (3)).

Figure 72. Model of an Operational Suitability Certificate for ports and terminals in Bulgaria (source: Annex No. 6 to Regulation No. 9 of 17 October 2013 on the Requirements for Operational Fitness of Ports and Specialised Port Sites)


REPUBLIC OF BULGARIA

MINISTRY OF TRANSPORT,
INFORMATION TECHNOLOGY AND COMMUNICATIONS

**OPERATIONAL SUITABILITY
CERTIFICATE**

№

Name and type of the port:

**Name and purpose of the
port terminal:**

Port owner:

Port operator(s):

**Port activities and services in accordance with
Art. 116 (2) paragraph 2 and 3 of the Law on the
Maritime Spaces, Inland Waterways and Ports
of the Republic of Bulgaria**

Date of issue: **Valid until:**

MINISTER: (signature and stamp)
(name)

**PART B OF OPERATIONAL SUITABILITY
CERTIFICATE**

№ _____, issued on _____.

Port operator:

**Maritime and technical port activities and services
in accordance with Art. 116 (3), paragraph 2
of the Law on the Maritime Spaces, Inland Waterways
and Ports of the Republic of Bulgaria**

Total length of quay front port:

Number of berths at the port:

Total area of open warehouses:

Total built-up area of closed warehouses:

Total volume for liquid cargo goods:

Total volume for bulk cargo goods:

MINISTER: (signature and stamp)
(name)

All port operators are registered in an official register (Art. 14)³²⁸.

Each port operator must prepare a Technical Flowchart containing, *inter alia*, 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 pursuant to Regulation No. 12³²⁹;
- sanitary and hygiene requirements and requirements on personal protective equipment;
- specific rules for fire and emergency safety and requirements for actions in emergency situations (Art. 34(2), items 7-10).

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 (Art. 37(2)).

Compliance with the rules on Flowcharts is supervised by the EAMA, who will carry out unannounced on-site inspections during loading and unloading operations (Art. 37(1)).

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 (Art. 46).

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 (Art. 47(2)).

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 (Art. 47(1)).

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” (Art. 51, item 1).

³²⁸ Procedural issues are further regulated in Ordinance No. 18 of 3 December 2004 on the registration of port operators in Bulgaria (Наредба № 18 от 3 декември 2004 г. за регистрация на пристанищните оператори в република България).

³²⁹ On the latter, see *infra*, para 562.

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 Act³³⁰ (Art. 51(2)).

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 (Art. 52).

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 (Art. 53(1)).

In accordance with Ordinance No. 9 of 17 October 2013 on the Requirements for Operational Suitability of Ports and Specialised Port Sites, 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 (see Art. 67(2)).

The EAMA carries out scheduled, ongoing and targeted inspections (Art. 98, 102 and 103). Inspections focus on, *inter alia*, health and safety conditions and the use of skilled operative personnel (Art. 103(2)).

In emergency situations which put the port personnel in danger, the Executive Director of EAMA may suspend the operation of a port or terminal (see Art. 109(1)).

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 (Art. 106(2)).

Violations of the rules on Operational Suitability Certificates or Technical Flowcharts will be sanctioned (see Art. 115 *et seq.*).

³³⁰ See Art. 63 *et seq.* of the latter Act.

547. The Executive Agency Maritime Administration informed us that employers in Bulgarian ports employ permanent workers, temporary workers as well as occasional workers. FTTUB only mentions permanent employment conditions.

There is no pool system in Bulgaria; neither are there hiring halls.

548. The collective agreement of Port of Varna EAD stipulates that all employment contracts shall be for an indefinite term, except in certain circumstances such as temporary or seasonal jobs where fixed-term contracts are allowed (Art. 10-11).

It also obliges employers wishing to introduce new technologies to agree on a plan and an additional protocol with the unions (Art. 17).

New jobs shall be offered first to existing workers having the necessary qualifications (Art. 19).

The terminals of Port Varna EAD operate 24 hours a day (Art. 27).

The collective agreement obliges the employer to maintain a list of jobs to be performed at irregular working hours. This list must be agreed upon by the unions and forms part of the collective agreement (Art. 31). Because of the special nature of their work, certain workers may be required to be available any time of the day (Art. 32). Shift work, night work, overtime work and their sequence, duration as well as the cases where they are not allowed, are determined in accordance with the Labour Code (Art. 33).

549. An unemployed port worker receives a regular unemployment benefit (up to a maximum of 12 months).

- Facts and figures

550. By mid 2012, 54 companies held an Operational Suitability Certificate for a port or a cargo handling terminal, of which 30 operated a terminal on the Black Sea, and 40 one on the Danube (data obtained from EAMA).

551. An ILO study of 2009 mentions the following data on employment and trade union membership in Bulgarian ports, which are however not limited to port workers as defined for the purpose of the present study³³¹.

Table 16. Total employment and trade union membership in Bulgarian ports, 2009 (source: ILO Report on Social Dialogue in Bulgarian Ports³³²)

PORT OPERATOR AT PUBLIC TRANSPORT PORT WITH NATIONAL IMPORTANCE	NUMBER OF EMPLOYED	TOTAL NUMBER OF WORKERS AND EMPLOYEES, MEMBERS OF THE TRADE UNIONS	TRADE UNION ACTIVITIES
Port Varna - Single Owner Joint Stock Company	1625	1602	Union of Port Workers CITUB Varna East Union of Port Workers CITUB Varna West Trade Union "Podkrepa" Trade union of Dockers
Port Burgas Single Owner Joint Stock Company	1400	400	PODKREPA CITUB Sailors Union Trade union of crane operators
Port Complex Russe Single Owner Joint Stock Company	342	323	Union of transport trade unions – CITUB; CL „Podkrepa” Russe; "Promiana" Union of Port Workers and Employees
Port Complex Lom Single Owner Joint Stock Company	308	305	Trade union of port workers CITUB; Transport workers federation "PODKREPA"
Port Vidin Single Owner Limited Liability Company	37	34	Section affiliated to CL "PODKREPA"
Danube Industrial Park Ferryboat Terminal Silistra	4	-	-
Port Lesport Joint Stock Company Port terminal Lesport	119	-	-

³³¹ On the latter, see *supra*, para 8 *et seq.*

³³² X., "The report on the results from the study of the national independent expert In the Framework of project "Strengthening the social dialogue in the restructuring process of Bulgarian ports and private sector participation in that dialogue", http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158936.pdf, 22 and 26.

PORT OPERATOR AT PUBLIC TRANSPORT PORT WITH REGIONAL IMPORTANCE	NUMBER OF EMPLOYED	TOTAL NUMBER OF WORKERS AND EMPLOYEES, MEMBERS OF THE TRADE UNIONS	TRADE UNION ACTIVITIES
Port MSWC			
General cargoes terminal	19		
Straight oils terminal	11	-	-
ODESOS PBM	24	-	-
Ship Repair Plant Port Burgas	63	25	Trade Union "Podkrepa"
Ro-ro SOMAT Vidin	18	-	Union of transport workers CITUB in SOMAT
BULMARKET	49	-	-
Thermoelectric Power Station SVILOZA	16	12	-
BELENE	9	9	National federation of power engineers CITUB; Federation Energy – Podkrepa; Independent trade unions federation of power engineering in Bulgaria –CITUB; Federation Nuclear energy at CL "Podkrepa"
East point Silistra	3	-	-
Petrol – Somovit	2	-	-
W Co – Russe	5	-	-
Russe – duty free zone	19	-	-

According to these data, a total of 4,073 workers found employment at Bulgarian ports in 2009, 2,710 or 67 per cent of whom were members of a trade union. In the ports of Burgas, Ruse, Lom and Vidin, trade union density varies between 92 and 99 per cent (99 per cent in Burgas).

Although copies of port workers' registers must be sent to EAMA, the latter administration was unable to state the total number of registered port workers in Bulgaria. EAMA explained that data are incomplete and that personal information on employees is confidential.

552. The Federation of Transport Trade Unions in Bulgaria (FTTUB) estimates that 50 per cent of certified port workers are members of a trade union. According to other sources, trade union density is very high in Bulgarian ports, between 92 and 99 per cent in Burgas. EAMA confirmed that most ports workers are indeed members of a union. This contrasts with average trade union density in Bulgaria which is generally estimated at between 20 and 30 per cent only³³³.

³³³ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

9.2.4. Qualifications and training

- Regulatory set-up

553. As mentioned before³³⁴, the Act on Marine Areas, Inland Waterways and Ports of the Republic of Bulgaria provides that port operators must employ qualified personnel and that training of port employees and the provision of qualified labour may be carried out by individuals and entities which are not port operators.

The Ports Ordinance confirms that the operatives directly involved in the loading process shall possess qualifications for the relevant position in accordance with the Vocational Education and Training Act and the Technical Requirements for Products Act. It further specifies that the personnel engaged in handling bulk cargo must be trained in all aspects of safe loading and unloading of bulk cargo vessels in accordance with their responsibilities as reflected in the Technical Flowcharts. Training shall be organised so as to acquaint the trainees with the general hazards of the loading, unloading and carriage of bulk cargoes and the adverse impact that improper handling of cargo may have on the safety of the ship (Art. 48(2), item 3 of Ordinance No. 9 of 17 October 2013 on the Requirements for Operational Suitability of Ports and Specialised Port Sites).

554. 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 (see in particular Art. 26). The Act contains no specific rules on port labour.

555. The collective agreement of Port of Varna EAD obliges the employer to hire only qualified workers, in accordance with applicable regulations (Art. 49).

The employer may sign a contract with a worker or employee who is a member of a trade union which signed the collective agreement in order to enhance his qualifications or re-qualification, and, if possible, the employer shall finance such training (Art. 50).

³³⁴ See *supra*, para 545.

- *Facts and figures*

556. According to unconfirmed data, there are 4 port training centres in Varna and 1 in Stara Zagora. The training centres are licensed by the national agency for professional training and qualifications. Therefore, although training is port-based there is uniform training provision and a system of accreditation that is regulated on a national (tripartite) basis³³⁵.

The Executive Agency Maritime Administration specified that, nevertheless, no genuine national curricula for the training of port workers exist in Bulgaria. It added that port training is also provided at company level.

557. According to the Executive Agency Maritime Administration, the following types of formal training are available for port workers:

- specialised training as part of a regular educational programme (secondary school);
- continued or advanced training after regular educational programme;
- induction courses for new entrants (compulsory);
- training in safety and first aid;
- specialist courses for certain categories of port workers such as crane drivers (compulsory), container equipment operators, ro-ro truck drivers (compulsory), forklift operators (compulsory), tallymen (compulsory), signalmen (compulsory) and reefer technicians (compulsory);
- retraining of injured and redundant port workers.

9.2.5. Health and safety

- *Regulatory set-up*

558. First of all, the port sector is subject to general Bulgarian legislation on health and safety. The main instrument is the Health and Safety at Work Act which set out duties aimed at the provision of healthy and safe working conditions according to the nature of the activities and the requirements relating to technical, technological and social development. Healthy and safe working conditions must be guaranteed on sites, at production premises, in processes, activities, work places and working equipment during the processes of designing, constructing,

³³⁵ Turnbull, P., *Training and Qualification Systems in the EU Port Sector: Setting the State of Play and Delineating an ETF Vision*, July 2009, <http://www.itfglobal.org/files/extranet/-75/17739/Final%20report%20EN.pdf>, 19 and 20.

reconstructing, modernising and opening for use as well as during exploitation, maintenance, repair and liquidation (Art. 3 of the Act).

559. As we have indicated before³³⁶, both the Act on Marine Areas, Inland Waterways and Ports of the Republic of Bulgaria and the Ports Ordinance contain specific provisions on health and safety. For example, the Port Administration has a duty to control the observance of the safety requirements for port facilities, the safety of labour and the safe handling of cargo by staff qualified thereto. The Technical Flowcharts of port operators must contain information on health and safety conditions and measures.

Further, the Ports Ordinance expressly states that the personnel involved in handling of the bulk cargoes must be provided with and use personal protective equipment, and must have adequate rest in order to avoid accidents due to fatigue (Art. 48(2)).

The working conditions and safety levels (microclimate, dust, noise, vibrations, lighting, physical tension, electromagnetic fields and laser radiation, toxic substances and ionising radiation) shall be compliant with the Health and Safety at Work Act and the regulations adopted for its implementation (Art. 18 of the Ports Ordinance).

560. In addition, the Bulgarian Labour Inspection Act entrusts the Minister of Transport with the enforcement of safety conditions in ports and more in particular the enforcement of labour legislation, health and safety inspections and supervision of increased hazards in the national transport system (Art. 6(7)).

561. Practically speaking, the rules on health and safety are enforced by the national Transport Ministry, the national Labour Ministry, the Port Authorities, the Harbour Master, the terminal operators, port companies and the trade unions.

562. Ordinance No. 12 of 30 December 2005 contains port-specific provisions on, *inter alia*, the obligations of employers of port workers to ensure healthy and safe working conditions, to inform workers of risks, to consult with workers and to provide personal protective equipment (see Art. 4(1)). It elaborates on aspects such as health and safety of workplaces and equipment, manual and mechanical handling, the preparation of risk assessments and specific technical requirements for specific operations such as the handling of dangerous goods. It also confirms that other, more general regulations on health and safety remain applicable (Art. 3).

³³⁶ See *supra*, para 545 *et seq.*

The Annexes contain extremely detailed regulations on different kinds of handling operations, including some minimum manning requirements (see Art. 44 of Annex 7 on the handling of long pieces of timber).

563. The collective agreement of Port Varna EAD contains a separate Chapter on health and safety (Art. 81-90) which confirms basic obligations of the employer, including the provision of personal protective equipment (Art. 86) and to make analyses of accidents and diseases (Art. 90).

- Facts and figures

564. In the port of Varna, 20 non major port labour-related accidents occurred in 2010, and 14 in 2011.

The Bulgarian Maritime Administration informed us that no further statistics on frequency, incidence and severity rates are maintained.

9.2.6. Policy and legal issues

- Restrictions on employment

565. First of all, according to the trade union FTTUB and the Executive Agency Maritime Administration, service providers from other EU countries are not allowed to establish themselves in Bulgaria or to provide services in the country's ports. In applicable laws and regulations, we found no express provision to this effect. Yet, as we have explained, the provision of port services in Bulgarian ports is conditional upon the acquisition of a Port Suitability Certificate. This Certificate can only be obtained if a number of objective requirements are met including conditions in relation to the employment of port workers.

Despite the port reform Acts of 2000 and 2004, the Executive Agency Maritime Administration informed us that terminal operators in Bulgarian ports do not compete with one another (FTTUB stated otherwise). It stressed, however, that market principles fully apply. FTTUB stated that competition does take place.

566. All port service providers in Bulgaria and their workers must be registered. Employment of non-registered workers is a criminal offence. Employers are however free to choose their own staff. They are not obliged to join any association or professional organisation. EAMA specified that there is no legal obligation to involve the unions in recruitment procedures.

According to FTTUB, the Bulgarian register of port workers can be considered a register within the meaning of ILO Convention No. 137. The Executive Agency Maritime Administration denied this, however, because Bulgaria is not bound by the Convention.

As we have mentioned above³³⁷, no updated nation-wide figures on the number of port workers are available.

567. EAMA assured us that there is no prerequisite for port operators to engage sufficient registered port workers before an Operational Suitability Certificate can be acquired. New entrants can gain access to the market for the provision of port services before they avail themselves of the necessary registered and trained workforce.

568. The high trade union density suggests that in Bulgarian ports closed shop issues may arise. FTTUB mentioned that "voluntary" trade union membership is a precondition to obtain registration as a port worker. At the same time, it argues that some (unspecified) restrictions to trade unionism exist. EAMA stressed that union membership is not required. The collective agreement of Varna Port EAD mentions that the employer will deduct the union membership fee if the worker consents in writing (Art. 118).

569. Replying to the port labour questionnaire, the trade union FTTUB mentioned the following restrictions on employment in Bulgarian ports:

- prohibition on employment of temporary workers through employment agencies;
- prohibition on self-handling (for example for lashing or unlashng).

It would appear that these restrictions indeed result from applicable legal provisions on port labour. EAMA could not confirm this information however, denied that there are express legislative restrictions on the recruitment of port workers and said that improvements may be implemented in the future. Whatever the case, FTTUB does not consider the supposed restrictions a major competitive disadvantage.

³³⁷ See *supra*, para 551.

The ban on self-handling would appear to find some confirmation in the provision of the Terms and Condition of a terminal operator in Burgas which reserves lashing and unlashng of cargo to the terminal operator's specialised teams³³⁸.

570. Port workers in Bulgaria cannot be transferred temporarily from one employer to another. Transfers between ports and terminals are possible when these are run by the same port operator. FTTUB mentioned that such transfers occur between Varna West and Varna East.

571. The Executive Agency Maritime Administration and FTTUB concur that if a port or port terminal is transferred to a new operator or employer, the latter is obliged to take over the port workers.

572. An ILO Report from 2009 mentions that the Bulgarian Water Transport Sub-branch Council for Tripartite Dialogue has discussed *inter alia* the following issues:

- supervisory mechanisms on the implementation of concluded port concession contracts through the following clauses: "For each year of the concession period, should the average number of jobs fall below the number of jobs as of the date of execution of the concession contract, the concessionary shall be liable to pay a penalty amounting to 5% of the fixed part of the annual concession payment for every vacant job", or "Should the concessionary fail to fulfil its obligations as set forth in the social programme that was part of the business proposal and concerning the increase of staff with 20% by the tenth concession year, it shall be liable to pay a penalty of 10% of the fixed part of the annual concession payment for every vacant job", as well as "Should the concessionaire, after the tenth year and until the end of the concession, fail to maintain an average payroll staff equal to the one at the end of the tenth concession year, it shall be liable to pay for every year a penalty of 10% of the fixed part of the annual concession payment for every vacant job";
- turnover of the workforce as a result of changes in job categorisation of port workers, which results from reforms in the social security system of the country but contradicts the philosophy of the ongoing port reforms;

³³⁸ See Art. 33.1 of the Rules of BMF Port of Burgas EAD, <http://en.navbul-portburgas.com/rules/>. U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited in Bulgarian ports:

(a) *All longshore activities.*

(b) *Exceptions:*

(1) *Opening and closing of hatches,*

(2) *Mooring and line handling on board ship, and*

(3) *Loading and discharge of supplies for the crew's own needs, spare parts for small repairs and other non-commercial longshore activities.*

- the creation of workforce pools where port workers are trained and retrained and which provide qualified port workers for temporary employment in handling specific cargo of different operators;
- the ageing of port workers and the unattractive conditions for employing young and skilled staff (low wages, *etc.*);
- excessive general administration within State port operators³³⁹.

EAMA has no information on the outcome of these discussions but specified that all concession agreements are freely negotiated between the parties.

Media reports suggest that the struggle to maintain employment levels in the outdated Bulgarian ports – who handle only a relatively low number of containers and have to compete with better equipped Greek and Romanian ports – is indeed a major issue. In 2010, local businesses and unions insisted, for example, that the port facilities of Burgas be modernised³⁴⁰. EAMA denied that Bulgarian ports are outdated and highlighted various modernisation works and technological improvements carried out over the last decade in the ports of Burgas and Varna.

573. Responding to the port labour questionnaire, the Executive Agency Maritime Administration mentioned an issue of temporary unemployment.

Although EAMA initially also reported issues relating to job insecurity, limited working days and hours and unauthorised absences (which it did not consider competitive issues however), it rectified this later on, and denied that such problems exist.

574. FTTUB mentioned the following restrictive working practices:

- limited working days and hours;
- inadequate duration of shifts;
- late starts, early knocking off;
- unauthorised absences;
- limitations on use of new techniques.

Again, FTTUB does not consider that these practices impact on competition. EAMA declined to comment on these allegations.

³³⁹ X., "The report on the results from the study of the national independent expert in the Framework of project "Strengthening the social dialogue in the restructuring process of Bulgarian ports and private sector participation in that dialogue", http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158936.pdf, 29-30.

³⁴⁰ See X., "Bourgas dockers to protest amid redundancies, pay cuts", *The Sofia Echo* 15 February 2010, http://sofiaecho.com/2010/02/15/858354_bourgas-dockers-to-protest-amid-redundancies-pay-cuts.

- Issues related to training, health and safety

575. First of all, both the Executive Agency Maritime Administration and the trade union FTTUB state that applicable rules on labour arrangements and on health and safety are properly enforced. The former however also said that safety and personal protection deserve priority attention.

576. Even if no respondent mentioned this as a separate policy issue, it should not go unnoticed that Bulgarian authorities were unable to provide detailed statistical data on occupational accidents in ports.

577. The 2009 ILO report mentioned above³⁴¹ states that the Water Transport Sub-branch Council for Tripartite Dialogue also discussed the following issues:

- an obligation on applicants for port concessions to include social programme proposals based on the best international practices in the fields of safety and health management at port terminals and training and retraining of the staff (including the basic parameters of a future collective labour agreement);
- annual analyses of the status of occupational safety and health and activities relating thereto, as well as reports on the investment programmes for the improvement of working conditions at State port operators;
- measures limiting the risks at work and for the implementation of port operators' business programmes for the rehabilitation of the working environment and equipment (renovation of rest homes, modernisation of workshops, *etc.*);
- prevention of injuries through a coordination of Technical Flowcharts by the Administration and monitoring of hazardous port equipments³⁴².

EAMA has no information on the outcome of these discussions but supposes that talks are ongoing.

578. The author of the 2009 Bulgarian Report on port labour commissioned by the ILO recommended that Bulgaria closely monitor compliance with EU rules on health and safety of

³⁴¹ See *supra*, para 572.

³⁴² X., "The report on the results from the study of the national independent expert In the Framework of project "Strengthening the social dialogue in the restructuring process of Bulgarian ports and private sector participation in that dialogue", http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158936.pdf, 29-30.

workers and that statistical information on injuries be collected³⁴³. EAMA confirmed to us that these recommendations have been acted upon.

579. Finally, Bulgaria is still bound by the outdated ILO Convention No. 32.

9.2.7. Appraisals and outlook

580. The National Strategy for Integrated Development of the Infrastructure of the Republic of Bulgaria and Action Plan for the Period 2006-2015, which was published in May 2006, devotes no specific attention to port labour.

Yet, it mentions, among the strengths of the Bulgarian port system, the availability of highly qualified personnel. It also states that the enhancement of the safety and security level of ports is a priority and expects new Public-Private Partnerships in ports through the granting of concessions to result in job creation³⁴⁴.

581. Similarly, the Strategy for the Development of the Transport System of the Republic of Bulgaria until 2020 prepared in 2010 states that the "[e]stablished system for training and professional qualification of the personnel" is one of the strengths of the Bulgarian transport system. However, it also says that this system is handicapped by a "relatively low level of safety and security of the transport system and services" and that an "[o]utdated organisation, which does not match modern market requirements" is one of the weaknesses of Bulgarian ports³⁴⁵. EAMA informed us that this information is wrong, as health and safety rules are strictly enforced.

582. Responding to the questionnaire, the Executive Agency Maritime Administration stated that the current port labour regime in Bulgaria is satisfactory and offers sufficient legal

³⁴³ X., "The report on the results from the study of the national independent expert In the Framework of project "Strengthening the social dialogue in the restructuring process of Bulgarian ports and private sector participation in that dialogue", http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158936.pdf, 35.

³⁴⁴ Republic of Bulgaria. Council of Ministers, *National Strategy for Integrated Development of the Infrastructure of the Republic of Bulgaria and Action Plan for the Period 2006-2015*, http://www.pl-bg.info/pdf/StrategyNatInfra_EN.pdf, May 2006, 26, 37 and 48.

³⁴⁵ *Strategy for the Development of the Transport System of the Republic of Bulgaria until 2020*, http://www.mtitc.government.bg/upload/docs/Transport_Strategy_2020_eng.pdf, 20, 54 and 55.

certainty. The current relationship between port employers and unions is described as satisfactory.

The Agency regards the port labour regime of Japan as a model³⁴⁶.

It sees a need for EU action in the field of port labour and suggests the adoption of EU legislation on employment, health and safety as well as training matters (even if it is currently fully complying with existing EU rules).

583. The trade union federation FTTUB agrees that the current port labour regime and that the relationship with employers are satisfactory, although it sees room for improvement with regard to collective labour agreements, work conditions, strategies for development and social dialogue. The Federation is of the opinion that the port labour regime offers sufficient legal certainty and that the current labour regime has a positive impact on the competitive position of the Bulgarian ports. EAMA endorsed this statement.

584. The anonymous Bulgarian national expert on port labour who authored the 2009 report for the ILO advocated the adoption of EU Guidelines on training of port workers. According to the expert, this could also improve the mobility of European port workers through the mutual recognition of their competencies³⁴⁷.

EAMA commented that it could accept an initiative to develop EU Guidelines on training, but said that improving mobility of port workers would require national regulation as well.

585. In August 2012, the Bulgarian Government announced that it is planning to offer operating concessions for two Bulgarian port terminals (Lom Port Terminal and Nessebar Port Terminal).

³⁴⁶ At first sight, this may be explained by the conclusion in 2008 of a loan agreement between the Bulgarian Port Infrastructure Company and the Japanese Bank for International Cooperation. EAMA commented that this explanation is "not necessarily" correct.

³⁴⁷ X., "The report on the results from the study of the national independent expert In the Framework of project "Strengthening the social dialogue in the restructuring process of Bulgarian ports and private sector participation in that dialogue", http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158936.pdf, 34.

9.2.8. Developments between January 2013 and September 2013

585A. In 2012, Bulgaria introduced several amendments to its social legislation, including on temporary work agencies³⁴⁸. 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.

585B. Ordinance No. 9 of 17 October 2013 has modified the requirements for operational suitability of ports and specialised port sites. Ordinance No. 19 of 9 December 2004 was amended in 2014. With the kind assistance of EAMA, we have integrated these changes in the description of the regulatory framework above.

585C. Concessions were granted to operate the port terminal of Lom (in 2013) and the port terminal of Nessebar (in 2014).

³⁴⁸ Law on Amendments and Supplements to the Labour Code of 15 November 2012.

9.2.9. Synopsis

586. SYNOPSIS OF PORT LABOUR IN BULGARIA³⁴⁹		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 3 main ports • Landlord model • 26m tonnes • 22nd in the EU for containers • 103th in the world for containers • Appr. 54 employers • Appr. 4,000 port workers (?) • Trade union density: 50-99% 	<ul style="list-style-type: none"> • <i>Lex specialis</i> (Waterways & Ports Act, 2000; Port Suitability Ordinance) aligned to EU trends • No Party to ILO C137 • National and company CBAs • Mandatory certification of all port operators • Port operators must have registered and qualified personnel • No pool system • No hiring halls 	<ul style="list-style-type: none"> • National figures on port employment not updated • Closed shop (?) • Ban on self-handling • Ban on temporary agency work • Restrictive working practices • Job insecurity (?)
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Port training centres • Company-based training 	<ul style="list-style-type: none"> • National certification and qualification requirements for workers and equipment operators 	<ul style="list-style-type: none"> • No genuine national training curricula
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Detailed accident statistics unavailable 	<ul style="list-style-type: none"> • Specific Ordinance on safety of loading and unloading • No Party to ILO C152 Certified port operators must meet safety requirements 	<ul style="list-style-type: none"> • Lack of statistics • Still bound by outdated ILO C32

³⁴⁹ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.2A. Croatia

9.2A.1. Port system

586A. Croatia has 409 ports open to public traffic, 95 of which serve at least one shipping line. The six main ports (Rijeka, Zadar, Šibenik, Split, Ploče and Dubrovnik) are situated along the mainland coastline and have been declared ports of exceptional (international) economic significance for the Republic of Croatia. Close to 90 per cent of Croatian port traffic is handled in Rijeka, Ploče and Split. The main passenger ports are Split and Zadar, while Dubrovnik is the leading cruise port³⁵⁰.

In 2012, the gross weight of seaborne goods handled in Croatian ports was about 19 million tonnes³⁵¹. For containers, Croatian ports ranked 23th in the EU and 105th in the world in 2011³⁵². Annually some 12 million passengers travel through Croatian ports.

586B. Although Croatia's port governance system follows the landlord model, the State continues to be an important actor.

First of all, 28 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 in the port of Rijeka are ensured by Luka Rijeka d.d. (aka Port of Rijeka j.s.c.) which is owned by the State (72.7 per cent), the (State-controlled) Croatian Healthcare Fund (8.1 per cent) and other stock holders (none of which controls more than 5 per cent of the stock). As a concessionaire, Luka Rijeka d.d. provides port services such as loading, unloading, warehousing and transportation of cargo. Rijeka's only full container terminal is run by Jadranska Vrata d.d. or Adriatic Gate Container Terminal (AGCT), a concessionaire owned by International Container Terminal Services Inc. (ICTSI) (51 per cent of the shares) and Luka

³⁵⁰ Information obtained from the Ministry of Maritime Affairs, Transport and Infrastructure. See also the report of the tripartite workshop 'Strengthening Social Dialogue in the Process of Structural Adjustment and Private Sector Participation in Ports', Rijeka, Croatia 29 June – 03 July 2009, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158938.pdf; for the history of the port of Rijeka, see Dubrović, E. et al., *Riječka Luka*, Rijeka, Muzej Grada Rijeke, 2001, 349 p.

³⁵¹ See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled\).png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled).png&filetimestamp=20140228161723)

³⁵² Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/PublicationsLibrary/rmt2013_en.pdf, 179-180.

Koper d.d. (49 per cent). AGCT's concession runs until 2041. Jadranski Naftovod j.s.c. (or JANAF) is Rijeka's third concessionaire. It runs an pipeline system for crude oil. Its activities will be not be considered further in this study.

The port of Ploče, to give but one other example, is run by a port authority and a single commercial operator, Port of Ploče d.d. The latter is a joint stock company established in January 2003 but still remains primarily State-owned. 42.9 per cent of the shares belong to the Croatian Privatization Fund, 40.3 per cent to port employees and to small shareholders, and 16.8 per cent to the Croatian Pension Fund.

In most other ports, commercial activities are likewise performed by a single 'primary' concessionaire.

9.2A.2. Sources of law

586C. The management of Croatian ports is regulated in the Maritime Demesne and Seaports Act of 2003 (as amended)³⁵³ which does not deal with port labour however.

586D. Croatia has ratified neither ILO Convention No. 137, nor ILO Convention No. 152. Apparently, it is still bound by ILO Convention No. 32, which it ratified on 8 October 1991.

586E. Croatia has no specific laws governing port labour. Employment conditions are governed by general labour law. A new Labour Act was published in the Official Gazette No. 93/2014 and will enter into force on 7 August 2014. Its draft was a result of a long negotiation process among the social partners, which started in mid-2013. The new law replaces the Labour Act of 2009³⁵⁴.

586F. Health and safety at work is likewise regulated in general legislation. A new Health and Safety at Work Act (Official Gazette No. 71/14) 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)³⁵⁵ was a fairly modern Act, there was a need for a new Act. Another recent instrument is the Labour Inspectorate Act (Official Gazette No. 19/2014).

³⁵³ Maritime Domain and Seaports Act (OG no. 158/03,100/04, 141/06 and 38/09).

³⁵⁴ Labour Act (Zakona o Radu) of 4 December 2009 (Text No. 3635).

³⁵⁵ Zakon o zaštiti na radu, 1996.

586G. The main sources of port-specific labour regulation are company-specific collective agreements. Such agreements exist, for example, in Rijeka and Split.

AGCT, the Independent Union of Employees in the Port of Rijeka and the Autonomous Union of Employees of the Port of Rijeka have concluded a company-specific collective labour agreement with a 3 years' duration (2014, 2015 and 2016). It deals with the following matters:

- 1. Rights and obligations of the employee and the way of exercise thereof:*
 - I. Conclusion of employment contracts*
 - II. Working hours*
 - III. Vacations and leaves*
 - IV. Salaries and salary continuations*
 - V. Other income*
- 2. Protection of employees with reduced work capacity*
- 3. Safety at work*
- 4. Termination of employment agreements*
- 5. Working conditions of the Trade Unions*
- 6. Amicable settlement of collective labour disputes and amendments to the Collective Bargaining Agreement*
- 7. Transitional and final provisions (Art. 3).*

9.2A.3. Labour market

- Historical background

586H. In 1973, seven labour associations in Rijeka signed an agreement on self-management. 1991 saw the creation of state-owned companies operating as comprehensive ports. A new milestone was reached in 1996, from which year landlord port authorities could be established (Rijeka being the first one). In 2011, Rijeka's container terminal was partly privatised.

- Regulatory set-up

586I. Port operators in Rijeka employ only part of their staff directly and hire general stevedores from third companies of their free choice (Rus d.o.o., Betalgis d.o.o., Barel Usluge d.o.o. and Štivador d.o.o.; AGCT uses only the former two). The latter sector can be compared to a private pool, from which shipyards draw part of their workforce as well. All port workers receive monthly pay. AGCT employs the following workers directly: General Purpose Workers, Gate Clerks, Tally Clerks, Mechanic Operators (tractors, cranes, RTGs, RMGs, reach stackers and forklifts) and Foremen.

586J. Croatian port workers do not have to be registered. Neither do employers have to join any professional association of other sectoral entity. AGCT is not bound by pre-determined rules on the composition of teams and can organise operations in accordance with the objective needs. It is up to the shipowner to decide whether lashing and unlashings can be performed by the ship's crew. No nationality requirements apply (even if, in practice, all port workers still are Croatian). There are no hiring halls.

- Facts and figures

586K. The Croatian Bureau of Statistics does not maintain specific data on port labour. Nonetheless, the number of employers of port workers in Croatia's main ports (including primary concessionaires employing port workers and Rijeka's temporary work providers) can be estimated at 12.

586L. The total number of port workers in Croatia can be estimated at between 1,000 and 1,250.

The total number of employees working for Luka Rijeka d.d. and AGCT is estimated at some 850. About 70 per cent of those (595) can be considered port workers in the sense of this study.

The Adriatic Gate Container Terminal (AGCT) in Rijeka employs 141 people, 78 of whom can be considered port workers for the purposes of our study (all figures for mid-2014). However, AGCT employs directly only a limited number of workers, namely the General Purpose

586M. Workers in the port of Rijeka (both at Luka Rijeka d.d. and at AGCT) are represented by 3 trade unions: 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. At AGCT, they represent 70, 20 and 3 employees respectively. At AGCT, 83 per cent of the port workers (65 out of 78) have joined a trade union. The Port Free Trade Union is too small to participate in CBA negotiations at AGCT.

The Autonomous Union of Employees of the Port of Rijeka is affiliated to the Dockers Union of Croatia and ETF. The Dockers Union counts some 800 members nationwide, of whom 345 in Rijeka (including office employees). Other unions representing port workers in Croatia include the Independent Dockers Union of Dalmatia and Plovput Split Employees Union.

In Croatia, too, the unionisation degree among port workers seems to exceed the average for the national economy which stands at some 35 per cent³⁵⁶. It should be pointed out, however, that workers made available by subcontractors in the port of Rijeka are not unionised at all. On the other hand, unionised port workers may have joined more than one union. In the absence of reliable data and thus very provisionally, we estimate the overall level of union membership among Croatia's dockers at 90 per cent.

9.2A.4. Qualifications and training

586N. 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 conditions³⁵⁷.

586O. In Rijeka, education is provided by a State-run High School for Operators of Port Equipment, while the Nautical School at Bakar has a ship's hatch equipped with derricks.

AGCT 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 unlashings. AGCT also encourages multi-skilling; the majority of its equipment drivers handles all types of machinery (forklift, cranes and RTGs).

³⁵⁶ See <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

³⁵⁷ See Pravilnik o Poslovima s Posebnim Uvjetima Rada (NN 5/84).

9.2A.5. Health and safety

- Regulatory set-up

586P. As we have mentioned, health and safety at work is governed by general laws and regulations.

586Q. All occupational accidents must be reported to the State HSE Inspectorate and to the institute of Public Health. An annual report is also required.

- Facts and figures

586R. As far as we were able to ascertain, no national statistics on health and safety in port labour are collected in Croatia.

586S. AGCT stated that the average annual number of occupational accidents in the last 5 years was 3.5.

9.2A.6. Policy and legal issues

586T. Employment conditions at Rijeka's State-controlled operator Luka Rijeka d.d. and at AGCT are said to diverge considerably. The former employer employs a relatively bigger and older staff at lower salaries while work at the latter company is better organised. Workers of State-controlled operators tend to stick to 'old habits'. At AGCT, productivity is higher and discipline is stricter. Although they were initially transferred from the public sector, it is believed that workers at the privatised operator AGCT have little reason to complain about working conditions (it should be underscored that this information was obtained from third parties, not from AGCT).

In any case, the port sector ensures a steady level of employment whereas Croatia is currently suffering from an unemployment rate which is already among the EU's highest.

586U. In an interview, AGCT's management said that productivity of workers is satisfactory and that its portworkers identify positively with their company. As most workers were transferred from the public sector, the company still considers employment conditions relatively rigid. A major problem is caused by the rules on working schedules imposed by general labour law which oblige the employer to give notice of changes in the working time schedule 7 days in advance and which consequently are not adapted to the reality of intermittent and unpredictable vessel calls. This is aggravated by the unions refusing to apply alternative shifts systems even if these are provided for in the CBA. As AGCT is not receiving container vessels every day, this lack of flexibility and the obligation to pay workers even when no work is performed (for example, when the vessel arrives and operations start at 11h00 whereas the shift already commences at 8h30), results in a serious competitive handicap. On the other hand, when several vessels call simultaneously the limited size of the local labour market often does not allow the operator to organise 6, 7 or 8 consecutive shifts. Establishing a formal pool of port workers would not offer a sustainable solution as it would only have one main user.

586V. A related issue is the difference of shift times at the port of Rijeka and at the national railways.

9.2A.7. Appraisals and outlook

586W. AGCT believes that more flexibility would make a competitive difference. AGCT's main competitors are ports in the North Adriatic and North Europe.

586X. The Dockers' Union of Croatia is satisfied with both the level of social protection and the safety record.

586Y. The Croatian Ministry of Maritime Affairs, Transport and Infrastructure describes the safety level as good.

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 service³⁵⁸. It also envisages measures to enhance the safety and security levels at ports³⁵⁹.

586Z. A planned new port development in Rijeka will entail the construction of a second full container terminal at Zagreb Pier which is expected to create employment for 1,500 people, including 310 direct jobs.

586AA. During interviews with Croatian stakeholders we could note little enthusiasm for EU regulatory initiatives regarding ports.

³⁵⁸ X., *Maritime Development and an Integrated Maritime Policy Strategy of the Republic of Croatia for the 2014 to 2020 Period*, Zagreb, December 2013, Measure 2.4.2.4.

³⁵⁹ X., *Maritime Development and an Integrated Maritime Policy Strategy of the Republic of Croatia for the 2014 to 2020 Period*, Zagreb, December 2013, Measures 3.2.1, 3.2.2 and 3.2.3.

9.2A.8. Synopsis

586BB.		
SYNOPSIS OF PORT LABOUR IN CROATIA³⁶⁰		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 6 main ports • Landlord model • 19m tonnes • 23rd in the EU for containers • 105th in the world for containers • Appr. 12 employers • Appr. 1,000-1,250 port workers • Trade union density: appr. 90 % 	<ul style="list-style-type: none"> • General Labour Act • No Party to ILO C137 • Company CBAs • No registration • No pool system • No hiring halls 	<ul style="list-style-type: none"> • Inflexible working time rules and practices • Old habits among older workers in State-controlled operators
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • State education • Company-based training 	<ul style="list-style-type: none"> • No sector-specific qualification standards or curricula 	<ul style="list-style-type: none"> •
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Detailed accident statistics unavailable 	<ul style="list-style-type: none"> • No Party to ILO C152 • General law on safety at work 	<ul style="list-style-type: none"> • Lack of statistics • Still bound by outdated ILO C32

³⁶⁰ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.3. Cyprus

9.3.1. Port system³⁶¹

587. Cyprus has several seaports, the largest of which is Limassol (Lemesos), a multipurpose port that handles roughly 50 per cent of all cargo. Other important ports are the multipurpose port of Larnaca and the industrial port of Vassiliko.

In 2012, the gross weight of seaborne goods handled in Cypriot ports was about 6.2 million tonnes³⁶². For containers, Cypriot ports ranked 18th in the EU and 80th in the world in 2011³⁶³.

588. The Cypriot seaports are managed by the Cyprus Ports Authority (CPA), a public autonomous organisation under the supervision of the Ministry of Communication and Works³⁶⁴. The CPA was established in 1973 within the context of a World Bank port loan to Cyprus. It is responsible for the formulation of ports policy and for the development, management and operation of ports. CPA's role includes the provision of port infrastructure, equipment and services for the accommodation of ships. The CPA employs crane drivers and warehouse workers, but all other cargo handling services are provided by the private sector. Loading and unloading operations are reserved for registered port workers employed by private companies, while land transportation and storage in ports are the remit of licensed porters who employ their own workers.

³⁶¹ For general information on Cypriot ports, see ECOTEC and Manoudi, A., *Employment trends in all sectors related to the sea or using sea resources, Country Report - Cyprus*, European Commission, DG Fisheries and Maritime Affairs, 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/cyprus_employment_trends_en.pdf, 4-5; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 123-132; The World Bank, *Staff Appraisal Report. Second Ports Project. Cyprus*, 7 March, 1978, 42 p. + maps.; www.cpa.gov.cy; for statistics, see <http://www.cpa.gov.cy/CPA/page.php?pageID=26&mpath=/11&langID=0> and http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

³⁶² See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

³⁶³ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/PublicationsLibrary/rmt2013_en.pdf, 179-180.

³⁶⁴ The CPA was originally named the Cyprus Ports Organisation. Formally, the CPA also administers the ports of the northern part of the island (Famagusta, which was once the largest port in Cyprus, Karavostasi and the smaller port of Kyrenia). Following the occupation by Turkey, the Republic of Cyprus declared these ports prohibited and closed for all vessels as of October 1974.

9.3.2. Sources of law

589. The Cyprus Ports Authority functions on the basis of the Cyprus Ports Authority Act No. 38 of 1973³⁶⁵ and the regulations made thereunder.

590. Port labour is governed by the Port Workers (Regulation of Employment) Act of 31 December 1952³⁶⁶ (hereinafter: 'Port Labour Act', which forms Chapter 184 of the Laws of Cyprus) and the annexed Port Workers (Regulation of Employment) Regulations of 1952³⁶⁷ (hereinafter: 'Port Labour Regulations'). Both instruments were repeatedly revised.

591. As regards to health and safety, work at ports is governed by the Factories Act (Cap. 134) and by the Safety and Health at Work Act of 1996³⁶⁸.

The Factories Act contains a separate Section on dock work indicating which provisions of the Act also apply to docks, wharves and quays (Section 73).

Under the Safety and Health at Work Act, a number of port-specific regulations were issued: the Occupational Safety and Health in Dockwork Regulations (No. 349/1991)³⁶⁹, the Occupational Safety and Health in Dockwork (Medical Examinations) Order (No. 321/2002)³⁷⁰, and the Occupational Safety and Health in Dockwork (Identifying Competent International Organisations) Order (No. 55/2008)³⁷¹.

Cyprus also issued a Code of Practice for the Training of Mobile Crane Operators³⁷² and Regulations on the Manual Handling of Loads³⁷³.

Directive 2001/96/EC of the European Parliament and of the Council of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers was transposed in 2004³⁷⁴.

³⁶⁵ Ο περί Αρχής Λιμένων Κύπρου Νόμος του 1973 (Ν. 38/1973).

³⁶⁶ Ο περί Λιμενεργατών (Ρύθμιση Απασχόλησης) Νόμος (ΚΕΦ.184).

³⁶⁷ Οι περί Λιμενεργατών (Ρύθμιση Απασχόλησης) Κανονισμοί του 1952.

³⁶⁸ Ο περί Ασφάλειας και Υγείας στην Εργασία Νόμος του 1996 (Ν. 89(I)/1996).

³⁶⁹ Οι περί Επαγγελματικής Ασφάλειας και Υγείας στις Εργασίες Λιμένων Κανονισμοί του 1991.

³⁷⁰ Το περί Επαγγελματικής Ασφάλειας και Υγείας στις Εργασίες Λιμένων (Ιατρικές Εξετάσεις) Διάταγμα του 2002.

³⁷¹ Επαγγελματικής Ασφάλειας και Υγείας στις Εργασίες Λιμένων (Αναγνώριση Αρμόδιων Διεθνών Οργανώσεων) Διάταγμα του 2008.

³⁷² Κώδικας Πρακτικής για την Εκπαίδευση Χειριστών Κινητών Γερανών.

³⁷³ Οι περί Ασφάλειας και Υγείας στην Εργασία (Χειρωνακτική Διακίνηση Φορτίων) Κανονισμοί του 2001.

³⁷⁴ Ο περί Εναρμονισμένων Απαιτήσεων και Διαδικασιών Ασφαλούς Φόρτωσης και Εκφόρτωσης των Φορτηγών Πλοίων Μεταφοράς Φορτίου Χύδην Νόμος του 2004 (28(I)/2004).

592. Cyprus is bound by neither ILO Convention No. 32 nor ILO Convention No. 137. It ratified ILO Convention 152 by Act No. 197 of 1987³⁷⁵.

593. In Cyprus, all port workers are employed under a collective bargaining agreement.

On 1 January 2011, a collective agreement was concluded between the Cyprus Shipping Association (CSA) and two labour unions (SEK and PEO).

A second relevant collective labour agreement was concluded between the licensed porters and the same two labour unions (SEK and PEO) on 10 March 2011.

Thirdly, a collective agreement was concluded for the workers of Cyprus Port Authority. The last agreement was concluded by CPA and the personnel's six trade unions and covers the period 2010-2012.

Reportedly, the agreements deal with employment procedures, wages, working time, training and health and safety. As we were unable to consult the full text of the agreements, we could not verify this information or screen them for the presence of restrictions.

9.3.3. Labour market

- Historical background

594. The characteristic institution of licensed porters was implemented in Limassol in 1904, after an initiative of the colonial government. The aim was the formation of a team of permanent workers for the secure transportation of freight from the ships to the storerooms and for the safekeeping of the goods during storage, until delivery. The institution of registered porters was regulated on the basis of the Customs Administration Act (Chapter 315 of the Laws of Cyprus). Their main task was collecting cargo from ships, transporting it, sorting it out into items, and delivering it to the consignees. At that time, all these activities were carried out manually. In addition, during those difficult years the infrastructure as well as the technological equipment required did not exist. The responsibility for the appointment of registered porters lay with the Customs Director.

³⁷⁵ See Ministry of Communications and Works, Department of Merchant Shipping Lemesos, Circular No. 12/2002 of 29 April 2002. Cyprus has never been a Party to ILO Convention No. 32.

In 1952, the porters went on strike. They numbered around 100, half of them Greek-Cypriots and the other half Turkish-Cypriots. They demanded that their names be put on a numbered list, so that they could work on the basis of a rotation system. Until then, the foreman had picked them out at random. After 96 days of strike, the list system was introduced and it remains in operation until the present day. The Port Labour Act, which also regulates the employment of port workers, dates from the same year.

Following the establishment of the Republic of Cyprus in 1960, the regulation of matters concerning registered porters was undertaken by the Ports Authority of the Transport and Works Department, an authority and right that were later on transferred to the Cyprus Ports Authority.

In 1966, the Department of Ports reportedly ordered the porters to work in the port area only. Before this order, the porters delivered and unloaded cargoes to the private warehouses of the importers.

In 1973, the Cyprus Ports Authority was established.

In 1991, the Limassol Licensed Porters Association bought out equipment from two private companies thus obtaining full control of cargo operations, as the Port Labour Act requires³⁷⁶.

Act No. 70(I) of 2000³⁷⁷ stipulates that all employers and shipping agents are obliged to pay a special tax of 5 per cent on the revenues of port workers and tallymen under their employ to enable the full repayment of a loan taken out to meet current needs for the compensation of retired port workers and tallymen. This tax is to be paid to a special fund created for this purpose, called 'Special Fund for the settlement of the loan destined to compensate the retired port workers and tallymen'. Provisions for the Fund's organisation and management, along with the conditions for its repayment, and sanctions and penalties for non-compliance are also set out.

According to a 2005 European Commission document, the fragmentation of operations among different service providers and worker categories led to cost-inefficiency and difficulties in applying rules, as there were no clear lines of accountability. The Commission noted that none of the private sector stakeholders made any payment to the CPA for the use of facilities to perform their operations. The suggestion had been put forward for the creation of a private company but with a controlled profit margin, as studies indicated that only one company would be economically viable, and that the existing private sector stakeholders would participate, while provisions should be made to safeguard existing personnel. The final form of the company, the operations to be performed, the contribution of each entity to the capital and management, the kind of control/regulation to be performed by CPA and other details were considered subjects to be covered in the feasibility study for setting up a Container Handling

³⁷⁶ See http://www.limassolporters.com/en_llpa.shtml?en_profile and http://www.limassolporters.com/en_llpa.shtml?en_milestones.

³⁷⁷ Ο περί Ειδικού Τέλους επί των Απολαβών των Λιμενεργατών και Σημειωτών Νόμος τον 2000 (Ν. 70(I)/2000).

Company, and to be discussed with existing major stakeholders. The authors of the document commented that the transfer of cargo handling from publicly owned authorities into private hands in Cyprus would follow a well-established trend in Europe³⁷⁸.

In an attempt to reduce operation costs and boost competitiveness in the ports of Limassol and Larnaca, the labour regime of port workers was effectively reformed in 2007 and 2008³⁷⁹ – without however making major changes to the existing legal framework.

In May 2007, following lengthy bargaining procedures lasting almost five years, and with the assistance of the Ministry of Communications and Works, an agreement was reached between the CSA and the trade unions PEO and SEK. The main provisions of the new agreement included a new pay system for job entrants and incentives for voluntary retirement. More specifically, the agreement provided for a guaranteed income for port workers, combined with an encouraging work scheme which varies according to the type of cargo and the type of ship. CSA assumed the obligation of supplementing the income of any port workers or tally clerks unsuccessful in obtaining the minimum guaranteed income.

The new agreement determined the exact number of port workers needed for each port. In the event of labour shortage in either of the two ports, port workers may now be transferred to from one port to the other in order to carry out the required jobs effectively.

In relation to the existing staff's ability to take voluntary retirement, provision was made for port workers and tally clerks working at the port of Limassol who opted to retire voluntarily or for health reasons. This costly reform was aimed at lowering wage costs, given that annual earnings of newly hired port workers are estimated to be less than half of those of older workers. The cost of the older port workers' compensation was borne by the CSA. The drastic rejuvenation of the workforce that resulted from the retirement of existing staff was expected to bring about a qualitative and quantitative improvement in the role of port workers.

The majority of port workers accepted the provisions of the agreement. The trade unions were of the opinion that the new agreement would result in a significant reduction of about 60 to 70 per cent in the running costs of Cypriot ports. According to the secretary of the transport and dockworkers section of the trade union PEO, given the amount of compensation provided, almost all workers employed in both ports were expected to retire. 125 port workers effectively did retire voluntarily. Part of the decrease in labour cost was expected to benefit trade and a major part would be used to pay off the loan that CSA took out to cover compensation payments.

³⁷⁸ See European Commission, *Standard summary project fiche for transition facility. Strengthening the administrative capacity of the Cyprus Ports Authority*, 2005, http://ec.europa.eu/enlargement/fiche_projet/document/2005-017-643-02.01%20Cyprus%20Ports%20Authority.pdf, Annex 4.

³⁷⁹ Our account of the reform measures is largely based on Soumeli, E., "New collective agreement for port workers sets pay guarantee", *Eironline* 13 August 2007, <http://www.eurofound.europa.eu/eiro/2007/06/articles/cy0706049i.htm>; Soumeli, E., "Cyprus: Eiro annual review 2008", *Eironline* 19 February 2010, <http://www.eurofound.europa.eu/eiro/studies/tn0903029s/cy0903029q.htm>; and on the Annual Report of CPA for 2008.

A change was also made to the employment relationship between port workers and their employer. Until 31 August 2008, the port workers at the ports of Limassol and Larnaca were employed through the Cyprus Shipping Association (CSA) (which acted as a liaison party) by the shipping agents on behalf of the ship owners. Their employment was governed by a collective agreement between the CSA and the trade unions. The local District Labour Offices were responsible for the proper implementation of the collective agreements and made daily arrangements for the allocation of gangs to each ship. As of 1 September 2008, a new system for the provision of port services was put in operation. Cargo handling is now undertaken by the CSA and its sister company United Stevedoring Co. These organisations appoint and train their own staff, the employment of which was now governed by the new collective agreement. The agreement provided for the payment and other terms of employment of the port workers, tally clerks and supervisors, who were now being paid by the CSA and not by the shipping agent acting on behalf of the ship owners as was the case before the reform.

The 2008 reform measures did not impact on the regime of licensed porters.

As we have mentioned, the legal framework of port labour has remained essentially unaltered since its adoption in 1952.

- Regulatory set-up

595. The special legal regime laid down in the Port Labour Act and the Port Labour Regulations only applies at the ports of Limassol and Larnaca³⁸⁰.

The Cypriot port labour system is characterised by the distinction between work on board and work on shore. The former (stevedoring and tallying) is performed by port workers whereas the latter is taken care of by licensed porters³⁸¹.

The port workers are employed by the ship's agent through a pool operated by the Department of Labour of the national Government. Their employment is regulated by the Port Labour Act and the collective agreements negotiated between the Cyprus Shipping Association and their trade unions. The pool is administered by the Labour Office of the Ministry of Labour which is also responsible for the registration of workers and their allocation to vessels.

³⁸⁰ And, theoretically, also at Famagusta; see <http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/B36F8C873DCC287AC2256E82002046A8?OpenDocument>.

³⁸¹ The present paragraph is largely based on the earlier summary of cargo handling and port labour arrangements in Cyprus in European Commission, *Standard summary project fiche for transition facility. Strengthening the administrative capacity of the Cyprus Ports Authority*, 2005, http://ec.europa.eu/enlargement/fiche_projet/document/2005-017-643.02.01%20Cyprus%20Ports%20Authority.pdf, Annex 4 and on information obtained from the Cyprus Shipping Association.

Quay cranes, including gantry cranes, and drivers are provided by Cyprus Ports Authority (CPA). The functioning of the CPA is governed by the Cyprus Ports Authority Act. CPA is excluded by law from taking part in the loading and unloading of vessels (Section 10(2)(a) of the Cyprus Ports Authority Act). The CPA also maintains and repairs the cranes.

Cargo handling operations in port land areas, particularly the horizontal transfer of cargoes and containers between the quay (ship's sling) and sheds or other storage locations, including reception, stacking and delivery to consignees are performed by the self-employed licensed porters, so licensed by the Cyprus Ports Authority, but are also governed by the Port Labour Act. They own their own equipment and also employ, on a permanent basis, engine drivers, mechanics and technical staff. The warehouses in the ports are owned by the Cyprus Ports Authority.

The tally clerks check the cargo at the side of the ship and in port storage areas for the account of the shipping agents, who are the representatives of the ship. Their work is also governed by the Port Labour Act.

The shipping agents act as master stevedores, drawing stevedores from the labour pool and securing services and equipment from the licensed porters and the Cyprus Ports Authority for the above operations. As a result, the functions of the shipping agent in Cyprus are of a broader nature and wider scope than traditionally. Their activities indeed extend beyond the representation of ships calling at the ports³⁸². In order to facilitate the operation of vessels and ensure efficient and uninterrupted services, the Cyprus Shipping Association has established the United Stevedoring Co. Ltd. which undertakes on behalf of the agents the handling of goods onboard the vessels. The ship agents are however not obliged to join the Cyprus Shipping Association and they do compete with one another. There are no port terminal operators in Cyprus.

596. In its currently applicable version, the Port Labour Act starts out with a series of fundamental definitions (Section 2).

First of all, a "licensed porter" (αδειούχος αχθοφόρος) means "any person who holds a permit issued by the Director under the provisions of this Act or any regulation or any administrative act issued thereunder to carry, and is employed to carry into any port, any things after discharge from any ship, aircraft or other vessel to dock or pier, until the delivery of these things over the customs control".

An "employer's porter" (αχθοφόρος εργοδότη) is defined as any person who is employed regularly by any employer to handle:

³⁸² See <http://www.csa-cy.org/members.htm>.

- (1) any of his goods destined for exportation, from or to any of his stores to or from any pier or dock or any store, within any Customs area and by the Director of Customs as a place of deposit theretofor;
- (2) any such goods on their conveyance from any such pier, dock or store to any sling for shipment on any lighter or, where no lighters are used, to any sling of any ship, aircraft or other vessel on which the goods are to be exported from any such pier, dock or store;
- (3) any of his goods on their importation over his private pier.

A "port worker" (λιμενεργάτης) is a person who is employed or to be employed in any port on work in connection with the loading, unloading, movement or storage of goods, or on work in connection with the preparation of ships, aircraft or other vessels for the receipt or discharge of goods, but does not include:

- (1) a member of an engineering or other craft;
- (2) any clerical employee or a member of the administrative staff of the employer;
- (3) any licensed porter or employer's porter;
- (4) any licensed boatman engaged in conveying passengers' luggage to or from a ship, aircraft or other vessel in any port;
- (5) any member of the crew of any ship, aircraft or other vessel when engaged on board such ship, aircraft or other vessel—
 - (i) in the handling of any machinery other than cranes, except where the superintendent of the port, after taking the views of the master of the ship or the captain of the aircraft or other vessel and of the employers and port workers, is of the opinion that there is not available any port worker possessing the special technical knowledge required for the handling of that particular type of crane;
 - (ii) in any other work, for the purpose of enabling the loading, unloading, movement or storage of goods by any port worker;
- (6) any porter regularly employed in an enclosed area allocated by the Director of Customs for military use.

A "tally clerk" (σημειωτής) is a person who is employed or will be employed in any port to keep record of the goods loaded onto or unloaded from a ship.

"Port" means any place designated by the Governor (now the Council of Ministers) as a port under the Customs and Excise Management Act³⁸³.

597. The Port Labour Act prohibits any person to work as a licensed porter in a port unless he has been given permission to do so by the Director of the CPA (Section 2A(1)).

Regulations made under the Port Labour Act may regulate the permitting, work and employment of licensed porters, establish the annual licence fees and the portage charged by the porter

³⁸³ Ports were actually designated by Order 93/92, which was issued on the basis of the Customs Laws 1967 to 1991.

for his services, and impose fines for any breaches (Section 2A(2)). Reportedly, the tariffs are not revised every year, but only as the need arises.

Licensed porters are not employees, but independent, self-employed professional workers³⁸⁴. Practically, porters are granted a licence by the CPA which is valid until the age of 65.

Each individual licensed porter participates in the Limassol Licensed Porters Association by payment of a specific contribution and the association then purchases, or provides securities for obtaining financing for the purchase of, specialised equipment and machinery necessary for the handling of cargo³⁸⁵. A licensed porter is a co-owner of the equipment³⁸⁶.

The Limassol Licensed Porters Association, in addition to its own members and permanent staff and on the basis of agreements with other workers' groups in the port, also employs workers who undertake various jobs in the port area. Working with this combination, the Association claims to be able "to have specialized personnel according to the demands of new technology in equipment and organization, as well as to handle everyday fluctuations in the work volume".

From an administrative point of view, the Limassol Licensed Porters Association consists of a five-member Council, dealing with issues of policy, buying of equipment and work issues. A Coordinator-in-Chief and two Assistant Coordinators undertake the organization of the daily activities of the Association, while a Manager of the container terminal deals with the organising, programming and inspection of work in the stacking areas and in the inspection office.

The Association bought its own technological/mechanical equipment which includes RTGs, straddle carriers, forklifts and tractors, as well as an electronic system for monitoring/managing and work flow in the containers terminal and an accounts department.

The CPA approves the tariffs of charges applied by the licensed porters of Limassol and Larnaka. These charges are paid by the cargo owners or receivers.

598. The Port Labour Act authorises the Government to declare its provisions applicable to individual ports (in practice, as we have seen³⁸⁷, Limassol and Larnaca) and to establish a Port Labour Board (Συμβούλιο Λιμενεργασίας) where it appears to the Cabinet "that the conditions of employment or other prevailing circumstances in any port are such as to render necessary or expedient the regulation of engagement and employment of port workers therein or that public interest so requires". Such Port Labour Board is established "for the purpose of regulating the wages and the conditions of engagement and employment of port workers in that port and for

³⁸⁴ See, *inter alia*, Theodore Kapnisis vs. Cyprus Ports Authority, 15 October 2001, Case 10771.

³⁸⁵ See Mavrokefalos, S., "Cyprus" in Goodman, S. (Ed.), *The Public Competition Enforcement Review*, London, Law Business Research, 2010, (115), 119.

³⁸⁶ Andreas Avraam vs. The Ports Authority of Cyprus (Case No. 196/79), 9 September 1981.

³⁸⁷ See *supra*, para 588, footnote.

the performance of such other functions in relation to such engagement or employment as may prescribed" (Art. 3(1)). A Port Labour Board may also be dissolved (Section 3(2)).

599. A Port Labour Board consists of a Chairman and two members appointed by the Council of Ministers and members representing, in equal numbers, the employers and the port workers or their unions (Section 4(1))³⁸⁸.

600. The Port Labour Act further regulates the payment by employers of fees for services rendered by the Department of Labour (*i.e.*, the cost of the management of the port labour pool) (Section 4A) and the making of executive regulations by the Council of Ministers for, *inter alia*, the registration of port workers, the mode of such registration, the class in which they will be registered, and the conditions for registration, and prohibiting or restricting the work or employment of port workers unless registered; enabling the Board to determine the number of port workers to be registered in respect of any port; the issuance of registration cards to port workers; the determination of wages and prescribing the obligations of port workers; and providing for training and welfare of port workers (Section 5, especially (a), (b), (c) and (f)).

601. The Port Labour Regulations provide that, at each port for which they were declared applicable (Reg. 3), a register of port workers shall be opened and kept at the Employment Exchange of the Department of Labour (Reg. 4(1)). Every registered worker receives a registration card (Reg. 4(2)). Registration continues in force until cancelled or suspended (Reg. 4(3)).

It is not lawful for any person to work as a port worker in any port where the Port Labour Regulations apply unless he is registered in accordance with the relevant provisions and is allocated to an employer by the Manager of the Employment Exchange (Reg. 5(1)).

Neither is it lawful for any person to employ at any port to which the Port Labour Regulations apply any port worker who is not a registered port worker, or to employ in a port any registered port worker who is not allocated to him by the Manager of the Employment Service. By way of exception, employers are allowed to employ two regular lightermen under a contract of a fixed duration or terminable upon notice (Reg. 5(2))³⁸⁹.

³⁸⁸ Practically, the Boards consist of nine members and include an equal number of Government representatives, representatives of employers and employees' organisations (see <http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/B36F8C873DCC287AC2256E82002046A8?OpenDocument>).

³⁸⁹ An amendment adopted on 17 April 1954 provides: "Provided further that no registered port worker shall be allocated to an employer for the purpose of acting as a signalman during cargo operation without the consent of such employer". We were informed that, today, this proviso is inapplicable.

Before the 2007/2008 reform, port workers were supplied by the Labour Office to ship agents to work on a given ship. The ship agents paid the workers and were considered their employer, acting as independent contractors or as agents of an undisclosed principal³⁹⁰. Today, port workers are employed by members of the Cyprus Shipping Association which cooperates with United Stevedoring.

Any person may work and be employed as a port worker and any person may employ any person as a port worker if the Manager is unable to allocate to him a registered port worker or other person for employment (Reg. 5(3)).

602. A registered port worker may have his name struck off the register by the Port Labour Board of the port in which he is registered:

- (1) if without any reasonable cause he fails to accept any employment in connection with any port work offered to him by the Manager or, without leave of the Manager, absents himself from work; or
- (2) if he is in full time employment unconnected with port work;
- (3) if he is, on account of age, health or for any other cause, in the opinion of the Board, no longer a fit and proper person to be a port worker; or
- (4) if he is, on account of the number of the registered port workers for the port, in the opinion of the Board, redundant or surplus to requirements (Reg. 6).

603. The Port Labour Regulations give the Port Labour Board power to determine the number of the port workers to be registered in respect of the port, to fix the wages and determine the conditions of employment of port workers in the port and, of its own motion or at the request of the Commissioner of Labour, to advise the Commissioner on any matter affecting work in the port (Reg. 7(1)).

The fixing of the wages and the determination of the conditions of employment by the Board shall be made by agreement between the employers' side and the port workers' side and thereupon it shall be final and binding on all concerned (Reg. 7(2)). If no agreement can be reached, the issue shall be referred to a special tribunal (see Reg. 7(3)).

The above rules shall apply *mutatis mutandis* with respect to determining the number of wages and conditions of employment of the tally clerks (Reg. 8(3A)).

604. At each port where the Port Labour Regulations apply, the Manager shall–

³⁹⁰ See *Anastassis Stavrou vs. Orfanides and Murat and Others* (Admiralty Action No. 110/77), 26 October 1982; *Demetrios Kitros vs. Salto Shipping Agencies Ltd.* (Admiralty Action No. 237/79), 1 December 1984.

- (1) keep, adjust and maintain a record of registered port workers;
- (2) supply port workers and tally clerks to employers in accordance with such a rota as may be determined by the Board or, failing determination by the Board, such a rota as the Manager may determine;
- (3) maintain and supply such records of employment and earnings as may be required by the Commissioner (today, this refers to the Minister of Labour);
- (4) carry out such other functions as may be prescribed or as the Commissioner may direct (Reg. 9).

605. Every port worker shall, on registration, be deemed to have accepted to abide by any wages and conditions of employment established under the Port Labour Regulations (Reg. 10(1)).

Every registered port worker shall report for work at such times and at such places as he may be required by the Manager so to do (Reg. 10(2)).

Every registered docker shall abide by all rules and Regulations as may apply to the place or to the type of work on which he is engaged (Reg. 10(3)).

Every registered port worker shall notify the Manager of any day on which he absents himself from work due to injury or sickness and shall forward to the Manager a medical certificate if any period of incapacity or sickness exceeds three consecutive days (Reg. 10(4)).

Every port worker shall, when at work, carry on him his registration card and shall produce it when required to do so by the Manager or any Customs officer or any member of the Board or the employer (Reg. 10(5)).

606. Every employer who applies to the Manager for the allocation to him of registered port workers shall be deemed to have agreed to abide by any wages and conditions of employment determined under the Port Labour Regulations (Reg. 11).

607. If a port worker contravenes or fails to comply with any provisions of the Port Labour Regulations or misconducts himself in the course of or in connection with his work then, without prejudice to any other liability he may incur under the Regulations or any other Law, the Board may—

- (1) warn him; or
- (2) suspend him from work for a period not exceeding three months and suspend his registration card accordingly; or
- (3) give him fifteen days notice of cancellation of registration; or

(4) cancel his registration and registration card forthwith (Reg. 12).

608. Any vacancies in any class of registered port workers in any port to which the Port Labour Regulations apply shall be filled from among such persons as are registered for employment in the Employment Exchange (Reg. 13(1)). However, no registration of a port worker shall be made unless the person to be registered is over the age of eighteen years and is considered a fit and proper person by the Board or a Committee appointed for the purpose³⁹¹ (Reg. 13(2)).

The CPA adds that a high (*i.e.*, secondary) school diploma is needed and that candidates must not have a criminal record.

609. Under the Port Labour Regulations, notice must be given of any intention to organise a lock-out or a strike (see Reg. 14).

610. Any port worker or employer who contravenes or fails to comply with the exclusive right of employment of registered port workers or with the decisions on wages and conditions of employment, shall be liable to imprisonment or to a fine (Reg. 16).

611. The provisions of the Port Labour Regulations that relate to the duties of workers, disciplinary measures, the filling of vacancies, lock-outs and strikes and criminal sanctions apply *mutatis mutandis* to the tally clerks (Reg. 17).

612. The Cyprus Ports Authority Act authorises the Authority to make regulations in respect of, *inter alia*, prescribing and regulating the services to be rendered or any activity within port precincts; regulating the loading, unloading, stowing, sorting, delivery and otherwise handling of goods and the custody thereof, and the embarkation and disembarkation of passengers; and regulating matters concerning porters, carriers and other labourers to be employed within port precincts and the issue of licences for the performance of such occupations (Section 30(1)(b), (e) and (h)).

613. Temporarily unemployed port workers receive unemployment benefit from the Government.

³⁹¹ Employers and workers must be equally represented in such a Committee (see Reg. 7).

614. The rules on employment of port workers are enforced with the assistance of national employment and transport agencies, CPA, CSA and the unions.

- *Facts and figures*

615. Most shipping agents employing port workers are members of the Cyprus Shipping Association (CSA) which has 56 members of whom 46 are full members and 10 associate members.

616. The ports of Cyprus employ some 274 workers, including 162 port workers *sensu stricto*, 75 licensed porters and 37 crane drivers (figures obtained on 15 April 2014).

The following table provides an overview of the number of port workers and licensed porters in the ports of Limassol and Larnaca between 2003 and 2013.

Table 17. Number of port workers and licensed porters in the ports of Limassol and Larnaca, 2003-2013 (source: Cyprus Port Authority)

LIMASSOL				
	Port workers			Licensed porters
	Dockers	Tally clerks	Supervisors	
2003	106	9	n.a.	73
2004	104	9	n.a.	68
2005	103	9	n.a.	63
2006	90	8	n.a.	63
2007	77	8	n.a.	63
2008 (until 31/08)	77	8	n.a.	61
2008 (as of 01/09)	109	15	10	61
2009	109	15	10	54
2010	108	15	10	51
2011	107	15	11	51
2012	107	15	10	46
2013	107	17	n.a.	34

LARNACA				
	Port workers			Licensed porters
	Dockers	Tally clerks	Supervisors	
2003	50	6	n.a.	41
2004	50	6	n.a.	42
2005	50	6	n.a.	42
2006	50	6	n.a.	42
2007	47	6	n.a.	38
2008 (until 31/08)	47	4	n.a.	37
2008 (as of 01/09)	26	4	3	37
2009	26	4	3	33
2010	25	4	3	32
2011	23	4	3	28
2012	23	4	3	29
2013	23	4	n.a.	27

In addition, the Cyprus Ports Authority employs 37 permanent crane drivers, while the licensed porters employ 68 permanent workers and technical staff (2011). As a result, the total number of port workers in Cyprus is 342.

At Limassol, passenger luggage is handled by the United Stevedoring Company which is associated to the Cyprus Shipping Agents Association. In 2009, this company employed 7 permanent workers and 2 temporary workers. At Larnaca, the 33 licensed porters had luggage porter licences in 2009.

617. The self-employed licensed porters are members of local unincorporated associations in Limassol (the Limassol Licensed Porters Association)³⁹² and Larnaca.

618. According to the Cyprus Port Authority, all port workers are members of a trade union.

The relevant trade unions are the Transport and Dockworkers' Union, which is affiliated to the Pancyprian Federation of Labour (Παγκύπρια Εργατική Ομοσπονδία, ΠΕΟ) and IDC, and the Federation of Transport Petroleum and Agricultural Workers of Cyprus (FTPAAW), which is affiliated to the Cyprus Workers' Confederation (Συνομοσπονδία Εργαζομένων Κύπρου, ΣΕΚ) and ETF. There is also a Democratic Labour Federation (Δημοκρατική Εργατική Ομοσπονδία Κύπρου, ΔΕΟΚ).

9.3.4. Qualifications and training

619. There are no national rules on qualifications and training of port workers. Neither are training curricula available.

620. Practically, training of port workers in Cyprus is organised by the CSA. The training equipment and infrastructure is provided by the CPA. Training of licensed porters is organised by the licensed porters' associations. United Stevedoring is mentioned among the users of ILO's Port Development Programme³⁹³.

621. According to the CPA, the following types of formal training are available for port workers in Cyprus:

- specialised training as part of a regular educational programme;

³⁹² See www.limassolporters.com.

³⁹³ On the latter aspect, see *supra*, para 94.

- continued or advanced training after a regular educational programme;
- induction courses for new entrants;
- training in safety and first aid;
- specialist courses for certain categories of port workers such as crane drivers and container equipment operators;
- training aimed at the availability of multi-skilled or all-round port workers.

622. Further details on recent safety training initiatives will be provided below³⁹⁴.

9.3.5. Health and safety

- Regulatory set-up

623. First of all, the Safety and Health at Work Act sets out general rules on duties and responsibilities of employers, self-employed persons and employees and health and welfare. The Act expressly confirms that, in the context of dock work, it also applies on board sea-going vessels (Section 3(5)).

624. Specific rules are set out in the Occupational Safety and Health in Dockwork Regulations (No. 349/1991) and the Occupational Safety and Health in Dockwork (Identifying Competent International Organisations) Order (No. 55/2008), both of which we were unable to consult.

In 2000, the ILO Committee of Experts on the Application of Conventions and Recommendations noted "with satisfaction" that the 1991 Regulations gave effect to most of the provisions of ILO Convention No. 152³⁹⁵.

625. The Occupational Safety and Health in Dockwork (Medical Examinations) Order 321/2002 regulates a mandatory medical examination of port workers.

³⁹⁴ See *infra*, para 630 *et seq.*

³⁹⁵ International Labour Conference (88th Session 2000), *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), Geneva, International Labour Office, 433.

626. The Cyprus Ports Authority Act authorises the Authority to make regulations for the safe and orderly discharge of business within port precincts and providing for the exclusion and removal from port precincts of "idle or disorderly or other undesirable person" (Section 30(1)(d)).

627. Under common law, ship agents hiring registered port workers from the Labour Office have a duty to provide these workers with a safe system of work³⁹⁶.

628. Health and safety rules are enforced with the help of national agencies, CPA, the harbour master, the employers and the unions. If an occupational accident takes place, the CPA and the responsible governmental department of the Ministry of Labour are immediately informed.

629. Measures taken by CPA for the reduction of accidents include the adoption of Readiness and Action Plans prepared in cooperation with all other responsible bodies. CPA employs a Health and Safety Officer who deals exclusively with matters of his/her competence. At the port of Limassol there is a resident hospital unit which is manned by two nurses, employees of the Authority. The unit has an ambulance at its disposal. In addition, the Authority studies all work related accidents at the port areas for the purpose of finding their causes and of taking appropriate corrective steps for preventing, in the future, the occurrence of similar undesirable events. In matters of safety which may involve human lives, the Authority organises educational seminars for its personnel so that accidents may be reduced to the minimum possible. CPA also cooperates with other Government Departments such as the Labour Inspectorate³⁹⁷.

630. In 2007 and 2008, the Department of Labour Inspection implemented a project, funded by the Transition Facility National Programme of the European Union for the Republic of Cyprus as a new Member State, for the improvement of the capacity of the Department of Labour Inspection, the social partners and the workers on health and safety at work issues in dock work, construction and mining. The main purpose of the project was to enhance the capacity of

³⁹⁶ See, for example, *Anastassis Stavrou vs. Orfanides and Murat and Others* (Admiralty Action No. 110/77), 26 October 1982; *Demetrios Kitros vs. Salto Shipping Agencies Ltd.* (Admiralty Action No. 237/79), 1 December 1984; compare also *Christos Pericleous vs. Comarine Ltd. and Amathus Navigation Co. Ltd.* (Admiralty Action No. 70/75), 23 September 1977; *Lambros Lazarou vs. S. Ch. Ieropoulos & Co. Ltd. and Masters Shipping Co., Ltd.* (Admiralty Action No. 141/78), 5 February 1982; *Georghios Tziellas vs. The Ship "Nadalena H", Seadoll Marine Co., Ltd. and Limaship Co., Ltd.* (Admiralty Action No. 14/80), 6 November 1982; *Vasilis Charalambous vs. Associated Levant Lines S.A.L. and Demetriou Gargour and Co. Ltd.* (Admiralty Action No. 5/81), 28 April 1983.

³⁹⁷ See http://www.cpa.gov.cy/CPA/page.php?pageID=20&langid=0&more_a=113.

the public services and the private enterprises (management staff and workers) operating in dock work and the other two sectors to effectively comply with the legislation on safety and health at work. Through this project, 170 employees, including managerial, scientific and technical staff of the Cyprus Ports Authority, the Cyprus Shipping Association and the Limassol Licensed Porters Association, received safety training. Two levels of training programmes were offered (a 70-hour programme for the managerial and scientific staff, and a 35-hour programme for the technicians). The training programmes included courses on occupational risk assessment, monitoring of prescribed preventive and protective measures, national and EU legislation, physical, chemical, biological hazards, as well as guidance regarding specific risks of workers in dock work (loading and unloading operations for containers and bulk materials, cleaning inside ships, etc.). Case studies were also conducted whereby the trainees had to check work areas with ongoing loading and unloading operations using checklists and relevant risk assessments. Also, a Good Practice Guide to Occupational Safety and Health in Dock Work was prepared, as well as training material on safety and health issues which are available for free, to all persons interested in this topic, on the webpage of the Department of Labour Inspection.

631. In 2007 and 2008, through a project for the strengthening of the administrative capacity of Cyprus Ports Authority also funded by the Transition Facility, approximately 400 port employees. The trainees included managerial, scientific, and technical staff as well as other workers of the Cyprus Ports Authority, the Cyprus Shipping Association and the Limassol Licensed Porters Association. The purposes of this project were the enhancement of efficiency of operations at Cyprus Ports Authority and of maritime safety in port areas, the application of best practices and measures for sustainability and improved reporting requirements and finally the improvement of the capacity of major stakeholders (mainly shipping agents, licensed porters and stevedores) to implement the relevant EU acquis and practices.

632. Since 2008 the Cyprus Ports Authority organises annual training programmes on safety and health issues for its own staff, using the training material and the Good Practice Guide to Occupational Safety and Health in Dock Work mentioned above. Additionally, in 2011 the Cyprus Ports Authority organised a training programme on safety and health issues for all port workers. This programme was attended by 155 persons.

- Facts and figures

633. Accidents occurring to persons employed in the port sector of Cyprus and resulting in a loss of more than 3 working days, must be notified to the Department of Labour Inspection. The table below provides data for the period 2007 to 2013.

Table 18. Number of accidents in Cypriot ports, 2007-2013 (source: Department of Labour Inspection, Cyprus)

Year	Number of Accidents
2007	6
2008	13 (1 fatal)
2009	21
2010	22
2011	11
2012	17
2013	17
Total	107

The employed persons in the port sector of Cyprus during 2013 numbered 600 (750 in 2011).

The Department of Labour Inspection informed us that the frequency index (number of accidents per 100,000 employees, of whom there were 600 (750 in 2011)) of accidents in the port sector was 2,833 in 2013 (1,466.66 in 2011). In the absence of reliable data on the number of workers, it is impossible to provide rates for previous years.

The Department of Labour Inspection also maintains an Accidents Frequency Index by Economic Activity in Cyprus according to the ESAW (European Statistics of Accidents at Work) methodology of EUROSTAT. Even if accidents in ports are included in the figures for other sectors, as the ESAW methodology does not provide for a separate classification for accidents in the port sector, a comparison of frequency rates for ports and other industries in 2013 indicates that the frequency index in the port sector is very high in comparison to other industries, with an average twice as high as the mean value for all sectors of the economy. The Labour Inspection insists that caution is needed as no data are available for previous years.

Table 19. Accident Frequency Index in ports and selected other industries in Cyprus, 2011 and 2013 (source: Department for Labour Inspection, Cyprus)

Economic activity sector	Number of accidents		Number of employed persons		Frequency Index	
	2011	2013	2011	2013	2011	2013
Ports	11	17	750	600	1,466.66	2,833
Electricity, gas, steam and air conditioning supply	33	18	1,454	1,888	2,269.60	953.39
Construction	418	250	34,773	23,264	1,202.08	1,074.62
Manufacturing	413	306	23,781	22,352	1,736.68	1,369.01
Mining and quarrying	11	9	832	647	1,322.12	1,391.04
Total / mean value of all sectors of the economy	2,010	1,538	306,715	309,253	655.33	497.33

Additional caution is warranted because the Labour Inspectorate was unable to specify which categories of employees at ports (dockers, crane drivers, licensed porters, administrative staff) are actually covered by the statistics above.

9.3.6. Policy and legal issues

- Restrictions on employment

634. Port labour in Cyprus is generally described as an occupation which is difficult to enter and where pay is particularly high³⁹⁸.

Back in 2005, an EU-wide project on the Mediterranean Transport Infrastructure Network noted that there are three different monopolies in the ports of Cyprus: the port workers, the licensed porters and the CPA crane drivers, and that this has reduced the competitiveness of the ports and kept port fees at a high level³⁹⁹. The 2007/2008 reform measures have not removed any of these three monopolies. Up till now, the port labour regime of Cyprus has remained highly restrictive.

³⁹⁸ Soumeli, E., "New collective agreement for port workers sets pay guarantee", *Eironline* 13 August 2007, <http://www.eurofound.europa.eu/eiro/2007/06/articles/cy0706049i.htm>.

³⁹⁹ See Chatelin, B., *Technical Note 20: Overview of Institutional Arrangements in the MEDA Region, Euro Mediterranean Transport Project (EURMED)*, January 2005, http://p23680.mittwaldserver.info/fileadmin/download/InfrastructureTechnicalNotes/IP0335-RPT-TR-28_Technical_Note_20.pdf, 39.

635. Although initial replies to the questionnaire suggested that port service providers from other EU countries are not allowed to establish themselves or even to offer their services in Cyprus and that there is also a prohibition on the employment of non-nationals and workers employed by employers from other EU countries, the Cyprus Port Authority clarified that no rules to this effect apply.

636. As we have explained above⁴⁰⁰, the Cyprus Shipping Association established a single cargo handler under the name of United Stevedoring Co. Ltd. The Association considers this arrangement very important for the smooth, efficient and flexible way of serving vessels at minimum costs. To our knowledge, the shipping agents continue to compete with one another.

637. As we have explained, the Port Labour Act and the Port Labour Regulations only apply to the ports of Limassol and Larnaca.

In 2011, the port workers of Limassol and Larnaca went on a two-hour strike over the use by third parties of the industrial port of Vassiliko. Labour at the latter port is not governed by the specific laws and regulations on port labour and also has different labour agreements from the two main ports. The port workers protested against the use of Vassiliko port for shipping by companies other than Vassiliko Cement Works Ltd. According to the trade unions, no agreement was made to serve these ships by registered port workers at the port. The unions argued that the CPA and the Ministry of Communications should work towards incorporating the Vassiliko port in the legislation on port workers. This suggestion was strongly contested by the Cyprus Chamber of Commerce and Industry who argued that the port workers want to introduce and apply to Vassiliko port "that which has unacceptably been happening in the Limassol and Larnaca ports, with all the resulting catastrophic consequences to the industry"⁴⁰¹.

These developments suggest that the limitation of the scope of the port labour laws to Limassol and Larnaca may have an impact on inter-port competition. In this respect, it is worth noting that in 2012 unions of port workers also went on strike over the tendering procedure concerning Larnaca port which may result in competition between Larnaca and Limassol⁴⁰².

⁴⁰⁰ See *supra*, para 595.

⁴⁰¹ X. "Cyprus: Dockers down tools at both ports", *Hellenic Shipping News* 4 May 2011, <http://www.hellenicshippingnews.com>.

⁴⁰² X., "Port workers on strike over tenders", *Hellenic Shipping News* 13 July 2012, <http://www.hellenicshippingnews.com/News.aspx?ElementId=41ef7ca2-1d02-4a34-8ae7-d0376266776f>.

638. Assuming that all port workers in Cyprus are indeed members of a trade union, a closed shop issue seems to arise. Trade union density for Cyprus as a whole is estimated at around 55 per cent⁴⁰³.

639. According to the CPA, there are no restrictions concerning a minimum or a maximum number of port workers that may be registered. However, the CPA states that new port workers are seldom recruited. The last recruitment round took place in 2008, following that year's reform. Moreover, the Port Labour Regulations expressly empower the Port Labour Boards to set the number of registered port workers for each port⁴⁰⁴.

Despite non-ratification by Cyprus, CPA confirmed that the port workers' register may be considered a register within the meaning of ILO Convention No. 137 which ensures priority of employment for registered workers.

640. Reportedly, the collective agreement for port workers contains mandatory manning scales.

In 1997, a scrap handler operating in Limassol which relied on its own specialised staff and machinery complained in vain before a national court about the obligation to pay large numbers of unnecessary registered port workers who performed no service whatsoever⁴⁰⁵. The company, which moved from Limassol to the port of Vassiliko which is outside the scope of the Port Labour Act, was unavailable for comment. Reportedly, in order not to distort competition with Limassol, the company agreed to pay a certain amount into the Port Workers' Fund.

641. In 2008, following a complaint by a private agrobulk company, a national Court found that the Port Labour Board of Limassol had been negligent in not taking any action against the unjust, discriminatory and anti-competitive exemption from the use of registered port workers which had been granted in 1998 to a publicly-owned grain company under an agreement with the Board and the union PEO. Reportedly, the case was also referred to the Cypriot Competition Commission and the European Commission⁴⁰⁶. Reportedly, this case has not yet been resolved.

⁴⁰³ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

⁴⁰⁴ See *supra*, para 603.

⁴⁰⁵ Epiphaniou Scrap Metals Ltd vs. District Labour Officer of Limassol and Cyprus Ports Authority, 2 December 1997, Case No. 857/95.

⁴⁰⁶ AGS Agrottrading Ltd vs. Port Labour Board of Limassol, 24 November 2008, Case 1/36.604.

642. Legal disputes have arisen over the factual control exercised over the licensing of porters by the Limassol Licensed Porters Association.

In 1995, the Supreme Court held that the Cyprus Ports Authority, after deciding to grant a porter's licence to Theodoros Kapnisis, had unlawfully refused to effectively deliver this licence to the applicant as long as the latter had not settled his financial affairs with the Limassol Licensed Porters Association. The Association had declined such a settlement because it opposed the granting of new licences. The Court noted that the refusal by the Cyprus Ports Authority to issue the licence because of outstanding accounts with the Association found no basis in the Port Labour Act. Moreover, the decision by the Cyprus Ports Authority amounted to a recognition of licensing powers in the Limassol Licensed Porters Association, which this organisation does not possess⁴⁰⁷.

In 2009, the Cypriot Commission for the Protection of Competition issued a decision on the infringement of the national Protection of Competition Act with regard to the transportation and delivery of goods by licensed porters⁴⁰⁸.

The case concerned a complaint against the Limassol Licensed Porters Association and the Cyprus Ports Authority by Theodoros Kapnisis (again) and Aristotelis Meletiou, two licensed porters who had obtained their licence from the CPA, but were refused membership by the general assembly of the members of the Limassol Licensed Porters Association. They claimed that due to the fact that the specialised equipment and machinery necessary for the work of a porter at the Limassol port is extremely expensive, the Association's refusal to grant them membership, thus refusing them access to an essential service, meant that they could not in effect exercise their profession or offer their services.

The Commission decided that each and every porter and member of the respondent was an undertaking for purposes of the Act, that the respondent itself was a group undertaking active in the relevant market for the provision of services of transport and delivery of cargo by licensed porters and the administration and use of specialised equipment or installations which are essential to the provision of the aforementioned services. It concluded:

(A) The LLPA's practice constitutes: (i) a decision by an association of undertakings prohibited by section 3 of the Law as it restricts the availability of portage services in breach of section 3(1)(b) of the Law, as a result of the LLPA's refusal to provide access to the complainants (licensed porters) in the markets of operating and using specialized equipment without objective justification that led to their inability to gain access in the markets of transportation and delivery of goods by licensed porters, and (ii) a decision by an association of undertakings prohibited by section 3 of the Law by applying dissimilar conditions to equivalent transactions thereby placing them at a competitive

⁴⁰⁷ Theodoros Kapnisis vs. Cyprus Ports Authority, 30 June 1995, Case 818/93.

⁴⁰⁸ See Commission for the Protection of Competition, *Annual Report 2009*, 20-21; Mavrokefalos, S., "Cyprus" in Goodman, S. (Ed.), *The Public Competition Enforcement Review*, London, Law Business Research, 2010, (115), 119.

disadvantage, in breach of section 3(1)(d) of the Law, as a result of the discriminatory treatment exercised by the LLPA against the complainants, in contrast to older and newly licensed porters. And,

(B) Such behaviour, actions and/or omissions on the part of the LLPA constitute an abuse of dominant position in the markets of transportation and delivery of goods by licensed porters and the markets of operating and using specialized equipment and/or facilities that are essential and/or necessary for the provision of the aforementioned services (basic facilities) in breach of sections 6(1)(b) and 6(1)(c) of the Law.

The Commission imposed an administrative fine of 250,000.00 EUR on the Limassol Licensed Porters Association and ordered it to avoid repeating such practices and actions which distort the rules of a freely competitive market. To our knowledge, the decision did not give rise to any initiative to change the Port Labour Act or the Port Labour Regulations.

643. Reportedly, the 2007 collective agreement on the reform of port labour provides that in the event of labour shortage in either of the two ports, port workers may move from one port to the other in order to carry out the required jobs at the ports, but without abusing the opportunity to make up the list of port workers⁴⁰⁹. According to CPA, such transfers rarely occur. They are not possible for licensed porters.

644. The currently applicable Port Labour Act and Port Labour Regulations would appear to result in a complete ban on self-handling⁴¹⁰. As we have explained⁴¹¹, ship's deck cranes must be operated by registered port workers, unless no such workers are available. The CPA confirmed that self-handling is indeed prohibited, but does not identify this as a major competitive issue.

Self-handling has been a contentious issue ever since the Port Labour Act was adopted. In 1954, a ship agent's clerk was acquitted after he had aided and abetted the commission of the offence of employing other workers than registered port workers. The clerk had been unable to obtain registered port workers to unload certain packages from the ship into the lighter as the office of the Labour Exchange was closed. As a result of what the clerk told the master of the ship, the master caused the crew to unload the packages into a lighter manned by registered lightermen. On the principle of self-handling, the Supreme Court ruled as follows:

⁴⁰⁹ Soumeli, E., "New collective agreement for port workers sets pay guarantee", *Eironline* 13 August 2007, <http://www.eurofound.europa.eu/eiro/2007/06/articles/cy0706049i.htm>.

⁴¹⁰ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) All longshore activities.

(b) Exceptions:

(1) Opening and closing of hatches, and

(2) Rigging of ship's gear.

⁴¹¹ See *supra*, para 596.

In construing the Law of 1952, it must be borne in mind that freedom of contract is one of the fundamental freedoms which British subjects enjoy and which British Courts are careful to protect. Any legislation which restricts this freedom should be carefully scrutinized, so that the subject's liberty is not restricted beyond the intention of the legislature.

Now if the expression "port worker" is given the interpretation for which the respondent contends, a ship's crew who are not registered port workers may not do any work in connection with the loading or unloading of cargo or even with the preparation of their ship for the receipt or discharge of goods : for example, the crew could not open a hatch or prepare derricks and pulleys in order to load or off-load cargo. If this interpretation is accepted two results must follow : The seamen of which the crew is composed, having special training, and experienced in the handling of ship's gear, would be prohibited from doing acts which it was within their particular competency to perform. Secondly, a ship with a small number of packages to off-load might, for want of registered port workers, incur considerable expense through delay, whereas the crew might easily place the packages on the slings as they did in the present case. To require a ship's master to wait for registered port workers in these circumstances is surely an absurdity and contrary to the public interest which requires shipping to enjoy reasonable facilities.

[...]

A master is at liberty to use his crew for any purpose covered by their contract of employment; he is only restricted to registered dock workers if he seeks to employ on his ship anyone other than his crew for the purposes mentioned in the definition of "dock worker".

It is reasonable to assume that the objects of our Law of 1952 of 1952 are the same as the objects of the English [Dock Workers (Regulation of Employment) Act, 1946], and that it was the intention of the Legislative Authority to restrict the labour which a master might employ only if he wished to employ persons other than his crew. It is not intended that the law should prevent a crew from doing work which the master required done and which they were willing to perform⁴¹².

In 2003, Cypriot unions opposed the proposed EU Port Services Directive. SEK stated that the servicing of ships should be done exclusively by skilled dockworkers. If this work were assigned to seafarers, it would place in jeopardy both the safety of the crews and the levels of safety within port areas. According to the PEO affiliated Transport and Dockworkers' Union, the adoption of the proposed Directive would have led to a chain of economic and social repercussions, the most serious of which were:

- job losses among dockworkers and their replacement by unskilled, cheap labour;
- downgrading of the quality of port services;
- increased cost of the provision of port services; and
- increased work accidents⁴¹³.

⁴¹² Philippos Kleantous Vardas vs. The Police (Case Stated No. 89), 18 March 1954.

⁴¹³ INEK/PEO, "Dockworkers' unions oppose proposed EU port services Directive", *Eironline* 11 November 2003, <http://www.eurofound.europa.eu/eiro/2003/11/inbrief/cy0311101n.htm>.

645. CPA confirmed to us that the applicable rules on port labour result in a prohibition to use temporary agency workers. It does not regard this as a major competitive handicap however.

We are unaware of the contents of the national report of Cyprus on prohibitions and restrictions on temporary agency work, as required under Temporary Agency Work Directive 2008/104/EC⁴¹⁴. Suffice it to mention that the grounds on which the Cypriot Government may introduce an exclusive right for registered port workers are described in vague terms⁴¹⁵ and that they are substantially broader than the grounds which may justify a restriction or a ban on temporary agency work under Directive 2008/104/EC.

In this respect, it is also worth mentioning that earlier Cypriot case law held that

the whole philosophy of the [Port Labour Act and the Port Labour Regulations is] to regulate employment for the purpose of having an adequate supply of workers for the smooth functioning of the ports and the avoidance, as far as possible, of trade disputes⁴¹⁶.

646. As we have mentioned⁴¹⁷, the Port Labour Regulations prohibit employers to permanently employ more than two lightermen. In practice, however, this profession no longer exists in Cypriot ports.

647. CPA states that rules on employment of workers are properly enforced.

648. In its assessment of the 2012 national reform programme and stability programme for Cyprus, the European Commission mentioned "severe restrictions in key transport sectors in terms of working hours", for example in the ports and warehousing sectors⁴¹⁸. We could obtain no further details on this issue.

⁴¹⁴ On the Directive, see *supra*, para 225 *et seq.*

⁴¹⁵ See *supra*, para 598.

⁴¹⁶ *Viceroy Shipping Co. Ltd. vs. Andreas Mahattou* (Civil Appeal No. 6310), 3 March 1982.

⁴¹⁷ See *supra*, para 601.

⁴¹⁸ European Commission, *Commission Staff Working Document, Assessment of the 2012 national reform programme and stability programme for Cyprus accompanying the document 'Recommendation for a COUNCIL RECOMMENDATION on Cyprus' 2012 national reform programme and delivering a Council opinion on Cyprus' updated stability programme, 2012-2015*, (COM(2012) 308 final), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0308:FIN:EN:PDF>, 18-19.

- *Qualification and training issues*

649. Even if it was not raised in the replies to the questionnaire, the absence of a framework for qualifications and training should be mentioned as a possible issue.

- *Health and safety issues*

650. CPA is convinced that applicable health and safety rules are adequate. According to the Cyprus Ports Authority, as of 2008, safety rules for port labour have effectively been implemented. As a result, the number of occupational accidents decreased significantly. The CPA adds that the few accidents that still occur are mainly due to carelessness of the port workers.

On its website, however, CPA states that, despite the fact that the Authority is vigilant and all the appropriate measures for averting and avoiding accidents are taken, the number of accidents occurring every year at the ports – mainly at Limassol – is around 30. This number covers accidents resulting in either material damage or personal injuries as well as accidents which entail neither damage nor injury. Most of the accidents are attributable to human error, a term which covers a wide range of causes, such as ignorance, absent-mindedness, bad habits, bad risk assessment, or even familiarity with danger, non conformity with directives and safety regulations at workplaces *etc.* Another factor for the ineffective averting and avoiding of accidents is the non observance by pedestrians and vehicles of the traffic regulations for safe movement in the port areas⁴¹⁹.

In 2005, a company was appointed to carry out a study on risk assessment at the ports of Lemesos and Larnaka and at the Headquarters of the Authority in Nicosia. The authors made suggestions on preventive measures to reduce risks and accidents.

As we have explained above⁴²⁰, official statistical data for 2011 indicate that port work remains a particularly dangerous profession.

In a final comment, Cyprus Ports Authority emphasised that it applying all relevant national and European laws and regulations and that it is periodically inspected by the Department of Labour Inspection.

⁴¹⁹ See http://www.cpa.gov.cy/CPA/page.php?pageID=20&langid=0&more_a=113.

⁴²⁰ See *supra*, para 633.

651. In view of national policy on occupational health and safety and initiatives relating to occupational risk prevention, which included the organisation by the Labour Inspectorate of specific health and safety training for the port labour sector, the European Committee of Social Rights concluded in 2009 that the situation in Cyprus was in conformity with Article 3(1) of the European Social Charter on health and safety and the working environment⁴²¹.

9.3.7. Appraisals and outlook

652. The CPA is of the opinion that the current port labour regime in Cyprus is satisfactory and that the relationship between employers and port workers and their respective organisations is excellent. CPA asserts that the port labour regime has a positive impact on the competitive position of the Cypriot ports because it prevents strikes and increases productivity.

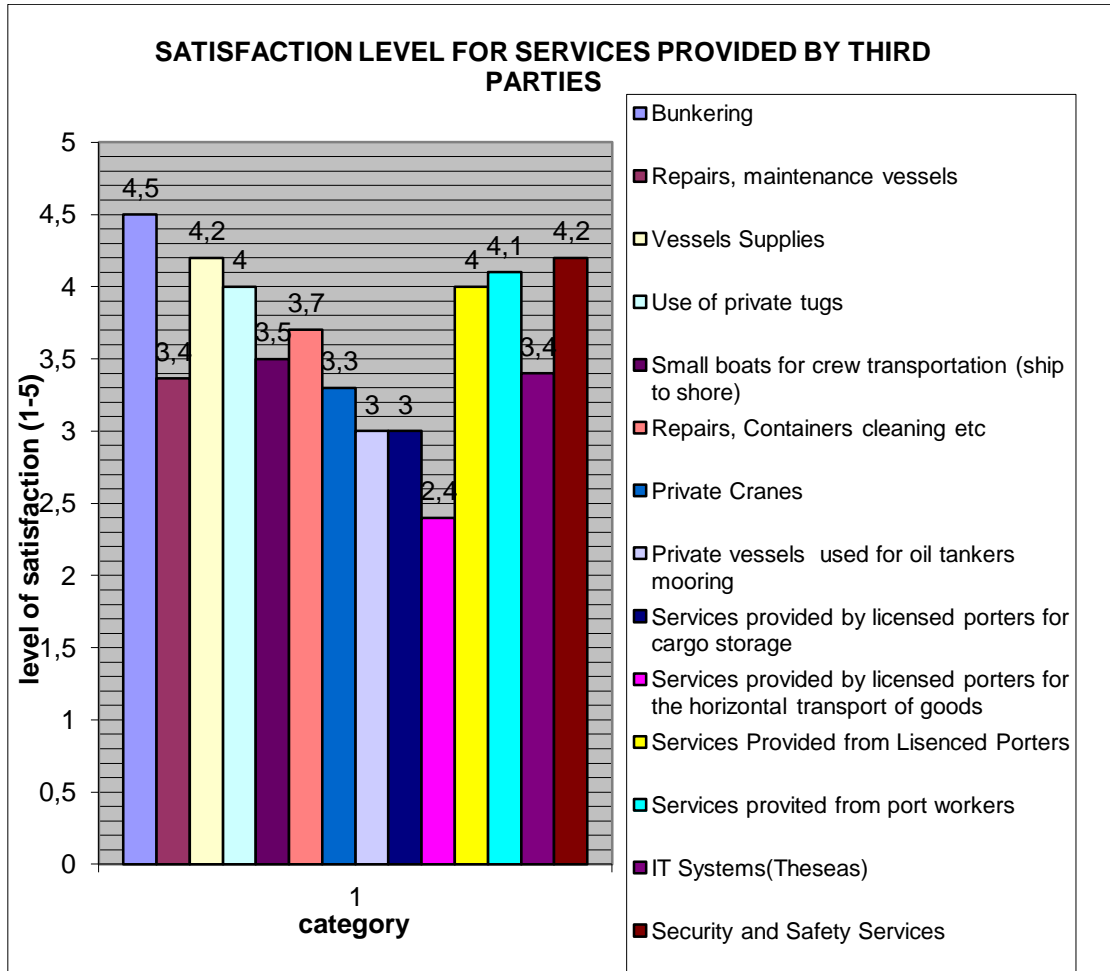
653. For the future, the CPA suggests a unique employment system for on board and on shore port services, which are now performed by port workers and licensed porters respectively⁴²². The CPA stresses that all ports must remain under the ownership and supervision of the competent authority (being the CPA), an issue that is best addressed at national level.

654. In 2010, CPA organised a questionnaire on customer satisfaction on services provided by third parties. Port workers achieved a higher score than licensed porters.

⁴²¹ See <http://hudoc.esc.coe.int/esc2008/document.asp?item=0>.

⁴²² The division of the work over three different categories of workers indeed seems to be causing various problems. In December 2011, the crane drivers at the port of Limassol, who are employed by the CPA, decided, without notice, to take part in a three-hour broader State sector strike. This action disrupted the smooth operation of the port and resulted in considerable overtime pay. The licensed porters were surprised by the action of the crane workers, which caused serious problems to them (X., "Unannounced port workers strike costs taxpayer €4,000", *Cyprus Mail* 13 December 2011, <http://www.parikia.co.uk/daily-news/cyprus-news/cyprus-news-in-english/32073-unannounced-port-workers-strike-costs-taxpayer-4000.html>).

Figure 74. Results of a questionnaire on customer satisfaction on services provided by third parties at Cypriot ports, 2010 (source: Cyprus Ports Authority)



655. The Cyprus Shipping Association responded that, despite the prevailing restrictions resulting from the existing rules and regulations pertaining to the operation of Cypriot ports, it is beyond doubt that the productivity and efficiency of Cypriot can be compared to those of other successful European ports. The Cyprus Chamber of Commerce and Industry endorsed this statement. We were unable to obtain further appraisals by private sector representatives. Neither could we gather information on a reported attempt by shipping agents to take over control of the business of licensed porters.

656. A representative of the trade union SEK said that the Cyprus labour regime in the ports, which largely rests on collective bargaining, is fully democratic and ensures industrial peace.

The issues of training and safety levels are of very special importance, and are therefore discussed within special committees. Our interviewee expressed satisfaction with applicable laws and regulations on port labour, since they ensure high levels of safety, training and standard of living.

657. At the time of writing, plans for the redevelopment of Larnaka Port and Marina were under preparation. These would involve the establishment of major cruise passenger and tourist facilities. The government had already reached an agreement with a strategic investor. The impact on port labour arrangements is still unclear.

658. The CPA did not identify any matter which it believes should be regulated at EU level.

659. A representative of trade union SEK recalled its opposition the previous proposals for an EU Port Services Directive and expects from the EU that it express support to the Cyprus port industry to continue working within the spirit and letter of the existing framework for port labour in Cyprus.

9.3.8. Developments between January 2013 and September 2014

660A. In March 2014, the Cyprus parliament approved a large-scale privatisation programme covering *inter alia* the commercial activities of CPA.

For the port sector, the privatisation plan, which is an essential component of the strategy to solve the sovereign debt crisis yet has encountered opposition from dockers' unions⁴²³, entails the following:

Stage 1: The CPA remains a public entity but with a regulatory/supervisory role, which will be enhanced by 31.12.14.

Stage 2: The management of the commercial activities of Larnaka and Limassol ports will

be privatised as follows:

- *Larnaka: Already promoted through Public-Private Partnership (PPP).*

⁴²³ See, for example, X., "Cyprus: Port privatisation", *Hellenic Shipping News* 13 December 2013, <http://www.hellenicshippingnews.com/b6ab4fa5-a266-4b16-9473-e4dbbef20564/>.

- *Limassol: Promotion of long-term licensing of the commercial activities of the port to a port operator, which will be chosen through international procurement procedures by 31.12.15⁴²⁴.*

⁴²⁴ Short summary - Privatisation Plan of the Republic of Cyprus, [http://www.mof.gov.cy/mof/mof.nsf/All/C86131D7D834ACF1C2257C850046D13F/\\$file/Summary%20of%20privatisation%20plan%20of%20Cyprus.pdf](http://www.mof.gov.cy/mof/mof.nsf/All/C86131D7D834ACF1C2257C850046D13F/$file/Summary%20of%20privatisation%20plan%20of%20Cyprus.pdf).

9.3.9. Synopsis

660. SYNOPSIS OF PORT LABOUR IN CYPRUS⁴²⁵		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 3 main ports • Toolport model with shipping agents acting as master stevedores • 6m tonnes • 18th in the EU for containers • 80th in the world for containers • Appr. 56 employers • 600 port workers • Trade union density: 100% 	<ul style="list-style-type: none"> • <i>Lex specialis</i> (Port Workers Act, 1952 and Regulations) • No Party to ILO C137 • National CBAs per category • Exclusive right of workers • 3 categories of workers: <ul style="list-style-type: none"> (1) Port workers <i>sensu stricto</i> registered in pool under tripartite management (2) Self-employed porters licensed by Cyprus Ports Authority (3) Crane drivers employed by Cyprus Ports Authority • Criminal sanctions 	<ul style="list-style-type: none"> • Fragmentation of services and labour markets between port workers, licensed porters and crane operators • Exclusive rights for each of these categories • Port of Vassiliko remains outside scope of Port Workers Act • Closed shop • Mandatory manning scales • Factual control over market access by Licensed Porters Associations • Ban on self-handling • Ban on temporary agency work • Limited working hours • No major reform to date
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Training by Cyprus Ports Authority and Licensed Porters' Associations 	<ul style="list-style-type: none"> • No legal requirements 	<ul style="list-style-type: none"> • Absence of framework for qualifications and training
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • National accident statistics available • Frequency index twice as high as national average (2013) • Recent safety training projects 	<ul style="list-style-type: none"> • Specific Health and Safety Regulations • Party to ILO C152 	<ul style="list-style-type: none"> • High accident rates

⁴²⁵ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.4. Denmark

9.4.1. Port system⁴²⁶

661. Geographically destined to accommodate short sea and feeder traffic between the North Sea and the Baltic, Denmark has some 120 seaports which include several medium-sized specialised seaports. Copenhagen and Aarhus are among Denmark's largest ports; they are also the country's major container ports.

In 2012, the gross weight of seaborne goods handled in Danish ports amounted to about 87.8 million tonnes⁴²⁷. In the container business, Danish ports ranked 15th in the EU and 61th in the world in 2011⁴²⁸.

662. In terms of governance, Denmark has 6 principal types of ports: municipally governed ports, autonomous municipal ports, limited companies owned wholly or partly by a local authority, State ports, privately owned ports and, as a port authority *sui generis*, the Port of Copenhagen. For the greater part, cargo is handled by the private sector. As we shall explain below⁴²⁹, the degree of involvement of port authorities in cargo handling operations varies according to the legal form of the port. A few privately-run Danish ports, particularly power plant ports and also one oil port, only handle their own cargoes and are not open to general traffic.

⁴²⁶ For general information on the Danish port system, see ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 357 et seq.; Wihlborg, M. and Nevala, A.-M., *An exhaustive analysis of employment trends in all sectors related to sea or using sea resources. Country report – Denmark*, European Commission. DG Fisheries and Maritime Affairs, 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/denmark_employment_trends_en.pdf, 14-15; for statistics, see <http://www.statbank.dk/statbank5a/default.asp?w=1280> and http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

⁴²⁷ [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723)

⁴²⁸ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

⁴²⁹ See *infra*, para 670.

9.4.2. Sources of law

663. The management of Danish ports is regulated by the Ports Act (Lov om havne) of 28 May 1999⁴³⁰, which was repeatedly revised (lastly in 2012). The Ports Act mainly describes the legal form of port authorities and the activities that these authorities are allowed to undertake, and also charges the Minister for Transport with the adoption of Regulations on the good order in ports. Although the Ports Act contains a few provisions on the employment of employees of port authorities (especially on civil servants of State ports which are transformed into another type of port authority), it does not regulate port labour as such.

On the basis of the Ports Act, Standard Regulations for the Observance of Good Order in Danish Commercial Ports were adopted on 25 November 2004⁴³¹. These Regulations deal with safety aspects of port operations but do not address port labour as such either.

The Port of Copenhagen operates under a specific legal framework based on the Copenhagen Freeport Act of 31 March 1960⁴³², the Metro Company and City Development Company Act of 6 June 2007⁴³³ and the Port of Copenhagen Concession of 31 March 1980⁴³⁴. These instruments do not regulate port labour either.

664. Today, there are no specific legal instruments on the organisation of port labour in Danish ports. Employment of port workers is regulated by the general rules of labour law, which include the Working Environment Act⁴³⁵ and Orders issued in pursuance thereof. The Act mentions expressly that it applies to the loading and unloading of ships, including fishing vessels (§ 3(2), 1). Implementing regulations of a general nature deal with, *inter alia*, hoists and winches, noise limits, biological agents, asbestos, etc.

665. Health and safety aspects of port labour are governed by the Executive Order on Loading and Unloading of Ships of 18 May 1965⁴³⁶ which is the only port labour-specific legal instrument in the country⁴³⁷. In addition, we should mention Circular No. 3057 of 29 September 1977 on Collaboration between the Danish Working Environment Authority and the Danish Maritime

⁴³⁰ Lov om havne (Lov nr 326 af 28/05/1999). A consolidated version was published under Bekendtgørelse af lov om havne (LBK nr 457 af 23/05/2012).

⁴³¹ Bekendtgørelse om standardreglement for overholdelse af orden i danske erhvervshavne (BEK nr 1146 af 25/11/2004).

⁴³² Lov om Københavns frihavn (Lov nr 141 af 31/03/1960).

⁴³³ Lov om Metroselskabet I/S og Arealudviklingsselskabet I/S (Lov nr 551 af 06/06/2007).

⁴³⁴ Bekendtgørelse af koncession for Københavns Frihavns- og Stevedoreselskab A/S til i Københavns Frihavn at udøve frihavsvirksomhed (BEK nr 144 af 31/03/1980).

⁴³⁵ See the consolidated version in Bekendtgørelse af lov om arbejdsmiljø (LBK nr. 1072 af 7. september 2010).

⁴³⁶ Bekendtgørelse (BEK nr 181 af 18/05/1965) om regulativ for lastning og losning af skibe.

⁴³⁷ See more *infra*, para 690.

Authority on the Implementation of the Regulations concerning Loading and Unloading Ships, *etc.*⁴³⁸.

Some further provisions on the safety of port labour can be found in the Regulations on Lifting Gear On Board Ships⁴³⁹. For completeness' sake, we should also mention the general Order on Hoists and Winches⁴⁴⁰.

Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers was transposed by separate Regulations adopted on 9 October 2002⁴⁴¹.

666. Denmark has ratified ILO Convention No.152⁴⁴² but not ILO Convention No. 137. Previously, it was a Party to ILO Convention No. 32.

667. Collective bargaining in Denmark covers a range of issues that elsewhere are often dealt with by legislation⁴⁴³. In the absence of a specific legal framework on port labour, it does not come as a surprise that collective agreements are an important source of the law.

The Common National Agreement for the Transport and Logistics Sector contains general provisions which apply to, among others, permanently employed port workers, as well as a number of specific provisions for casually employed port and warehousing workers⁴⁴⁴. The agreement regulates matters such as working time, wages, holidays, sick leave, workers' representation and collective bargaining, training and skills. The annexed Special Conditions for port workers regulate, *inter alia*, holidays, overtime, hiring procedures, waiting money, work on board and training.

In ports relying on a pool of port workers, local collective agreements apply as well. These ports include Aabenraa⁴⁴⁵, Aalborg⁴⁴⁶, Aarhus⁴⁴⁷, Bornholm⁴⁴⁸, Copenhagen⁴⁴⁹, Esbjerg⁴⁵⁰,

⁴³⁸ Cirkulære om samarbejde mellem arbejdstilsynet og skibstilsynet om gennemførelse af regulativ for lastning og losning af skibe.

⁴³⁹ Teknisk forskrift om hejsemidler og lossegrej m.v. i skibe (BEK nr 11643 af 12/10/2000).

⁴⁴⁰ Bekendtgørelse om hejseredskaber og spil (BEK nr 1101 af 14/12/1992).

⁴⁴¹ Teknisk forskrift nr. 9639 af 09/10/2002 om lastning og losning af bulkskibe.

⁴⁴² Royal Decree of 3 November 1989; Bekendtgørelse (18 april 1991) af ILO-konvention nr. 152 af 25. juni 1979 om sikkerhed og sundhed i forbindelse med havnearbejde.

⁴⁴³ See, *inter alia*, <http://www.worker-participation.eu/National-Industrial-Relations/Countries/Denmark/Collective-Bargaining>.

⁴⁴⁴ Fællesoverenskomst mellem DI Overenskomst II og 3F Fagligt Fælles Forbund, Transportgruppen 2012 – 2014 for lagerarbejdere, chauffører og havnearbejdere. We also consulted earlier agreements for 2004-2007 and 2010-2012. The National Agreement on Transport and Logistics applies to logistics, warehousing and terminal workers (Transport- og Logistikoverenskomst 2012 - 2014 Indgået mellem DI Overenskomst I (ATL) og 3F Fagligt Fælles Forbund, Transportgruppen) but not to port workers. The reason is that these agreements were concluded by two different employers' organisations (who are now both part of DI).

⁴⁴⁵ Overenskomst 2010 - 2012 er indgået mellem DI Overenskomst II (DSA) og 3F Aabenraa.

Hirtshals⁴⁵¹, Horsens⁴⁵², Nakskov⁴⁵³, Randers⁴⁵⁴, Skagen (fishing port)⁴⁵⁵ and Vejle⁴⁵⁶. The local agreements contain additional rules on, for example, recruitment times and procedures, wage rates, working times, overtime, manning scales, quality of work, personal protective equipment and priority of employment for union members. Some local agreements (for example, in Randers) also contain company-specific rules.

In addition, there is a specific agreement for the terminal workers and mooringmen employed by the members of the Danish Car Ferry Association⁴⁵⁷. This agreement for non-shipboard work such as port workers, terminal and ticket office staff only applies to staff employed by the car ferry company, and only to the extent that the car ferry company is a member of the Danish Car Ferry Association. The Association explained that the reason for having these separate CBAs is that it gives the car ferry companies an opportunity to employ their own staff rather than being dependent on the services which might be provided by the port operator at a different cost. It is also important to note that the majority of the ferry routes operates from ports with a rather limited commercial activity besides the ferries.

The agreements are freely accessible on the internet⁴⁵⁸.

⁴⁴⁶ Tillægsoverenskomst 2012-2014 til fællesoverenskomst mellem DI Overenskomst II (HTS-Arbejdsgiverforeningen Nordjylland) og 3F, Aalborg gældende for havnearbejdere i Aalborg.

⁴⁴⁷ Lokale bestemmelser aftalt mellem 3F Transport, Logistik & Byg Århus (Tidl. Havnearbejdernes Fagforening i Århus) og Arbejdsgiverforeningen for Handel, Transport og Service for Aarhus og Omegn gældende for havnearbejde på Århus Havn 2004 - 2007; Tillægsoverenskomst til Fællesoverenskomst 2012 - 2014 mellem DI Overenskomst II og 3F Transport, Logistik og Byg, Århus.

⁴⁴⁸ Tillægsoverenskomst til Fællesoverenskomst 2010 - 2012 mellem DI Overenskomst II (Bornholms Havne- og Købmandsforening) og 3F Bornholm vedrørende lastning og losning.

⁴⁴⁹ Overenskomst 2012-2014 indgået mellem DI Overenskomst II (HTS-Arbejdsgiverforeningen, Hovedstadsområdet) for Udviklingsselskabet By & Havn I/S og 3F/BJMF, Bygge-, Jord- og Miljøarbejdernes Fagforening. Reportedly, the reference in this agreement to crane drivers has only historical importance.

⁴⁵⁰ Tillægsoverenskomst til Fællesoverenskomsten 2012-2014 mellem DI Overenskomst II (Sydvestjysk Arbejdsgiverforening) og 3F Esbjerg Transport for Esbjerg Havn.

⁴⁵¹ Tillægsoverenskomst til Fællesoverenskomst 2012-2014 mellem DI Overenskomst II (DSA) og 3F - Skagerak gældende for Claus Sørensen A/S, Hirtshals (frysehus og pakkeri).

⁴⁵² Tillægsoverenskomst til Fællesoverenskomsten 2012-2014 om løn- og arbejdsforhold ved havnearbejde i Horsens indgået mellem DI Overenskomst II (HTS-A, Horsens) og 3F, Horsens.

⁴⁵³ Tillægsoverenskomst (til Fællesoverenskomst) mellem DI Overenskomst II (Nakskov og Omegns Arbejdsgiverforening) og 3 F, Vestlolland (2010-2012).

⁴⁵⁴ Tillægsoverenskomst til Fællesoverenskomst 2012 - 2014 mellem DI Overenskomst II (DSA) og Fagligt Fælles Forbund, Randers (Transportarbejdere).

⁴⁵⁵ Overenskomst 2012-2014 mellem DI Overenskomst II (HTS-A Vendsyssel) og 3F, Frederikshavn gældende for arbejdere beskæftiget hos Skagen Lossekompani ApS.

⁴⁵⁶ Tillægsoverenskomst til Fællesoverenskomsten 2012-2014 Indgået mellem DI Overenskomst II (Vejle Arbejdsgiverforening) og 3 F, Vejle gældende for havnearbejdere i Vejle; Tillægsoverenskomst til Fællesoverenskomst 2012-2014 indgået mellem DI Overenskomst II (Vejle Arbejdsgiverforening/DSA) og 3F Vejle og 3F Midtjylland gældende for Claus Sørensen A/S, Terminal Vejle Nord og Engesvang.

⁴⁵⁷ Overenskomst mellem Bilfærgernes Rederiforening og 3F Fagligt Fælles Forbund, Transportgruppen Transportgruppen Overenskomst 2010-2012 for trosseførere.

⁴⁵⁸ See <http://di.dk/Shop/Overenskomster/Pages/overenskomster.aspx>.

668. Some collective agreements expressly refer to local usages as an additional source of the law⁴⁵⁹. The Danish Port Operators stress that local usages are an extremely important source of the law, that they are not always codified into the letter of applicable agreements but that, even then, in practice they often take precedence over the written agreements.

9.4.3. Labour market

- Historical background

669. To our knowledge, no comprehensive history of port labour in Danish ports is available.

In an excellent paper on dock work in Aarhus between 1870 and 1970, Svend Aage Andersen notes that there is no evidence of an artisanal period previous to that of casual labour, and that there is no information about guilds. As far as is known, before 1870 dock work was done by sailors on the ships. During the second half of the 19th century the need for dock work grew rapidly, and by 1880 dock work was performed by casual labourers. Dock work was one of the possibilities in a casual labour market where a large number of workers found it difficult to find permanent work. So-called foremen acted as middlemen between the importers and the workers. Dock work was a free enterprise, and foremen simply entered the ships and made a contract on the spot. A dockers' union was formed in 1885, and in 1895 an employers' organisation was constituted as an association of the largest firms with interests in the port. In 1896 the employers started a new labour exchange, which had as its aim to take care of all loading and discharge in the port, as well as take over the tasks of the former foremen. In 1897 a big strike marked a dramatic change in the power relations in the docks. As a consequence of the strike the dockers lost their work, and strike-breakers were hired instead. After the strike the old dockers were not rehired, with only a few exceptions, and the strike breakers kept their work. The new labour exchange – later the Aarhus Stevedore Company – made every effort to employ a hard core of loyal, permanently engaged workers. In order to secure a livelihood the old dockers formed their own co-operative stevedore union in 1903. After the dockers had lost the strike, the employers' stevedore company totally controlled the hiring through different foremen used by the companies receiving goods in the port. Although these endeavours were met with resistance from the dockers, the employers more or less succeeded in dividing the dock labourers into a hierarchy: (1) dockers 'permanently' employed by specific firms; (2) dockers who were sent from one firm to another according to demand; and (3) further casual workers who were taken in when the first two groups were insufficient in number to cope with the work. Thus, the dockers were divided into at least two sections, 'core' workers in the regular gangs, and more 'peripheral' workers who were only employed when a larger labour force was needed. After WW I, rationalisation and the introduction of cranes and other

⁴⁵⁹ See, for example, § 1(5) of the Common National Agreement for the Transport and Logistics Sector for 2012-2014 and § 4(1) and § 8(2) of the annexed Special Provisions for Port Workers.

mechanical equipment led to a reduction of the gangs, and the workforce started to decline, a trend which was reinforced after the opening of the first container terminal in 1970. Crane and truck drivers found regular employment, but the rest were still casual workers. In 1998, most of the remaining 200 dockers were regularly employed, but a minority of some 80 dockers were still casual workers. The latter still had to report to the call stand every morning at 7:00 am and 10:00 am. The foreman from the Aarhus Stevedore Company placed himself on a stand and shouted the names of the workers he needed, and the rest of the dockers went home again⁴⁶⁰. In 2006, when it had long lost its monopoly to supply dockers, the Aarhus Stevedore Company became Cargo Service. Today, several stevedoring companies operate in the port, employing both permanent and casual labour.

In Copenhagen, port workers started to organise in 1895. Even if more permanent employment forms were found desirable as early as 1940, and some workers including crane operators indeed obtained fixed employment, not until 1987 did all Copenhagen's port workers become permanent employees⁴⁶¹.

- *Regulatory set-up*

670. As we have explained⁴⁶², the current Danish Ports Act does not regulate port labour as such.

Importantly, however, it determines the extent to which port authorities are allowed to provide cargo handling-related services. First of all, the Ports Act allows State ports and autonomous municipal Port Authorities to make available cranes, warehouses, and similar, with a view to serving ships, stevedores, tenants, *etc.* (§ 7(3) and 9(5)). In the absence of private port operators, autonomous municipal Port Authorities may, in addition to their other tasks, undertake port-related operator activities (*havnerelateret operatørvirksomhed*) either alone, or in co-operation with other entities (§ 9(6)). Ports which are organised as a limited company owned wholly or partly by a local authority are commercial enterprises (§ 10(1)) and may, in addition to the normal tasks of municipal ports, only carry out port-related operator activities (§ 10(3)), which implies that these port authorities have full powers to perform cargo handling services themselves. Finally, privately organised ports are commercial enterprises which are not prevented from operating businesses other than port-related operations (§ 11).

The port of Copenhagen is managed by the CPH City & Port Development which is owned by the City and the State. It is operated by Copenhagen Malmö Port, a Danish/Swedish

⁴⁶⁰ Anderson, S.A., "Danish dock workers: Aarhus, 1870-1970", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (15), especially 18, 19 and 37.

⁴⁶¹ See Christensen, J., "Ved Havnearbejdernes Klub Frihavnen's 50-års jubilæum 14. oktober 1967", <http://www.1980.dk/pdf/frihavnsklub%2050%20aar%20web.pdf>.

⁴⁶² See *supra*, para 663.

commercial company which holds a monopoly to operate cranes and warehouses and to load and unload cargo in the Freeport (§ 3 of the Copenhagen Freeport Act) and which acts as an employer of port workers, including crane drivers.

671. Most port workers in Denmark work for a terminal operator, but some are employed by the local port authority (especially crane drivers) or a shipping company.

Although the terminology is not always consistent, a distinction is made between port workers (*havnarbejdere*), who are casually employed, and terminal workers (*terminalarbejdere*), who are permanently employed.

In ports relying on a pool system, conditions of employment vary widely, as they are regulated by local, port-specific collective agreements.

672. Under the traditional casual work system (*løsarbejdersystemet*), port workers form a pool and are hired for a day or a shift. The pool system functions on the basis of local collective agreements. In most ports, priority of employment is granted to union members, and in some places the workers are also registered in a list. There is however no national registration system. The pool is not a legal entity and the workers are employed by the individual terminals. The workers enjoy a large degree of freedom. As a rule, they report at the hiring hall on a voluntary basis. Mostly, they work in fixed gangs. The manning scales are determined at local level⁴⁶³.

673. In Aabenraa, for example, port workers are hired on a daily basis in the hiring hall (*på Havnestuen*). In the event of a shortage due to illness or other exceptional circumstances, workers may be hired outside normal recruitment times. All workers registered in the 'Port List' (*Havnelist*) are obliged to report in the hiring hall and to accept labour offered. Workers who repeatedly refuse tasks, are removed from the Port List, but this can only be done in mutual agreement between 3F and the local employers. In case of illness and unavailability of registered workers, other workers can be hired⁴⁶⁴.

⁴⁶³ See especially Transport- og Energiministeriet samt Søfartsstyrelsen og Konkurrencestyrelsen, *Vækst i danske havne*, November 2005, <http://www.kfst.dk/~media/KFST/Publikationer/Dansk/2005/Vækst%20i%20danske%20havne%2028112005.pdf>, Annex 3, 1-2; see also Konkurrencestyrelsen, *Udvalgte konkurrenceanalyser*, Copenhagen, December 2005, <http://www.kfst.dk/~media/KFST/Publikationer/Dansk/2005/Udvalgte%20konkurrenceanalyser%2016122005%20analyse.pdf>, 73-74.

⁴⁶⁴ § 5 of the Aabenraa Agreement for 2010-2012.

674. Day labourers are also hired in the port of Esbjerg. Day labourers report to the dockers' employment bureau at either 7:00 am or 10:00 am. If there is work that day they are hired, and when the job is finished they go home. If there is no work the workers receive unemployment benefit. The day labourers in Esbjerg have a meeting place where they distribute the work. Everyone who is part of this group gets some work if they want, and in peak periods everybody has to work. Working hours are very flexible and include evenings and weekends. The group is becoming smaller and smaller because of the transition to permanent employment relationships and also a drop in demand for port labour⁴⁶⁵.

675. Other ports where local agreements regulate the daily hiring of workers at fixed times in the recruitment hall, dockworkers' house or other gathering places include Aarhus⁴⁶⁶, Horsens⁴⁶⁷, Nakskov (here, workers can also be hired by telephone)⁴⁶⁸, Randers⁴⁶⁹, Vejle⁴⁷⁰.

676. There are no longer day labourers in Copenhagen and Aalborg. These ports only employ permanent workers. But also in other ports, permanent workers are increasingly employed at terminals and in warehouses. Generally speaking, permanent employment is more common in larger ports and in ports with liner services. Permanent terminal workers tend to have more varied jobs and can be deployed in a flexible way according to the daily needs of the terminal operator. Operators of cranes and other equipment are in many cases also permanently employed⁴⁷¹. The Danish Ports Association confirms that there is a clear tendency towards more permanent employment.

677. At terminals operated by members of the Danish Car Ferry Operators' Association, workers are, as a rule, permanently employed. Additional workers may be employed on an

⁴⁶⁵ See Hansen, N. and Ourø Nielsen, H., "Denmark: Flexible forms of work: 'very atypical' contractual arrangements", 5 March 2010, <http://www.eurofound.europa.eu/ewco/studies/tn0812019s/dk0812019q.htm> (as commented upon by the Danish Port Operators); see further § 2 of the Esbjerg Agreement for 2012-2014.

⁴⁶⁶ Item A, § 1 of the Agreement for 2004-2007.

⁴⁶⁷ § 2 of the Agreement for 2012-2014.

⁴⁶⁸ § 3 of the Agreement for 2010-2012.

⁴⁶⁹ § 2 of the Agreement for 2012-2014.

⁴⁷⁰ § 2 of the Agreement for 2012-2014.

⁴⁷¹ See especially Transport- og Energiministeriet samt Søfartsstyrelsen og Konkurrencestyrelsen, *Vækst i danske havne*, November 2005, <http://www.kfst.dk/~media/KFST/Publikationer/Dansk/2005/Vaekst%20i%20danske%20havne%2028112005.pdf>, Annex 3, 1-2; see also Konkurrencestyrelsen, *Udvalgte konkurrenceanalyser*, Copenhagen, December 2005, <http://www.kfst.dk/~media/KFST/Publikationer/Dansk/2005/Udvalgte%20konkurrenceanalyser%2016122005%20analyse.pdf>, 73-74.

hourly basis. If they perform a sufficient number of tasks in the course of a three-month period and the need for their work persists, they must be permanently employed⁴⁷².

678. The Danish Port Operators report that occasional workers are often picked from 'telephone lists' maintained by individual employers and that it depends on local usages whether temporary agency workers may be hired. The trade union 3F denies that agency workers are used in port areas but added that large numbers of them are used in warehouses outside these areas.

679. Some local agreements set out the duties of the casual workers in terms of standards of care and professionalism and quality of work.

In Aabenraa, for example, workers must be sober, arrive at the workplace in a timely manner and exercise due care in the performance of their work and the use of port equipment⁴⁷³.

680. Unemployed permanent and pool workers enjoy unemployment allowance (*dagpenge*) if they are member of an Unemployment Fund (*a-kasse*). The allowance is financed partly by the Fund, partly by the Government and is only paid out for two consecutive years. However, if pool workers are temporarily employed, they only get a partial allowance (*supplerende dagpenge*) when they are not employed. If you are not a member of an Unemployment Fund, you can only claim the social security allowance (*kontanthjælp*) which is substantially lower than unemployment allowance – and only if you have no other financial means or property. Hence about 75 per cent of the total workforce in Denmark is a member of an Unemployment Fund.

- Facts and figures

681. Danish port authorities and operators were unable to provide detailed nation-wide figures on the number of employers and port workers. The official agency Statistics Denmark maintains no separate statistics on employment in the port sector⁴⁷⁴.

⁴⁷² § 2 of the Agreement for Terminal Workers of Danish Car Ferry Operators for 2010-2012.

⁴⁷³ § 8 of the Aabenraa Agreement for 2012-2014; compare § 4 of the Esbjerg Agreement; § 5 and 6 of the Horsens Agreement for 2012-2014; § 4 of the Nakskov Agreement for 2010-2012.

⁴⁷⁴ For 2011, Statistics Denmark mentions 23,765 workers employed at "Support activities for transportation" (Code 52000).

The Danish Working Environment Authority provided data based on NACE Code 522210 'Operation of harbours and piers'. The latter's scope does not coincide with the concept of port labour as defined in the present study, as it focuses on port authority functions rather than on cargo handling activities⁴⁷⁵. The Authority also informed us that, according to data maintained by Statistics Denmark on NACE Code 522400 'Cargo handling', there were 106 cargo handling companies in Denmark. The latter Code comprises non-port based cargo handlers as well as employment of administrative staff at ports⁴⁷⁶. Still according to Statistics Denmark, the total number of employers and employees in the cargo handling sector evolved as follows:

Table 20. Number of employers and employees in NACE Code 522400 'Cargo handling' in Denmark, 2007-2011 (source: Statistics Denmark / Working Environment Authority)

2007	2008	2009	2010	2011
941	768	805	747	1,053

⁴⁷⁵ Data collected under the NACE Code indicate that there were 77 workplaces in the sector in 2012, but the number of employers is probably lower. At these workplaces, in 2011 a total staff of 938 was employed (data below are for November, and figures for 2010 and 2011 are estimates).

Table 21. Number of workplaces and employees in NACE Code 'Operation of harbours and piers' in Denmark, 2007-2011 (source: Danish Working Environment Authority)

522210 Operation of harbours and piers	2007	2008	2009	2010	2011	2012
Number of workplaces / facilities	69	77	74	74	76	77
Number of employed	1,078	966	974	937	938	n.a.

The Authority explained these statistics as follows:

Statistics are based on the NACE code for the economic activity of the employer (trade). The trade 'Operation of harbours and piers' (NACE Rev. 2, Code 5222 - Danish subgroup 522210) is the basis for the following statistics. This means for instance that cargo handling taken care of by companies outside this trade is not included. It also means that other work activities than port work is included, because companies in the trade do perform these activities, e.g. clerks, administration etc. NACE Rev. 2 is applicable from 2007 and onwards.

It is not possible to do statistics on the job titles for the employed persons, because there is no specific ISCO (ISCO-88) code for port workers. The code '9330' covers Transport and storage workers no matter where the activity takes place.

Other sources indicate that in 2005, the 17 largest seaports directly employed some 950 people (Wihlborg, M. and Nevala, A.-M., *An exhaustive analysis of employment trends in all sectors related to sea or using sea resources. Country report – Denmark*, European Commission DG Fisheries and Maritime Affairs, 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/denmark_employment_trends_en.pdf, 14). A report by the Danish Maritime and Competition Authorities from 2005 mentions that there are nearly 1,000 port workers in Denmark (see Transport- og Energiministeriet samt Søfartsstyrelsen og Konkurrencestyrelsen, *Vækst i danske havne*, November 2005, http://www.kfst.dk/~media/KFST/Publikationer/Dansk/2005/Vaekst%20i%20danske%20havne%20281_12005.pdf, Annex 3, 6).

⁴⁷⁶ In addition, the Working Environment Authority confirmed the absence of an ISCO-88 code for port workers.

The Danish Port Operators estimate that there are more than 100 port employers in the country, and about 500 or 600 casual port workers, while the number of permanently employed terminal workers is much higher, but impossible to estimate (there may be 1,000 or 5,000). Danish Ports estimates the number of port authority staff at about 1,000, but only a minority can be considered port workers for the purpose of the present study.

Copenhagen Malmö Port informed us that it employs approximately 200 permanent blue collar workers and between 50 and 100 temporary workers in Copenhagen.

682. The majority of port workers in Denmark are represented by the national trade union National Union of Port and Terminal Workers (Landsklubben for Havne- og Terminalarbejdere) which is affiliated to the United Federation of Danish Workers aka 3F (Fagligt Fælles Forbund), which is the largest trade union at national level. Some workers belonging to a specific category such as mechanics are represented by other unions.

The trade union 3F claims that it is the only union which signed a collective agreement on port labour but that workers are allowed to join another union (KDF, Det faglige hus, ASE or others). Nearly all port workers are members of 3F. In the large ports, 100 per cent of port workers are 3F members. In small ports, some workers have not joined 3F, but even so 3F says it represents over 95 per cent of all port workers in Denmark. Danish Port Operators said that trade union density is declining, with younger staff joining alternative 'yellow' unions which provide legal advice yet do not conclude collective agreements.

9.4.4. Qualifications and training

- Regulatory set-up

683. The Common Agreement for the Transport and Logistics Sector regulates the right of every worker to continued training and to develop his or her personal skills and the duties of employers in this respect⁴⁷⁷.

Some local collective agreements contain further provisions on payment of workers attending training courses⁴⁷⁸. Danish Car Ferry terminal workers have a right and a duty to training that is tailored to the needs of the company and of the individual worker⁴⁷⁹. The Copenhagen City &

⁴⁷⁷ § 30 of the Common Agreement for the Transport and Logistics Sector for 2012-2014; see also Item 6 of Annex 6 and Annexes 12, 13 and 14 to the Agreement.

⁴⁷⁸ See, for example, § 18 of the Horsens Agreement for 2012-2014; see also the Aalborg Agreement for 2012-2014; see also the Aalborg Agreement for 2012-2014.

⁴⁷⁹ § 18 of the Agreement for Terminal Workers of Danish Car Ferry Operators for 2010-2012.

Port Development Company (as far as still relevant here) must develop training plans and programmes for its workers⁴⁸⁰. At some individual companies, a truck driver's certificate is needed for certain jobs⁴⁸¹.

684. For a number of jobs such as the operation of cranes, forklift trucks, stackers and telescope loaders and for work with hazardous substances and materials, specific certificates are required⁴⁸². The relevant regulations are not specific to the port sector.

- *Facts and figures*

685. In response to our questionnaire, the Danish Ports Association and the Danish Port Operators mentioned the availability of a varied offer of training programmes for port workers in Denmark, including:

- specialised training as part of a regular educational programme (secondary school);
- continued or advanced training after regular educational programme;
- induction courses for new entrants (voluntary);
- courses for the established port worker (voluntary);
- training in safety and first aid (unclear whether compulsory);
- specialist courses for certain categories of port workers, such as crane drivers, container equipment operators, ro-ro truck drivers, forklift operators, lashing and securing personnel, tallymen, signalmen and reefer technicians (all compulsory);
- training aimed at the availability of multi-skilled or all-round port workers (voluntary);
- retraining of injured and redundant port workers (voluntary).

686. In the light of the establishment of a joint Port Authority for Copenhagen and Malmö, a 2001 Report investigated the possibility of developing common training schemes for Danish and Swedish port workers in the Øresund Region⁴⁸³. Copenhagen Malmö Ports informed us that, today, common training activities are only organised occasionally.

⁴⁸⁰ See § 15 *et seq.* of the Copenhagen City & Port Development Company Agreement for 2012-2014.

⁴⁸¹ See, for example, item 1 of the Protocol for HH-Ferries attached to the Agreement for Terminal Workers of Danish Car Ferry Operators for 2010-2012.

⁴⁸² Bekendtgørelse om arbejdsmiljøfaglige uddannelser (BEK nr 1088 af 28/11/2011). For an earlier overview, see Styregruppen for projektet "Uddannelse af havnearbejdere i Øresundsregionen", *Uddannelse af havnearbejdere i Øresundsregionen. Rapport om muligheden for et fælles længerevarende uddannelsesforløb for beskæftigede havnearbejdere i Øresundsregionen*, September 2001, <http://www.fic.dk/dan/Materialer/Publikationer>, 30-31.

⁴⁸³ See Styregruppen for projektet "Uddannelse af havnearbejdere i Øresundsregionen", *Uddannelse af havnearbejdere i Øresundsregionen. Rapport om muligheden for et fælles længerevarende*

687. In 2011, two jointly managed educational institutions (AMU Nordjylland and EUC Nordvestsjælland) were certified to issue port worker's certificates to port workers, but also to prospective port workers. The training scheme is part of the Labour Market Training (Arbejdsmarkedsuddannelse, AMU) for adults who did not get proper vocational training or need retraining or new skills. The Transport Training Board (Transporterhvervets Uddannelser, TUR) is responsible for setting national standards and goals for all apprenticeship training for operative personnel of the transportation sector in Denmark, as well as for all labour market training for the same sector. Transport and logistics training and education, supervised by the Board, cover all kinds of training for operative personnel, including port, crane, lift truck and warehousing operations. The Government pays all training costs, and the company will receive wage compensation as well, when their employees are attending AMU training. Unemployed people can also attend AMU training. On average, 25 per cent of all participants are unemployed, but this does not apply to the port sector, where all current trainees are indeed employed.

The new port training programme combines theoretical classes with practical courses at port companies. The programme includes the driving of a forklift and the use of computer systems. The students learn how to act independently and to pay more attention to customer service, safety and security, and the environment. These courses are spread over 2.5 years, but may be shortened if the trainee proves past experience or training attended elsewhere. Holders of the certificate will receive a wage increase⁴⁸⁴. Workers have the right to attend the courses if this is compatible with the planning of work at their company. Employers may also oblige workers to participate in the programme.

In 2012, the first workers from the ports of Aalborg, Copenhagen and Esbjerg obtained the certificate.

uddannelsesforløb for beskæftigede havnearbejdere i Øresundsregionen, September 2001, <http://www.fic.dk/dan/Materialer/Publikationer>.

⁴⁸⁴ See <http://www.tur.dk/arbejdsmarkedsuddannelser/amu-kurser/lufthavn-og-havn/2795-havn-og-terminal.aspx> and http://www.uq.dk/Uddannelser/arbejdsmarkedsuddannelseramu/transporterhvervene/havn_og_terminal.aspx.

Figure 75. The first holders of an official port worker's certificate in Denmark, photographed in Aalborg in 2012 (source: 3F)



688. Maersk operates its own dedicated training centre at Svendborg, which has simulators and has been considered a world best practice⁴⁸⁵.

9.4.5. Health and safety

- Regulatory set-up

689. As we have mentioned⁴⁸⁶, port work is governed by the Working Environment Act. This Act is a framework Act, which lays down the general objectives and requirements in relation to the working environment. The Act aims at preventing accidents and diseases at the workplace and at protecting children and young persons on the labour market through special rules. The main

⁴⁸⁵ See <http://maersktraining.com/centres/maersk-training-svendborg> and Turnbull, P., *An international assessment of training in the port sector*, Geneva, International Labour Office, 2011, http://www.ilo.org/public/libdoc/ilo/2011/111B09_336_engl.pdf, 46.

⁴⁸⁶ See *supra*, para 664.

areas of the legislation are performance of the work, the design of the workplace, technical equipment, substances and materials, rest periods and young persons under the age of 18. It is the responsibility of the employer to ensure that the working conditions are fit for purpose and safe and sound in any way. The employer also has a variety of responsibilities, *inter alia* to ensure that the employees receive work instructions. The employees must participate in the co-operation on safety and health. Furthermore, they have an obligation to use the protective equipment provided by the employer⁴⁸⁷.

690. The Executive Order on Loading and Unloading of Ships of 18 May 1965 regulates matters such as the design of and access to the workplace, the obligation to employ a signalman if safety of work so requires (§ 11), the safe working load of hoisting equipment, stress tests, health and welfare measures, emergency and rescue equipment, the use of personal protective equipment and inspection and penalties.

691. The Regulations on Lifting Gear On Board Ships stipulate, *inter alia*, that all winch and crane operators and all signalmen must be 18 years of age. They reiterate that if safety so requires, one or more signalmen must be used (§ 19).

692. Occupational accidents in Denmark are notified to the Working Environment Authority (WEA) if the accident results in incapacity to work for one day or more after the day of the injury.

The rules on health and safety in port work are enforced by the WEA and the police, but other bodies may also see to it that health and safety rules are complied with (e.g. port authorities, trade unions, *etc.*).

The division of inspection competences is regulated by Circular No. 3057 of 29 September 1977 on Collaboration between the Danish Working Environment Authority and the Danish Maritime Authority on the Implementation of the Regulations concerning Loading and Unloading Ships, *etc.*

693. Some local agreements contain rules on health and safety as well, for example on the obligation of workers to wear personal protective equipment⁴⁸⁸ or on the responsibility of workers to unconditionally comply with applicable safety standards and regulations⁴⁸⁹.

⁴⁸⁷ See <http://arbejdstilsynet.dk/da/engelsk/regulations.aspx>

⁴⁸⁸ See, for example, § 8 of the Aabenraa Agreement for 2010-2012; § 3 and 17 of the Horsens Agreement for 2012-2014.

More generally, the National Agreement obliges employers to organise work so as not to expose workers to illness or attrition. In case of illness, workers must be supported or be assigned other jobs. Flexibility should ensure employment of older workers⁴⁹⁰.

694. As in other countries, port authorities or terminal operators issue their own safety rules, guidelines and leaflets, some of which pay specific attention to the presence of workers supplied by external companies and the compulsory use of personal protective equipment. This is the case, for example, in Aarhus, where companies must sign a form in which they state that they are aware of applicable safety procedures and undertake to properly inform all their employees and subcontractors⁴⁹¹.

- Facts and figures

695. First of all, the Danish Working Environment Authority provided us with statistics on occupational accidents and diseases based on NACE Code 522210 'Operation of harbours and piers'. Again, caution is needed, however, because the NACE Code does not coincide with the definition of port labour in the present study⁴⁹² and also because, despite clear legal duties to report all accidents resulting in incapacity to work for 1 day or more, approximately 50 per cent of accidents at work remain unreported in Denmark. The Working Environment Authority specified further that it has no knowledge of near-accidents.

Table 22. Type of injuries at work in NACE Code 522210 'Operation of harbours and piers' in Denmark, 2007-2011 (source: Danish Working Environment Authority)

Type of injury	2007	2008	2009	2010	2011
Bone fractures	5	3	2	3	5
Dislocations, sprains and strains	21	22	17	19	15
Wounds	4	5	1	6	3
Superficial injuries	1	3	2	4	1
Poisonings and infections	1				1
Other specified injuries not included above	5	1	6	5	5
Total	37	34	28	37	30

⁴⁸⁹ Aalborg Agreement for 2012-2014.

⁴⁹⁰ See Annexes 8 and 9 to the Common Agreement for the Transport and Logistics Sector for 2012-2014.

⁴⁹¹ See http://www.aarhushavn.dk/en/regulations_and_security/security_for_external_workers/.

⁴⁹² See *supra*, para 235.

Table 23. Mode of injuries at work in NACE Code 522210 'Operation of harbours and piers' in Denmark, 2007-2011 (source: Danish Working Environment Authority)

Mode of injury ⁴⁹³	2007	2008	2009	2010	2011
30 Horizontal or vertical impact with or against a stationary object (the victim is in motion) - falls	11	11	11	15	14
40 Struck by object in motion, collision with	5	7	2	5	4
50 Contact with sharp, pointed, rough, coarse Material Agent	6		1	1	1
60 Trapped, crushed, etc.	3	2	2	6	4
70 Physical or mental stress	9	14	11	7	3
80 Bite, kick, etc. (animal or human)	1				
99 Other Contacts – Modes of Injury not listed in above	2		1	3	3
Total	37	34	28	37	30

The Working Environment Authority added that in the reference period no fatalities occurred.

Table 24. Number of diseases at work in NACE Code 522210 'Operation of harbours and piers' in Denmark, 2007-2010 (source: Danish Working Environment Authority⁴⁹⁴)

Category of disease	2007	2008	2009	2010
Muscular skeletal diseases	5	6		5
Hearing impairment	2	2	3	
Psychosocial diseases		1	1	
Airway diseases	1	1		
Nervous system diseases	1		1	
Other diagnoses		2		
Total: 522210 Operation of harbours and piers	9	12	5	5

⁴⁹³ The mode of injury is a description of the way in which the person got injured as a result of the accident and is not necessarily synonymous with the cause of the accident.

⁴⁹⁴ The Working Environment Authority explained that physicians and dentists are obliged to report suspected and confirmed cases of occupational diseases/work related diseases. The figures for cases of work related diseases are compiled according to the registration year, *i.e.*, the year in which they were reported. The table shows the number of reported cases of work-related diseases in Operation of harbours and piers in the period 2007-2010, broken down by category of main diagnosis. The overall extent of under-reporting of work related diseases is not known, but studies indicate that it is considerable.

Furthermore, the Working Environment Authority provided statistics on NACE Code 522400 'Cargo handling'. As already explained⁴⁹⁵, this Code covers all transport modes (not only cargo handling at ports) as well as administrative staff.

Table 25. Type of injuries at work in NACE Code 522400 'Cargo handling' in Denmark, 2007-2011 (source: Danish Working Environment Authority)

Type of injury	2007	2008	2009	2010	2011
Tramatic amputations			1		
Bone fractures	5	8	6	4	10
Dislocations, sprains and strains	25	20	26	24	28
Wounds	8	4	2	3	3
Superficial injuries	3	4	2		6
Poisonings and infections	1		1		
Other specified injuries not included above	10	9	5	4	10
Total	52	45	43	35	57

Table 26. Mode of injuries at work in NACE Code 522400 'Cargo handling' in Denmark, 2007-2011 (source: Danish Working Environment Authority)

Mode of injury ⁴⁹⁶	2007	2008	2009	2010	2011
10 Contact with electrical voltage, temperature, hazardous substances	1				
30 Horizontal or vertical impact with or against a stationary object (the victim is in motion) - falls	11	19	10	10	17
40 Struck by object in motion, collision with	17	14	7	7	12
50 Contact with sharp, pointed, rough, coarse Material Agent	1		3		1
60 Trapped, crushed, etc.	7	3	7	5	10
70 Physical or mental stress	14	9	14	12	12
99 Other Contacts – Modes of Injury not listed in above	1		2	1	5
Total	52	45	43	35	57

There were no reported fatalities in 'Cargo handling' in the reference period.

⁴⁹⁵ See *supra*, para 235.

⁴⁹⁶ The mode of injury is a description of the way in which the person got injured as a result of the accident and is not necessarily synonymous with the cause of the accident.

The table below indicates that the incidence rate of reportable accidents (frequency) is higher in the trade 'Cargo handling' than for NACE Code 'Operation of harbours and piers' and for the Danish labour force as such. It seems fair to assume that the same applies to cargo handling in ports.

Table 27. Incidence rate⁴⁹⁷ of occupational accidents in NACE Code 522210 'Operation of harbours and piers' in Denmark and all other trades, 2007-2011 (source: Danish Working Environment Authority)

Incidence rates	2007	2008	2009	2010	2011
522210 Operation of harbours and piers	343	352	287	395	320
522400 Cargo handling	553	586	534	469	541
All trades	173	173	152	165	160

The Danish Port Operators confirmed that over the past decade few, if any, fatal accidents occurred in Danish ports.

In its Report on the implementation of ILO Convention No. 152 of 2012⁴⁹⁸, Denmark confirmed that it maintains no statistics which unambiguously identify dock work. It also pointed out that NACE Code 63.11 'Cargo Handling' is of no relevance either since it comprises all loading and unloading operations irrespective of the means of transport, including aeroplanbes, trains, lorries, etc.

9.4.6. Policy and legal issues

- Restrictions on employment

696. Responding to the port labour questionnaire, the Danish Ports Association and the Danish Port Operators concurred that service providers from other EU countries are welcome to establish themselves and to provide services in Danish ports. Employers do not need to be licensed and do not have to join an employers' association; they are moreover free to choose their own personnel (subject to compliance with rules on education, health and safety, etc.).

⁴⁹⁷ The incidence rate is calculated as the number of reported accidents per 10,000 employed.

⁴⁹⁸ Report for the period 1 June 2007 to 31 May 2012 made by the Government of Denmark in accordance with article 22 of the Constitution of The International Labour Organisation on the measures taken to give effect to the provisions of the Occupational Safety And Health (Dock Work) Convention, 1979, J.nr. 20120214106, 6 and 8.

697. In this respect, we should first of all recall that in 2005 the Danish Competition Council challenged the cargo handling monopoly of CMP in the port of Copenhagen. This monopoly is based on the Copenhagen Freeport Act, which contains an exclusive right for CMP to perform several types of port services in Copenhagen Free Port⁴⁹⁹. CMP does thus have a legal monopoly, which impedes other companies from offering these types of services in the Free Port area. The analysis by the Competition Council showed that the exclusive right affects other competitors' possibilities for offering port services, especially concerning container handling and services for cruise liners. The exclusive right was thus particularly damaging for competition in these markets. Furthermore, the Competition Council found that the lack of competitive pressure following from the exclusive right in the Copenhagen Freeport Act caused inefficiency and high prices to the detriment of the users of the port. The Competition Council recommended to the Minister of Transport and Energy that the relevant sections in the Copenhagen Free Port Act be repealed.

In 2007, the Minister of Transport and Energy responded to the recommendation of the Council. He announced that the geographical area of Copenhagen Freeport would be reduced and that, from 2008, access on free and equal terms would be secured for competitors to the Port of Copenhagen outside Copenhagen Freeport. The Minister informed the Council that from the 2008 season, all cruise liners could freely choose their baggage handler in the Port of Copenhagen. Regarding container handling, the Minister stressed that, to a large extent, this service would continue to be provided in the Freeport; however, other operators would have the opportunity to rent areas in the port for commercial purposes. The Competition Council appreciated the reduction of the area of Copenhagen Free Port and the initiative to open the markets outside Copenhagen Free Port to a substantial extent. It stated that these measures would eliminate the anti-competitive provisions in the Copenhagen Free Port Act⁵⁰⁰.

As a consequence, the relevant provisions of the Copenhagen Freeport Act remained unaltered. It seems, however, that not all the objections of the Competition Authority were met, for example in relation to self-handling⁵⁰¹.

Copenhagen Malmö Port informed us that, today, its monopoly is a non-issue because container volumes in the port are very limited and because the monopoly does not extend to areas outside the Freeport area, so that the company would not in a position to hinder market access for competitors anyway. However, CMP also referred to an old agreement with the union which reserves all work for union members, in a way similar to the Swedish Stevedoring

⁴⁹⁹ See *supra*, paras 663 and 670.

⁵⁰⁰ See "Anti-competitive regulation on Copenhagen Free Port", <http://en.kfst.dk/Indhold-KFST/English/Decisions/20050622-Anti-competitive-regulation-on-Copenhagen-Free-Port?tc=70E5C9A3B49A4B1787F747FED8BEF30A>; "Copenhagen Free Port", <http://en.kfst.dk/Indhold-KFST/English/Decisions/20070620-Copenhagen-Free-Port?tc=E54958826ADF4DA190FADFA134162E12>; see the detailed analysis in "Lov om Københavns frihavn", <http://www.kfst.dk/Afgoerelsesdatabase/Konkurrenceomraadet/Afgoerelser/2005/Lov-om-K%C3%B8benhavns-frihavn?tc=E538038EB1E04A96B9964BE4C0F85F46>.

⁵⁰¹ See *infra*, para 713.

Monopoly. According to our informant, this closed shop arrangement would also apply in the event of market entry by a competitor. CMP also maintains an exclusive right to handle cruise vessels calling at the Freeport. At other berths, third handlers are free to offer their services.

698. Replying to the questionnaire, the Danish Ports Association further stated that restrictions on employment may occur locally, but should not be identified as a general tendency or a major competitive issue.

699. The Danish Port Operators identify the monopoly of pools, which results in higher wages, as a major policy issue which should be addressed at local or national level.

700. With regard to the port of Esbjerg, the shipping company DFDS mentions a high labour cost and reports the following restrictions on employment:

- prohibition on employment of non-nationals or workers employed by employers from other EU or non-EU countries;
- exclusive rights for certain categories of workers;
- mandatory composition of gangs;
- exclusive rights of trade union members (closed shop).

The respondent considers these rules and practices major competitive disadvantages.

701. Browsing through a number of local collective agreements for Danish ports, we were able to identify a number of overt closed and/or preferential shop provisions which are, at least in some ports, complemented by a mandatory registration of all port workers and preferential recruitment rights for members of employers' associations. We should also mention that, whereas almost all Danish port workers are unionised, trade union density in Denmark as a whole stands at about 67 per cent⁵⁰².

⁵⁰² See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

702. The National Agreement stipulates that where several ships call simultaneously at the port, the workers shall give priority to ships handled by members of the local employers' association⁵⁰³.

703. The Aabenraa Agreement expressly provides that the employer must appoint a foreman who is responsible for composing and leading gangs and that this foreman must be a member of trade union 3F Aabenraa (§ 7). Furthermore, it provides that the Board of 3F Aabenraa can request information on the membership of the local employers' association. Loading and unloading work on behalf of employers in Aabenraa who have not joined the local employers' association⁵⁰⁴ shall not be performed on more favourable terms than under the collective agreement. Next, no worker may be engaged on terms that deviate from those of the collective agreement. Finally, for port, storage and warehousing work members of 3F Aabenraa shall enjoy priority of employment; to the extent that a sufficient number of members is available, 3F undertakes to ensure that these also accept warehousing work⁵⁰⁵ (§ 10).

704. In Aarhus, the Agreement for 2004-2007 provided that workers be hired in the employers' recruitment hall (§ 1). Employers have the right to hire and dismiss workers, but members of the local branch of trade union 3F shall have priority, and the union shall check whether candidates are effectively unionised (§ 4).

705. In Bornholm, priority of employment is granted to those members of the local branch of 3F who have performed the greatest number of working hours for members of the employers' association. Should there still be a shortage, this may be filled by contacting union members, the union or the municipal labour agency (§ 3 of the Bornholm Agreement for 2010-2012). If no union members are available, the employer may choose either to wait until union members become available or commence work using its own staff who must then be employed at the same conditions as port workers and under supervision of the union. The employers shall strive to distribute the work evenly among the union members (§ 8).

⁵⁰³ § 4(4) of the Special Provisions for Port Workers annexed to the Common National Agreement for the Transport and Logistics Sector for 2012-2014.

⁵⁰⁴ Trade union 3F has no knowledge of the actual existence of non-members.

⁵⁰⁵ In the Danish original, the latter rule reads:

Til havne-, lager- og pakhusarbejde antages fortrinsvis medlemmer af 3F Aabenraa, der forpligter sig til, i det omfang tilstrækkeligt mange medlemmer er disponible, at sørge for, at disse også påtager sig lagerarbejde.

706. Employers at Esbjerg have the right to recruit workers from trade union 3F. Once hired, the union member is obliged to perform the work (§ 2 of the Agreement for 2012-2014). Weighers and measurers must always be members of the local branch of 3F (§ 7).

707. In Horsens, port workers are obliged to accept all jobs and to cooperate with occasional non-unionised workers. However, the employer shall not hire non-unionised workers as long as union members are available. If a gang is incomplete, the employer may order the workers to commence operations on condition that the latter receive full pay for the whole gang (§ 3 of the Horsens Agreement for 2012-2014). The workers shall not work for employers who have not joined the local employers' association at lower rates than agreed under the collective agreement (§ 11).

708. The Agreement for Nakskov contains an elaborate provision on the 'Priority Right' (*Fortrinsret*). First of all, where both members and non-members of the local employers' association need workers and the number of available workers may be insufficient, workers must give priority to the member employer. Member employers undertake to prefer to employ members of the local branch of trade union 3F, and shall seek to distribute work among the regular workers (*faste havnearbejdere*). Other port work that cannot be carried out by permanent workers or which is of a seasonal nature may be performed by temporary workers paid through stevedores, but conditions may not be below these of the collective agreement for port workers (§ 10).

709. Foreign fishing vessels arriving at Skagen must be unloaded by members of the local union (§ 1 of the Skagen Agreement for 2012-2014, which confirms an agreement of 1987). The parties to the collective agreement shall seek to ensure that all arriving fishing vessels use workers who usually perform unloading work at the port (§ 20). If no labour is available, the skipper may hire workers for the urgent handling of his cargo, but at the next call and for the sorting of fish he remains under an obligation to give priority to unionised workers (§ 21).

710. In Vejle, the collective agreement obliges employers to grant priority of employment for members of trade union Klub H. However, this priority only applies on condition that the members of this union do not decline employment offers (§ 1 of the Vejle Agreement for 2010-2014). Members of Klub H shall control whether workers are members of the union (§ 3). If a gang is incomplete, the workers shall commence work and the union shall seek additional workforce outside the union and cooperate with them (§ 4). Foremen are free not to join a union (§ 7). The Board of Klub H may require disclosure of the membership of the employers'

association, and the Board of the latter may request the union to state the approximate number of port workers available for port operations (§ 9).

711. A report published by the Danish Competition Authority in 2005 mentions that manning scales vary from port to port, that in some of them, the size of the gangs is considered disproportional to the type of activity, and that there is a lack of flexibility. In other ports, manning rules were not seen as a problem⁵⁰⁶.

Responding to our questionnaire, the Danish Port Operators confirmed the existence of restrictions resulting from mandatory composition of gangs and overmanning. Shipping line DFDS endorsed this analysis for Esbjerg.

Most local collective agreements indeed set out mandatory manning scales which are in some cases combined with tariffs of hourly or piecework rates or bonuses (see, for example, § 12 of the Aabenraa Agreement for 2010-2012; the Aalborg Agreement for 2012-2014; item C of the Aarhus Agreement for 2004-2007; § 5 and 6 of the Esbjerg Agreement for 2012-2014; § 16 of the Horsens Agreement for 2012-2014; § 9 of the Nakskov Agreement for 2010-2012; § 11 *et seq.* of the Randers Agreement for 2012-2014; § 10 of the Vejle Agreement for 2012-2014).

In Aabenraa, the – mandatorily unionised – foreman has a right of co-decision on manning levels (§ 12 of the Aabenraa Agreement for 2010-2012). In Copenhagen (as far as still relevant today), two workers are required to operate a container crane, one of whom is on standby and maintains radio contact with the operator for repairs or other technical assistance (§ 10(2) of the Copenhagen City & Port Development Company Agreement for 2012-2014).

The Horsens Agreement reminds the parties that the employer decides on the number of gangs (§ 8 of the Horsens Agreement for 2012-2014). In Nakskov, it is agreed that the employer decides on the number of workers needed and on the work that they have to carry out; workers may be switched between quay and on-board jobs (§ 4 of the Agreement for 2010-2012).

712. As regards self-handling, there are signs of considerable differences between ports and, moreover, of legal uncertainty and discriminatory practices which in some cases may distort competition⁵⁰⁷.

First of all, the National Agreement stipulates that for all work on board ships of over 160 dwt (400 dwt for timber ships), port workers must be hired⁵⁰⁸.

⁵⁰⁶ Transport- og Energiministeriet samt Søfartsstyrelsen og Konkurrencestyrelsen, *Vækst i danske havne*, November 2005, <http://www.kfst.dk/~media/KFST/Publikationer/Dansk/2005/Vaekst%20i%20danske%20havne%2028112005.pdf>, Annex 3, 2.

⁵⁰⁷ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) mentions no ban on longshore work by crewmembers aboard U.S. vessels in Danish ports.

Where work is performed on board and the ship's gear is used, a winchman must be hired, who must be paid as a member of the gang. Should the ship refuse to hire a winchman and let its own crew operate the ship's gear, the tariffs for port work, both on land and on board, shall be increased by 10 per cent. For all work on board ships of another nationality than Danish, Norwegian and Swedish, a local winchman must be hired (it was our assumption that the latter distinction is based on language skills and the need for fluent communication between ship and shore, and this was considered a fair guess by both Danish Port Operators and 3F. But the former also commented that, today, as port workers also understand English, the rule may sound a bit odd in most places). In cases where a local winchman must be hired but no local worker is available to operate the ship's gear, the ship is entitled to use its own crew to perform this work, without any additional payment of any kind. However, these rules on the use of winchmen shall not apply to ships for which no port workers must be hired and in special cases where other rules or usages apply⁵⁰⁹.

Some local agreements contain specific provisions imposing the use of port workers for the loading and unloading of ro-ro ships⁵¹⁰. It also occurs that the local agreement expressly states that where crew members assist in cargo handling operations, the gang of port workers shall be reduced proportionally⁵¹¹. 3F commented that the latter can only take place if no specific mandatory manning scales apply to the handling of the cargo concerned.

The Agreement for the Danish Car Ferry terminal workers contains an elaborate provision on social dumping. It obliges members of the Association of Danish Car Ferry Operators to grant the benefits of the collective agreement to their foreign workers. However, this provision is not applicable in case temporary workers are hired. Foreign companies joining the Association must abide by the rules of the Agreement. The provision sets out procedural rules to prevent labour stoppages and solidarity strikes⁵¹². A company-specific provision for Scandlines Denmark, which was agreed to by the Danish Seamen's Union, states that terminal workers may assist in stowing cars on board, but this is only allowed during peak seasons and in peak periods. This practice must moreover not lead to attempts to reduce ship's crews⁵¹³.

713. In 2005, the Danish Competition Council stated that the cargo handling monopoly of CMP, which is enshrined in the Copenhagen Freeport Act⁵¹⁴, prevents self-handling by ship operators, despite the fact that the latter would result in a more efficient use of ship's crews and a better

⁵⁰⁸ § 7 of the Special Provisions for Port Workers annexed to the Common National Agreement for the Transport and Logistics Sector for 2012-2014.

⁵⁰⁹ See § 8 of the Special Provisions for Port Workers annexed to the Common National Agreement for the Transport and Logistics Sector for 2012-2014.

⁵¹⁰ See, for example, item C of the Agreement for Aarhus for 2004-2007 which imposes the use of port workers at the handling of ro-ro ships in the West Norway trade and the payment of 'blind men' (*blinde mænd*) who do not perform any work; however, the latter rule is set to disappear once a new agreement is concluded.

⁵¹¹ § 4 of the Nakskov Agreement for 2010-2014.

⁵¹² § 14 of the Agreement for Terminal Workers of Danish Car Ferry Operators for 2010-2012.

⁵¹³ Item 3(1) of the Protocol for Scandlines Denmark.

⁵¹⁴ See *supra*, paras 670 and 697.

overall use of resources⁵¹⁵. As we have explained, the Competition Council recommended the abolition of the legal monopoly of CMP. Up to now, the relevant legal provisions have remained unaltered.

714. In a most remarkable judgment of 2011, the Danish Labour Court declared a union strike and blockade in the port of Hirtshals illegal⁵¹⁶. The union 3F had opposed the use of the ship's crew for lashing and securing work on board ro-pax vessels operated by Faroese Smyril Line, who had started a new weekly ferry service between the Danish port, Torshavn and Iceland. For loading and unloading work proper, the charterer of the ship relied on the permanent workers of Fjord Line, an existing port user in Hirtshals.

The ship operator complained that it should be allowed to exercise full authority to organise on-board work and that the ship's master had sole responsibility for safe loading. He also asserted that in all Nordic ports, lashing and securing is left to the crew, with the sole exception of Esbjerg, where local dockers must be hired; however, the latter port cannot be compared to Hirtshals which is much closer to the sea; furthermore, unlike the dockers, the crew were trained to perform lashing and securing work. The ship owner could not understand why Color Line and Fjord Line, two existing port users in Hirtshals, were allowed to use their own crews and why only Smyril Line should be forced to rely on dockers. The approach taken by the union resulted in an illegal discrimination. The charterer added that no port workers must be hired in the other ports on the route, and that lashing on local ferries in the Faroe Islands is ensured by the crew as well. The plaintiff's lawyer argued that it is customary in Hirtshals that lashing and securing work on ro-ro ships is not performed by port workers and that forcing Smyril Line, as the only operator, to use port workers would amount to an unacceptable and anti-competitive discrimination. The strike moreover encroached upon the managerial authority of the employer and was disproportional.

Before Court, a union representative retorted that the exemption for the two existing shipping lines using Hirtshals rested on a local unwritten agreement and was moreover justified historically, because these lines had been operating from the port for 90 and 60 years respectively. Furthermore, the exception only applied to routes between Denmark and Norway. If Fjord Line started up a new service to Sweden, for example, then the situation would be different. The union representative denied that ship's crews receive specific training for lashing and securing work. The union also stated that lashing and securing is a natural part of loading operations, that it is fully covered by the provision of the National Agreement on the compulsory use of port workers for inboard work⁵¹⁷ and that exemptions are only possible on the basis of local usages or customs.

⁵¹⁵ "Lov om Københavns frihavn", <http://www.kfst.dk/Afgoerelsesdatabase/Konkurrenceomraadet/Afgoerelser/2005/Lov-om-K%C3%B8benhavn-frihavn?tc=E538038EB1E04A96B9964BE4C0F85F46>, para 62.

⁵¹⁶ Labour Court, 27 October 2011, AR2011.0351, Smyril Line P/F vs. Landsorganisation i Danmark for Fagligt Fælles Forbund, Transportgruppen.

⁵¹⁷ § 7 of the Agreement, mentioned above.

Next, witnesses explained that in one terminal at Aalborg, port workers are also used to lash and secure cargoes on board ro-ro ships. In Aarhus, one exception applies under which lashing can be done by the crew. In Fredericia, all lashing on board ro-ro ships is carried out by sailors. The HR manager of Fjord Line stated that there are no two ports in Denmark where the rules on lashing are the same, and the situation may even vary from ship to ship. He added that lashing does not require long training, and that the port workers of Hirtshals would certainly be able to acquire the necessary skills.

The Court reasoned that it was unnecessary to rule on the interpretation of the relevant provision on inboard work of the National Agreement. It noted that in Hirtshals, lashing and securing on board ships of Fjord Line and Color Line was not carried out by port workers (neither permanent workers, nor casual workers). As a consequence, lashing and securing, at least on board ro-ro ships, is not considered port work reserved to port workers. Furthermore, the operations of lashing and securing are in their entirety carried out on board the ship and are of great importance for the ship's seaworthiness. The ship's master bears the ultimate responsibility that this work be carried out safely. Against this background, the Court decided that Smyril Line was entitled to oppose the demands of the union and that the industrial action undertaken by the latter was illegal.

In interviews, a manager of Smyril Line and the trade union 3F confirmed that, today, lashing is still performed by the crew and that this has not given rise to any further industrial action. Smyril Line explained that it had moved to Hirtshals because in other ports such as Hanstholm and Esbjerg, where it called previously, the requirement to hire dockers for lashing work created a tremendous extra cost. Our interviewee confirmed its satisfaction with the hiring of permanent port workers from Fjord Line for other port work because with 1 or 2 calls a week, employing permanent workers of its own would be unsustainable.

The Danish Car Ferry Association informed us that, if the collective bargaining agreement for port workers entered by the port or the local handling companies applies to lashing work, the port may require the port workers to carry out such work. Such a provision does however not imply that the dockers are entitled, or have any exclusivity, to carry out that work. According to the Association, the present state of the law is that local tradition rather than common sense decides the boundaries of what is work that is performed by port workers and work performed by ship's crew, making it difficult for some ports to attract new customers or to modernise their operations.

715. The Danish Ports Association and the Danish Port Operators informed us that there are no fundamental obstacles to temporary transfers of workers between employers or to other ports.

Some local agreements regulate the performance of port work in other ports. Port workers from Nakskov working in other ports shall be paid at the Nakskov rates⁵¹⁸. Danish Port Operators

⁵¹⁸ § 11 of the Agreement for 2010-2012.

commented that the latter rule is impossible to enforce and that it should be read as a declaration of intent rather than as a legal rule.

We have not studied general Danish labour law on the assignment and hiring out of workers.

716. According to Danish Ports Association, it is permitted to employ temporary port workers via job recruitment or employment agencies. The Danish Port Operators specify that temporary agency workers can only be employed where the pools allow it⁵¹⁹.

The National Agreement for 2012-2014 states the parties are awaiting the legislative implementation of the Temporary Work Directive and also confirm that the Agreement is compatible with Fixed Term Work Directive 99/70/EC⁵²⁰. Danish Port Operators and the trade union 3F both reported that, by 1 September 2012, no further steps had been taken.

717. The Danish Port Operators state that rules on employment are properly enforced. In this respect, the Danish Ports Association highlights the importance of negotiations between employers and unions.

- Restrictive working practices

718. The Danish Ports Association mentions the following restrictive working practices: limited working days and hours; inadequate duration of shifts; late starts, early knocking off; unjustified interruptions of work and breaks. The Danish Port Operators mention inadequate durations of shifts and overmanning. However, neither of these professional organisations regards these issues as major competitive obstacles for the sector in general. Danish Port Operators added, however, that these practices may cause huge problems for individual companies.

719. Certain rules of collective agreements seem to reflect the existence – at least in the past – of certain restrictive working practices.

⁵¹⁹ See already *supra*, para 678.

⁵²⁰ Annexes 20 and 16 to the Common Agreement for the Transport and Logistics Sector for 2012-2014.

The National Agreement obliges workers to continue their work if a gang is or becomes incomplete, but they are entitled to full payment for the whole gang. In the event of a shortage of workers to carry on with all tasks, the employer may order the workers to continue work at one hatch⁵²¹. It also stresses the sole authority of the employer to decide on interruptions of the work due to weather conditions⁵²².

The National Agreement obliges the parties to negotiate on new conditions of work if new cargo types or mechanical equipment are introduced⁵²³.

The Aabenraa Agreement expressly confirms that the employer has the right to introduce new mechanical equipment for the saving of labour or the protection of cargoes⁵²⁴. In such a case, the Agreement for warehousing in Aarhus obliges the employer to negotiate on an adaptation of pay rates⁵²⁵. In Skagen, the introduction of new working methods must be the subject of consultations⁵²⁶. Upon the introduction of new cargoes or mechanical equipment in the port of Bornholm, the parties shall negotiate on the necessary adaptations (such as a surcharge). Adaptations of the number of workers are also a matter for negotiations⁵²⁷.

The Aarhus Agreement for 2004-2007 insisted that working times must be complied with and that additional breaks beyond its provisions cannot be tolerated (§ 2(4)). Also, work commenced must be finished (§ 5).

In Horsens, employers have expressly reserved the right to move workers to another job once their initial task is completed⁵²⁸, and workers hired at an hourly rate or for piece work may not leave work until they have finished their job⁵²⁹.

720. Another characteristic rule is that the employers' association and the union agree to regulate nothing beyond the terms of the collective agreement than on the basis of a common understanding⁵³⁰. Some agreements also insist that workers may not be employed on conditions that differ from those set out in its provisions⁵³¹.

⁵²¹ § 4(2) and (3) of the Special Provisions for Port Workers annexed to the Common National Agreement for the Transport and Logistics Sector for 2012-2014.

⁵²² § 5(2) (§ 4(4) of the Special Provisions for Port Workers annexed to the Common National Agreement for the Transport and Logistics Sector for 2012-2014.

⁵²³ § 10 of the Special Provisions for Port Workers annexed to the Common National Agreement for the Transport and Logistics Sector for 2012-2014.

⁵²⁴ See, for example, § 8 of the Aabenraa Agreement for 2010-2012.

⁵²⁵ § 4 of the Aarhus Warehousing Agreement for 2012-2014.

⁵²⁶ § 17 of the Skagen Agreement for 2012-2014.

⁵²⁷ § 11 of the Bornholm Agreement for 2010-2012.

⁵²⁸ See § 3 of the Horsens Agreement for 2012-2014.

⁵²⁹ § 4 of the Horsens Agreement for 2012-2014; compare § 2 of the Bornholm Agreement for 2010-2012; § 5 of the Nakskov Agreement for 2010-2012.

⁵³⁰ See, for example, § 11 of the Aabenraa Agreement for 2012-2014; § 8 of the Vejle Agreement for 2012-2014.

⁵³¹ § 5 of the Aarhus Agreement for 2004-2007.

- *Qualification and training issues*

721. In 2005, several observers suggested that employers are more motivated to invest in training for their permanent workers than for casual pool workers. As a result, a State-subsidized VET system remained largely unused and the competence gap between both categories of workers threatened to widen⁵³². Danish Port Operators commented that it is too early to say whether this problem will be solved through the new AMU training scheme described above. The trade union 3F pointed out that, to address this issue, the current National Agreement (§ 13) gives casual workers the right to follow two weeks of education, paid by the employers.

- *Health and safety issues*

722. The Danish Working Environment Authority, the Danish Ports Association and the Danish Port Operators all agree that rules on health and safety of port workers are satisfactory and properly enforced.

9.4.7. Appraisals and outlook

723. The Danish Ports Association is of the opinion that the current port labour regime offers sufficient legal certainty. It considers the current relationship between port employers and port workers and their respective organisation satisfactory. However, the Association feels that the current port labour regime has a direct negative impact on the competitive position of the Danish ports, because collective bargaining results in more expensive port services. The Association concludes that “a market based solution for the industry” is needed and that this could be achieved through agreements between the social partners.

⁵³² See Muller, U., "Globalization alongside life long learning", <http://www.iptc-online.net/18thPapers/default.htm>; Transport- og Energiministeriet samt Søfartsstyrelsen og Konkurrencestyrelsen, *Vækst i danske havne*, November 2005, <http://www.kfst.dk/~media/KFST/Publikationer/Dansk/2005/Vaekst%20i%20danske%20havne%2028112005.pdf>, Annex 3, 3.

724. The Danish Port Operators consider the current port labour regime satisfactory and confirm that it offers sufficient legal certainty. The relationship between port employers and port workers and their respective organisations is generally described as good. The current port labour regime is reported to have both a positive and a negative impact. In this regard, reference is made to the existing pool monopolies which are believed to result in higher wages (negative impact) and to the flexibility of the systems which means lower costs (positive impact).

725. The trade union 3F believes that Danmark should ratify ILO Convention No. 137 and that the health and safety record should be improved.

726. Asked for an appraisal of the current port labour system, the Danish Shipowners' Association stated that the regime is different from port to port and that the standard agreements between shipowners and stevedore companies are to some extent old-fashioned but in general acceptable.

727. With regard to the port of Esbjerg, the shipping company DFDS confirms that the current port labour regime is satisfactory and that it offers sufficient legal certainty. The relationship between port employers and port workers and their respective organisations is considered good, because partners meet on a regular basis to discuss relevant issues. For DFDS, the regime of port labour at Esbjerg has no direct impact on the competitive position of the port. Yet, as we have seen⁵³³, the company also identified a number of serious restrictions which allegedly do have a negative competitive effect. For DFDS, the labour regime at Immingham in the UK is a best practice.

728. For the Danish Port Operators, there is no need or scope for EU action in the field of port labour. It specifies that the matter is best left to the social partners.

729. The trade union 3F thinks that the EU should "absolutely not" take any further initiative because it will only amount to further liberalisation which the union strongly opposes.

⁵³³ See *supra*, paras 700 and 711.

730. The Danish Shipowners' Association stated that they very much welcome the new port policy initiative of the European Commission but fail to see what kind of specific action from the EU that could be relevant with regard to port labour in Denmark.

731. Ship owner DFDS believes that there is a need for EU action directed against the exclusive rights of port workers.

9.4.8. Developments between January 2013 and September 2014

731A. Danish stakeholders reported no major recent developments. Under the new National Collective Agreement, the social partners will investigate the impact of the extensive automation of ports on skill requirements. Interestingly, the Danish Port Operators used the present study to publish an informative pamphlet on the organisation of port labour in their country for foreign port customers⁵³⁴.

⁵³⁴ Danske Havnevirksomheder / Danish Port Operators, *A short description of the Danish port labour system*, Copenhagen, 2014, 8 p.

9.4.9. Synopsis

732.		
SYNOPSIS OF PORT LABOUR IN DENMARK⁵³⁵		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 120 seaports, 2 main ports • Mixed management model • 87,8m tonnes • 15th in the EU for containers • 61th in the world for containers • More than 100 employers • 500-600 casual port workers • 1,500-5,000 permanent port workers • Trade union density: 95-100% 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • No Party to ILO C137 • National CBA for Transport and Logistics; local CBAs for pools; 1 CBA for ferry terminal workers • Important role of local usages • 2 categories of workers: (1) Permanently employed terminal workers (2) In 12 ports: casual pool workers hired per day or shift in hiring halls 	<ul style="list-style-type: none"> • Exclusive right of operator CMP / trade union in Copenhagen • Exclusive right of pool workers • Overt closed or preferential shop • Mandatory manning scales • Ban on self-handling, but arbitrary exceptions in some ferry ports • Ban on temporary agency work unless local usages permit it • Restrictive working practices
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • National training and certification standards • Jointly managed training since 2011 • Company-based training 	<ul style="list-style-type: none"> • Mandatory certification of equipment operators • Right to training guaranteed in CBAs 	<ul style="list-style-type: none"> • Success of new training scheme remains to be evaluated
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No specific statistics available • Higher accident rate than national average 	<ul style="list-style-type: none"> • Specific Order on Loading and Unloading of Ships • Party to ILO C152 • Safety rules in CBAs 	<ul style="list-style-type: none"> • No specific issues but still room for improvement

⁵³⁵ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.5. Estonia

9.5.1. Port system⁵³⁶

733. By far the largest Estonian port is the multi-purpose port of Tallinn, which consists of four port areas, spread along the coastline: the Old City harbour, Muuga, Paljassaare and Paldiski South harbour. Other important Estonian ports include Kunda, Pärnu and Sillamäe. Estonian ports also handle transit traffic generated in Russia.

In 2012, Estonian ports handled about 43.05 million tonnes of cargo⁵³⁷. As for container throughput, Estonian ports ranked 21st in the EU and 96th in the world in 2011⁵³⁸.

734. Estonian ports are operated as public limited companies. The port of Tallinn, as most ports in Estonia, is state-owned and operates as a pure landlord port, not providing any cargo handling services. The port of Kunda and its facilities are entirely privately owned. In other ports, shares are owned by the municipality and private companies.

735. Despite repeated requests, we received very little information from Estonian stakeholders. The Port Authority of Tallinn informed us that it was in a difficult position to reply to the questionnaire, because, as a landlord port, it is not involved in stevedoring operations, and has no information on these activities.

9.5.2. Sources of law

736. The management of Estonian ports is governed by the Ports Act of 22 October 1997⁵³⁹ which mainly describes the classification of ports and the exercise of public authority functions.

⁵³⁶ For general information on Estonian ports, see ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 90-98; Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 212-245; www.estonianports.com; for statistics, see http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

⁵³⁷ See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborn_e_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborn_e_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723)

⁵³⁸ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

For example, it provides that ports must have a port certificate confirming that they meet the standards established by legislation, and are open for safe shipping traffic and the functional activities of a port (§ 11(1)).

The Ports Act sets out no specific rules on cargo handling and port labour.

737. The Requirements for Storage Facilities for and Places of Loading, Unloading and Transshipment of Chemicals, and for Other Structures Necessary for Handling of Chemicals in Ports, Road Transport Terminals, Railway Stations and Airports, and Special Requirements for Handling Ammonium Nitrate, which were laid down by Regulation No. 106 of 6 December 2000⁵⁴⁰, do not contain any specific provision on port labour either.

738. Cargo handling in Estonia is governed by general labour law. No specific port labour-related legislation seems to exist. Contracts of employment are governed by the Employment Contracts Act of 17 December 2008⁵⁴¹.

739. The Occupational Health and Safety Act of 16 June 1999⁵⁴² also applies to the port sector but contains no provisions specific to that sector. Neither are there any port-specific implementing regulations. General regulations which may be of relevance to port labour include, for example, the Occupational Health And Safety Requirements For Manual Handling Of Loads (Regulation No. 26 of the Minister of Social Affairs of 27 February 2001)⁵⁴³ and the Occupational Health And Safety Requirements For Using Hazardous Chemicals And Materials Containing The Latter (Regulation No 105 of the Government of the Republic of 20 March 2001)⁵⁴⁴.

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 a separate instrument⁵⁴⁵.

⁵³⁹ Sadamaseadus Vastu võetud 22. oktoobril 1997. a.

⁵⁴⁰ Nõuded kemikaali hoiukohale, peale-, maha- ja ümberlaadimiskohale ning teistele kemikaali käitlemiseks vajalikele ehitistele sadamas, autoterminalis, raudteejaamas ja lennujaamas ning erinõuded ammooniumnitraadi käitlemisele vastu võetud teede- ja sideministri 6.12.2000. a määrusega nr 106.

⁵⁴¹ Töölepingu seadus.

⁵⁴² Töötervishoiu ja tööohutuse seadus.

⁵⁴³ Raskuste käsitsi teisaldamise töötervishoiu ja tööohutuse nõuded.

⁵⁴⁴ Ohtlike kemikaalide ja neid sisaldavate materjalide kasutamise töötervishoiu ja tööohutuse nõuded.

⁵⁴⁵ Puistlastilaevade lisaohutusnõuded, puistlastilaevade ohutu laadimise ja lossimise nõuded, puistlastilaevade terminalide ohutusnõuded ning laeva kapteni ja terminali esindaja teavitamise kord.

740. Estonia is not bound by any ILO Convention on dock work.

741. All permanently employed port workers have signed individual contracts. Only two companies have collective agreements. The first one was concluded at port-wide level between Tallinna Sadam AS and EFWTWF (Estonian Federation of Water Transport Workers Union)⁵⁴⁶, but it only concerns employees of the port authority, not port workers within the meaning of the present study. The other agreement was signed between a stevedoring company and its Workers' Council (not by a trade union). The Estonian Seamen's Independent Union reported that it is currently negotiating with two port operators with a view to the starting-up of a genuine collective bargaining process.

9.5.3. Labour market

- Historical background

742. During the Soviet era, Estonian ports were very important employers, and port labour was strictly regulated in a collective agreement. This agreement was rendered inoperative as a result of independence in 1991, the ensuing transition to a landlord model and privatisation of Estonian ports, which started in 1993.

- Regulatory set-up

743. All port operators in Estonia are separate, privately owned companies employing their own staff and applying their internal rules and regulations.

There is no pool for port workers in Estonia. A 2002 ILO survey confirmed that port workers in Estonia are not registered⁵⁴⁷ and this still applies today.

⁵⁴⁶ The agreement was concluded on 18 June 1998 and amended several times, lastly on 20 February 2004.

⁵⁴⁷ International Labour Conference (90th Session 2002), *General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, <http://www.ilo.org/public/english/standards/reIm/ilc/ilc90/pdf/rep-iii-1b.pdf>, 55, para 126.

744. In Estonian ports, no mandatory manning scales apply.

745. Apart from the general labour law requirement that the conclusion of an employment contract for a specified term for work performed by way of temporary agency work, that this must be justified by "the temporary characteristics of the work in a user undertaking" (§ 9 (1) of the Employment Contracts Act), no restrictions on the use of temporary agency workers seem to apply. Some terminal operators hire temporary workers from subsidiaries such as Varumees OÜ and Petromax OÜ.

- Facts and figures

746. According to the Estonian Seamen's Independent Union, in the ports of Sillamäe, Kunda, Muuga, Tallinn, Bekkeri, North Paldiski, South Paldiski and Pärnu more than 1,200 staff are employed, including 332 'dockers', 568 tallymen and warehouse workers, and management. In addition, some 100 casual workers are employed, half of whom are dockers (55-60 years old).

The 'dockers' are workers who hold a docker's certificate and include crane and other machine operators and also some manual workers⁵⁴⁸. Factory workers who also perform loading and unloading work are not included.

⁵⁴⁸ Compare ECOTEC Research & Consulting and El Konsult, *Employment trends in all sectors related to the sea or using sea resources, Country Report - Estonia*, European Commission, DG Fisheries and Maritime Affairs, August 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/estonia_employment_trends_en.pdf, 10, where the following statistics on employment in the seaport sector are given (not specifying, however, how many workers are port workers within the meaning of the present study):

747. In 2012, an ITF coordinator stated that 7 per cent of Estonian dockers are members of professional unions⁵⁴⁹. This figure would appear to roughly correspond with the unionisation degree in the Estonian economy as a whole⁵⁵⁰. In November 2012, however, the Union provided us with more detailed figures indicating that 119 workers have joined the Estonian Seamen's Independent Union (ESIU, Eesti Meremeeste Sõltumatu Ametiühing), representing 36 per cent of dockers, 13 per cent of port workers and about 10 per cent of all port staff.

9.5.4. Qualifications and training

748. The Estonian Ministry of Social Affairs reports that port workers do not receive any formal vocational training. However, national professional qualification standards for port workers have been established, on the basis of which qualification certificates are issued. This system rests on a recommendation only, and employers remain free to employ a person who does not meet the requirements set in the standards.

Table 28. Employment in the seaport sector of Estonia, 2006 (source: ECOTEC / El Konsult)

Sector	1997	1998	1999	2000	2001	2002	2003	2004	2005
Cargo handling	2,000	3,000	4,600	4,200	4,500	3,300	4,100	3,400	3,900
Shipping related activity (storage, agency, maritime logistics and expedition)	3,300	5,000	7,600	7,000	7,500	5,400	5,600	7,700	5,600
Management and administration of ports	-	-	-	-	-	900	800	800	800
Total	5,300	8,000	12,200	11,200	12,000	9,600	10,500	11,900	10,300

⁵⁴⁹ Matutis, V., "The cheapest ports in the Eastern Baltic", 29 February 2012, <http://www.jura24.lt/en/news/port/the-cheapest-ports-in-the-eastern-baltic-411348>.

⁵⁵⁰ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

749. Another source mentions that there are 4 training centres for dockers. A major centre, located in port of Muuga, offers basic and specialised professional education for all dockers. Our source mentioned that common training standards are being prepared at the Qualifications Authorities (Kutsekoda) and that the other three training centres are organised by individual stevedoring companies.

9.5.5. Health and safety

- Regulatory set-up

750. The Occupational Health and Safety Act contains provisions on, *inter alia*, the working environment, general obligations and rights of employers and employees (including, on the conducting of a risk assessment and notification to the employees of the risk factors), the organisation of occupational health and safety, procedures in case of occupational accidents and occupational diseases, State supervision, and dispute resolution and liability.

751. As we have mentioned above⁵⁵¹, there are no specific regulations on health and safety in port work. However, there are general regulations on, *inter alia*, the use of personal protective equipment, the manual handling of loads and the use of hazardous chemicals and materials⁵⁵².

- Facts and figures

752. Statistics on occupational accidents are said to be maintained both by the Ministry of Social Affairs and by the individual unions.

We were only able to collect the following statistics on the number of occupational accidents:

⁵⁵¹ See *supra*, para 739.

⁵⁵² For a comprehensive overview of health and safety regulations, see Kwantes, J.H., von Richthofen, W., Järve, J. and Meeuwsen, J.M., *Legal analysis for amendment of the Occupational Health and Safety Act in Estonia*, Hoofddorp, TNO, 2011, http://www.sm.ee/fileadmin/meedia/Dokumendid/Toovaldkond/uuringud/Legal_analysis_for_amendment_of_the_Occupational_Health_and_Safety_Act_in_Estonia.pdf, 24.

Table 29. Number of occupational accidents involving port workers in Estonia, 2004-2013
(source: Ministry of Social Affairs)

Severity rate	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total
Minor	4	5	4	4	5	3	4	4	5	5	43
Major	4	2	5	4	4	1	3	3	2	-	28
Fatal	1	1	-	-	-	1	-	1	-	-	4
Total	8	8	9	6	9	5	7	7	7	5	75

9.5.6. Policy and legal issues

753. A survey of the restructuring of the Estonian transport sector held in the run-up to EU accession noted good progress towards full privatisation of the cargo handling sector and did not report on any remaining problems in the field of port labour⁵⁵³.

It should be pointed out, however, that in the Port of Pärnu some issues arose over the transfer of port workers by the port authority to a private stevedore. Allegedly, the workers were offered less beneficial terms. Under the Transfer of Workers Directive No. 77/187/EEC, the workers should have been entitled to continue their employment under the same conditions. Reportedly, in Tallinn, where trade union organisation is stronger, all the port workers retained their labour contracts⁵⁵⁴.

754. Between 2002 and 2006, the Estonian Competition Authority received numerous complaints on the activities of the Port of Tallinn. This resulted in an abundance of case law regarding activities and market dominance of ports in Estonia⁵⁵⁵. The Competition Authority informed us that none of these cases related to port labour issues.

⁵⁵³ See Ojala, L., Naula, T. and Queiroz, C. (Eds.), *Transport sector restructuring in the Baltic states toward EU accession. Proceedings of the 2nd Seminar held in Pärnu on November 24-25, 2003*, March 2004, <http://Inweb90.worldbank.org/ECA/Transport.nsf/0/5FC55219E4D31FC685256E76005E27B4?OpenDocument>, 132-146.

⁵⁵⁴ See Ericsson, K. and Anderbjörk, A., "Matter: Transfer of undertaking. Case 9, Estonia 5", 19 June 2002, http://www.ijsbu.com/cases_page/view_document.asp?id=90.

⁵⁵⁵ See OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>, 118-121.

755. A 2006 report commissioned by the European Commission noted that port operators feel that their sector is generally attractive for the workforce. This argument was supported by the fact that salaries in the port sector are higher than salaries for similar jobs in other sectors. In addition, staff turnover is low⁵⁵⁶.

756. We have no indication that self-handling is prohibited in Estonian ports⁵⁵⁷.

757. A 2011 survey of Estonian occupational health and safety policy noted that, in essence, the Estonian legal framework is in line with EU and ILO requirements. The authors of the report note that Estonia has not ratified ILO Convention No. 152. Whereas they recommend that Estonia re-examine accession to a number of ILO instruments, they do not mention the latter Convention in this respect. The authors concluded that there is a strong need for a modern, comprehensive national labour inspection enforcement policy⁵⁵⁸. We were unable to obtain comments from the Labour Inspectorate.

758. According to a media report from 2012, Aleksander Meier of the Estonian Seamen's Independent Union, who is also an ITF coordinator, stated that Estonian port workers earn the lowest salaries of the Eastern Baltic including Russia. However, the idea of increasing salaries for dockers receives a lot of negative reaction from the governments. Moreover, dockers are afraid to join professional unions. The managers of stevedoring companies are pushing their workers not to join such unions. The report on the findings of the ITF coordinator continues as follows:

Mr. Meyer warns that Estonian ports see unfavorable trends for cargo handling companies. New cargo handlers are appearing, which manage to reduce port charges by half. The particular case has been recorded in the Estonian port of Muga. Dockers are accepted as temporary workers and they receive lower salaries. [...]

⁵⁵⁶ X., *Employment trends in all sectors related to the sea or using sea resources, Country Report – Estonia*, Birmingham, ECOTEC, 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/estonia_employment_trends_en.pdf, 11.

⁵⁵⁷ In 2002, Estonia was dropped from the list of countries where longshore activities by crewmembers of U.S. vessels is restricted (*Federal Register*, Vol. 67, No. 29, 12 February 2002, Proposed Rules, 6448). An ESPO report for 2004-2005 mentions, however, that the possibility of self-handling depends on contracts with the port owner and the scope and the size of the port, and that self-handling is more common in small harbours and marinas, not in merchant shipping ports (European Sea Ports Organisation, *Factual Report on the European Port Sector*, Brussels, 2004-2005, 127).

⁵⁵⁸ See Kwantes, J.H., von Richthofen, W., Järve, J. and Meeuwsen, J.M., *Legal analysis for amendment of the Occupational Health and Safety Act in Estonia*, Hoofddorp, TNO, 2011, http://www.sm.ee/fileadmin/meedia/Dokumendid/Toovaldkond/uuringud/Legal_analysis_for_amendment_of_the_Occupational_Health_and_Safety_Act_in_Estonia.pdf, 54 p. + appendices.

“In European ports, dockers are valued people. In Estonia it is considered to be a shame to work in docks. It means that you are a loser. We have to strive and achieve better status for dockers and their profession,” – considered Mr. Meyer.

Both in Estonia and Lithuania, dockers are compared to unskilled workers. In reality, dockers are highly skilled workers working with extremely difficult handling equipment. Dockers’ professional status is defined neither in Estonia nor in Lithuania. In many countries, dockers are released to pension five years earlier than others. Their work is considered to be dangerous. The same trend to release dockers earlier is maintained in Russia. According to the European Union’s conventions, there should not be any dangerous works. Therefore, dockers found it hard to prove their professional injuries. In reality, the work of dockers is dangerous. The work continues during the extreme weather conditions whether it snows or rains. They are surrounded by an enormous amount of dust clouds. However, dockers are hearing somewhat sarcastic remarks of their employees that they are working near the sea, where the weather is saturated with iodine, as if it was a spa⁵⁵⁹.

Mr Meier informed us that he had been unable to check the text of this media report, that the English translation does not reflect what he actually said and that he regrets that it had been published in this way because it does not help the case of the workers and the unions.

However, he also informed us that in some ports such as Paljassaare, so-called 'black' stevedores operate, who are using uncertified workers. The Labour Inspectorate so far declined to investigate these situations.

The Ministry of Social Affairs regretted the media report and possible rare cases of abuse because they give an entirely wrong impression and may impact negatively on the competitive position of Estonian ports. It also mentioned that the almost total absence of collective bargaining in the stevedoring sector should not surprise, as in Estonia only 5.8 per cent of employers have collective agreements.

9.5.7. Appraisals and outlook

759. For the Ministry of Social Affairs, priorities include raising qualification levels as well as awareness of health and safety standards.

760. The Estonian Seamen’s Independent Union confirmed to us that Estonia has a good labour regime, but regrets that it has not yet ratified ILO Conventions No. 137 and No. 152 which are

⁵⁵⁹ Matutis, V., "The cheapest ports in the Eastern Baltic", 29 February 2012, <http://www.jura24.lt/en/news/port/the-cheapest-ports-in-the-eastern-baltic-411348> (left verbatim).

very important for port workers and which should be a priority for an EU Member State. It also identifies a need to increase the prestige of the port worker's profession and to combat employment of unqualified and untrained port workers. It stresses the importance of developing common training standards for port workers and considers the current occupational health and safety system adequate which unfortunately does not prevent accidents from happening frequently, often as a result of fatigue and stress.

761. The Ministry of Social Affairs is looking forward to new EU initiatives on ports and confirmed its willingness to participate in a discussion on proposals relating to qualifications of port workers, which could also raise health and safety levels and strengthen the competitiveness of EU ports.

762. The Estonian Seamen's Independent Union believes that Port Package III is coming soon. What is needed, however, is a social dialogue.

9.5.8. Developments between January 2013 and September 2014

762A. In May 2013, unions convened a seminar on how to promote social dialogue in Estonian ports on which the website www.dockers-seafarers.org reported as follows:

Promoting social dialogue in Estonian ports has been the focus this week of a seminar at the Port of Muuga.

It's the first event of its kind and has been centered on the joint working of ITF and ETF affiliates, the Estonian Seaman's Independent Union (ESIU) with their Baltic colleagues at the Norwegian Transport Workers' Federation. This project is financed by the Norway Grants through the Fund for Decent Work and Tripartite Social Dialogue. Get more information on the programme: www.decentwork.no

Norwegian union members as well as representatives from the Port of Kristiansand Harbour Authority and Norwegian logistics company Seafront Ltd, have been in Estonia sharing their practical experience on how social dialogue works in their own ports and how it's used as an effective tool to make ports run smoothly. The Estonian unions expressed disappointment that none of the operators in the Estonian ports industry attended saying: "Most of the organised port workers in Estonia have chosen ESIU to represent them. We are independent from employers, we have experience on social dialogue in the maritime sector and we value our good international relations through ITF and ETF. We are open to dialogue at any time and are very disappointed that the

employers have not taken this opportunity to share with us what is an historic international event.”

Despite the absence of the Estonian employers, unions from both sides felt a great deal was achieved during the seminar.

Chair of the ETF Dockers Section within NTF (Norwegian Transport Workers), Terje Samuelson said: “This event in an important starting point for a project moving Estonian unions towards a system of social dialogue, which is the backbone of industrial relations throughout Europe.”

He continued: “We have been able to demonstrate that unions and employers don’t need to be constantly in dispute, in fact, a functioning system of social dialogue avoids conflict as employers and employees are able to discuss and resolve problems before they escalate. We have been lucky to have employers from a key Norwegian port who have been open and honest and prepared to engage with trade unions in both countries. We hope that the Estonian port employers will see the benefits of this kind of relationship and join us for the next seminar in September, which will be in Norway.”⁵⁶⁰

The event was part of a cooperation project aiming to promote social partnership, elaborate collective agreements and secure decent work in Estonian ports which is supported by Norway under the Norway Grants programme. The project comprised three training seminars and port site visits in Estonia and Norway⁵⁶¹.

⁵⁶⁰ X., "Baltic dockers' unions learning from each other on social dialogue", 17 May 2013, <http://www.dockers-seafarers.org/news/baltic-dockers%E2%80%99-unions-learning-each-other-social-dialogue>.

⁵⁶¹ See http://norwaygrants.inekstranett.no/Global/Project%20Profiles/DW%20Project%20Fact%20Sheet%20project_104563.pdf.

9.5.9. Synopsis

763. SYNOPSIS OF PORT LABOUR IN ESTONIA⁵⁶²		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 4 seaports, 1 main port • Landlord model • 43,4m tonnes • 21st in the EU for containers • 96th in the world for containers • Unknown number of employers • 1200 port workers • Trade union density: 13% 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • No Party to ILO C137 • No CBAs • Only employment contracts under general labour law • No registration of port workers • No hiring halls • No mandatory manning scales • No ban on self-handling • No ban on temporary agency work 	<ul style="list-style-type: none"> • Rare cases of employment of uncertified workers by 'black' stevedores • Union advocates ratification of ILO C137
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 4 training centres 3 of which run by port operators 	<ul style="list-style-type: none"> • No specific laws and regulations • Voluntary national qualifications standards 	<ul style="list-style-type: none"> • Raising qualification level • Use of unqualified workers
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Elementary statistics available 	<ul style="list-style-type: none"> • No specific rules on port labour • No Party to ILO C152 	<ul style="list-style-type: none"> • Frequency of accidents • Raising of safety awareness • Union advocates ratification of ILO C152

⁵⁶² Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.6. Finland

9.6.1. Port system⁵⁶³

764. Finland has more than 50 ports handling foreign trade-related transports. Only 23 of them have ice-breaking services and are open the whole year. The biggest port in terms of volume is Sköldvik in Porvoo, which is a private port located at the refinery of oil company Neste Oil Ltd. Currently, the biggest port for general cargo is Hamina-Kotka, which is the result of a merger of the Port of Hamina and the Port of Kotka. Helsinki and Vuosaari form another major port complex. In addition to locally generated traffic, Finnish ports handle considerable amounts of transit traffic destined for Russia.

In 2012, the gross weight of seaborne goods handled in Finnish ports was about 105.1 million tonnes⁵⁶⁴. The 10 largest ports handle almost 80 per cent of the total cargo and the 15 largest over 90 per cent. As for container throughput, Finnish ports ranked 12th in the EU and 50th in the world in 2011⁵⁶⁵.

765. Finland has both public and private ports. Almost all public ports are municipal, owned by cities. Some municipal ports are municipality-owned enterprises (MOEs) and two of them, Kotka and Hamina, were transformed into municipality-owned companies (MOCs) governed by the Limited-liability Companies Act. In 2011, the latter ports merged into one company.

Cargo handling is performed by independent private companies. A number of municipally controlled ports also rent out manned cranes. The prevailing port governance model has been described as a combination or modification of the landlord and tool port models⁵⁶⁶.

⁵⁶³ For general information on Finnish ports, see ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 362-369; Karvonen, T. and Tikkala, H., *Satamatoimintojen kehittäminen ja satamia koskevan lainsäädännön uudistaminen*, Helsinki, Liikenne- ja viestintäministeriö, 2004, http://www.lvm.fi/files/65_2004.pdf, 84 p. + annexes; Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 88-119; Rönty, J., Nokkala, M. and Finnilä, K., *Port ownership and governance models in Finland. Development needs & future challenges*, VTT Working Papers, <http://www.vtt.fi/inf/pdf/workingpapers/2011/W164.pdf>, 104 p.; www.finnports.com; for statistics, see <http://www.finnports.com/eng/statistics/>; http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

⁵⁶⁴ See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

⁵⁶⁵ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

⁵⁶⁶ Rönty, J., Nokkala, M. and Finnilä, K., *Port ownership and governance models in Finland. Development needs & future challenges*, VTT Working Papers, <http://www.vtt.fi/inf/pdf/workingpapers/2011/W164.pdf>, 21.

However, a large number of Finnish ports are owned by private companies, many of which are connected to the owner's industrial plant.

9.6.2. Sources of law

766. The management of Finnish ports is governed by two different Acts: Act No. 955/1976 on Municipal Port Ordinances and Traffic Dues⁵⁶⁷ and Act No. 1156/1994 on Private Public Ports⁵⁶⁸. These instruments are extremely concise and mainly regulate the power to make local port regulations and tariffs. They do not contain any specific provision dealing with port labour.

767. There are no specific legal instruments on the organisation of port labour in Finland. Among applicable general labour laws, the most important one is probably Act No. 55/2001 on Employment Contracts⁵⁶⁹.

768. With regard to health and safety in port labour, the general Occupational Safety and Health Act⁵⁷⁰ contains a special provision on work in ports⁵⁷¹. Further detailed rules are laid down in Government Decree No. 633/2004 on Occupational Safety in Loading and Unloading of Ships⁵⁷². Training for workers involved in the handling of dangerous goods is regulated by Government Decree No. 251/2005 on the Transport and Temporary Storage of Dangerous Goods in a Port Area⁵⁷³.

Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers was transposed by two instruments of 21 December 2004⁵⁷⁴.

⁵⁶⁷ Laki (955/1976) kunnallisista satamajärjestyksistä ja liikennemaksuista

⁵⁶⁸ Laki (1156/1994) yksityisistä yleisistä satamista.

⁵⁶⁹ Työsopimuslaki (55/2001).

⁵⁷⁰ Työturvallisuuslaki (738/2002).

⁵⁷¹ See *infra*, para 791.

⁵⁷² Valtioneuvoston asetus (633/2004) alusten lastauksen ja purkamisen työturvallisuudesta.

⁵⁷³ Valtioneuvoston asetus (251/2005) vaarallisten aineiden kuljetuksesta ja tilapäisestä säilytyksestä satama-alueella.

⁵⁷⁴ Laki eräiden irtolastialusten turvallisesta lastaamisesta ja lastin purkamisesta (2004/1206); Liikenne- ja viestintäministeriön asetus eräiden irtolastialusten turvallisesta lastaamisesta ja lastin purkamisesta.

769. Finland has ratified both ILO Convention No. 137⁵⁷⁵ and ILO Convention No.152⁵⁷⁶. Previously, it was bound by ILO Convention No. 32.

770. Collective agreements are an important source of port labour law⁵⁷⁷.

There are three nationwide and generally applicable collective labour agreements (all generally binding) which relate to ports: one for the port workers (hereinafter: 'Port Workers Agreement')⁵⁷⁸, one for the technical personnel (*i.e.* supervisors or foremen) (hereinafter: 'Foremen Agreement')⁵⁷⁹ and one for the administrative staff of stevedoring companies⁵⁸⁰. All these agreements are publicly available. Below, we shall only go into provisions of the former two agreements, as the latter agreement only applies to office work (see § 1 of the Agreement).

The Port Workers Agreement and the Foremen Agreement regulate matters such as freedom of association, industrial peace, job creation, termination of contracts, working time, overtime, annual leave, sick pay, shift work, holidays, transportation, group life insurance, the position of shop stewards, occupational health and safety and salaries.

Both Agreements also promote the conclusion of local agreements on working time and other matters⁵⁸¹. According to the Finnish Port Operators Association, only a few such agreements were concluded.

In addition, trade union AKT concluded several company level agreements with enterprises that are not members of the Finnish Port Operators Association. These agreements could not be consulted by us.

Crane drivers employed by port authorities operate under a separate collective agreement signed with the Union for the Public and Welfare Sectors, to which we had no access either.

⁵⁷⁵ Asetus (86/1976) satamissa käytettyjen uusien lastinkäsittelymenetelmien sosiaalisia vaikutuksia koskevan yleissopimuksen voimaansaattamisesta.

⁵⁷⁶ Asetus (381/1982) työturvallisuutta ja -terveyttä satamatyössä koskevan yleissopimuksen voimaansaattamisesta.

⁵⁷⁷ On collective bargaining in Finland, see <http://www.worker-participation.eu/National-Industrial-Relations/Countries/Finland/Collective-Bargaining>.

⁵⁷⁸ Collective Agreement for permanent employees in stevedoring (Ahtausalan vakinaisia työntekijöitä koskeva työehtosopimus) between the Finnish Port Operators Association and Transport Workers Union AKT for the period between 19 March 2010 and 31 January 2012. A new agreement was concluded for the period 1 February 2012 - 31 January 2014.

⁵⁷⁹ Collective Agreement for supervisors working in stevedoring (Ahtausalan työnjohtajien työehtosopimus) between the Finnish Port Operators Association and the Union of Port Foremen AHT for the period between 11 May 2010 and 31 March 2012. A new agreement was concluded for the period 1 April 2012 - 31 March 2014.

⁵⁸⁰ Collective Agreement for salaried employees working in stevedoring (Ahtausalan toimihenkilöiden työehtosopimus) between the Finnish Port Operators Association and the Union of Salaried employees PRO for the period between 1 May 2010 and 30 April 2012. A new agreement was concluded for the period 1 May 2012 - 30 May 2014.

⁵⁸¹ See Chapter III.3 of the Port Workers Agreement for 2010-2012 and Item 8 of the Protocol of Signature to the Foremen Agreement for 2010-2012). Local collective agreements were also concluded for the office workers at the private terminal operators Steveco Oy, Oy Hacklin Ltd and Finnsteve.

Finally, a separate collective agreement applies to workers working in forwarding agencies as well as in warehouses, warehouse terminals and ports that are engaged in international transportation and that are members of the Employers' Association of Special Services⁵⁸². Reportedly, the latter agreement does not apply in port areas.

771. For certain aspects, the collective agreements refer to, or confirm, established practices (*vakiintuneet käytännöt*)⁵⁸³.

9.6.3. Labour market

- Historical background

772. To illustrate the historical development of port labour in Finland, we rely on an excellent paper on the dockers of Turku by Kari Teräs and Tapio Bergholm⁵⁸⁴.

These authorities relate that in the winter harbour of Turku, stevedoring did not evolve as a trade in its own right until the end of the 19th century, although it incorporated traditions from the trades of both the porter and the sailor. Initially, gangs of longshoremen, usually temporary, were formed from drifters around the harbour by master stevedores, who also operated on a temporary basis. At the end of the century, these gangs began to handle an increasing proportion of the loading and discharging. The larger shipping companies were dissatisfied with these unreliable, drunken gangs, and in 1889 A.E. Erickson, a master stevedore from Hiittinen in the archipelago, managed to recruit a more regular group of stevedores. This stevedore did not treat dockers as a single unskilled mass of mixed labourers. Rather, he divided them into two basic groups according to their skills and their moral qualities: number men (*prikkamiehet*) and casuals (*nimimiehet*). Some of the latter group gradually became fairly regular workers, although they were not given a number (*prikka*) of

⁵⁸² Collective Agreement for Harbour and Warehouse Terminal Employees in the Forwarding Industry (Huolinta-alan varastoterminaali- ja satamatyöntekijöitä koskeva työehtosopimus) between the Service Sector Employers PALTA (Palvelualojen työnantajat PALTA ry, aiemmin Erityispalvelujen Työnantajaliitto ry) and Transport Workers Union AKT for the period between 10 March 2010 and 31 January 2012. Yet another agreement applies to terminals run by the members of the Employers' Federation of Road Transport.

⁵⁸³ See, for example, § 2 of Chapter I.1 of the Port Workers Agreement for 2010-2012.

⁵⁸⁴ Teräs, K. and Bergholm, T., "Dockers of Turku, c. 1880-1970", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, 84-101. Remarkably, before WW2 Finnish ports used to employ substantial numbers of female dockers (see Bergholm, T. and Teräs, K., "Women on the Waterfront: Changes in the Gendered Structures of Working Life in Finland").

their own. In this classification and division of the labour force, Erickson seems to have been applying methods used in ports in Sweden and countries further south⁵⁸⁵.

In 1905, Erickson signed a first collective agreement with the union which included a clause giving the organised workers a priority right to employment, as well as improvements in working conditions and wage increases. Erickson and the local union together drew up the regulations for work in the port. There were very few industrial sectors in Finland at the beginning of the century where local trade unions were able to influence the regulations of firms. The autonomy of the dockers was limited but not completely removed by the regulations. The local union took responsibility for the work force as well as for discipline and morale among the port workers. The closed shop provision in the agreement not only reflected the growth in strength of the local union but also guaranteed its organisational base. The agreement between the Turku stevedoring company and the local union was exceptional, because in other ports dockers' co-operatives and stevedoring companies competed for precedence. The wave of organising among dockers elsewhere was connected with a direct attempt to oust the stevedoring companies altogether, so that collective agreements could not exist in other ports. In 1906, at Erickson's initiative, the Stevedores' Federation of Finland was founded. Promoted by the Turku dockers, a National Union of Finnish Dockworkers was established, which consisted mainly of workers' co-operatives⁵⁸⁶. After 1907, Erickson reinforced his dominant position in the port of Turku and the local co-operative received only few and small contracts. Meanwhile, in many Finnish ports working conditions began to be determined by local collective agreements. Initially, Erickson's dockers were also farmers, sailors or fishermen, and the stevedoring company could avail itself of their services in a very flexible way⁵⁸⁷.

In the 1920s and 1930s, Erickson tried to limit the unofficial control exercised by the workers by hardly using permanent work gangs at all. Instead, the tasks were allocated daily for each job. After WW2, a profound change took place in Finnish ports, and the power relations between the employers and the employees altered decisively – in favour of the latter. The first national collective agreement contained rules for new hiring practices, and the employers allowed the newly erected hiring offices (a similar system to hiring halls) to fall under the trade unions' domination. This meant a radical decrease in the total number of men, and also gave the opportunity to screen workers on political grounds. The trade unions in Finland made strong demands in principle for decasualisation. Although there was no provision in the collective agreement for priority in hiring for union members, in practice, with the prevailing

⁵⁸⁵ Teräs, K. and Bergholm, T., "Dockers of Turku, c. 1880-1970", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (84), 86-87.

⁵⁸⁶ The initiative for founding a union for dockers had come from several local union branches almost simultaneously in August 1905. The most explicit proposal was made by the dockers' local union in Valko, Loviisa. The current union AKT was created in 1970, as a merger of the Dockers' Union with two other unions (see http://www.akt.fi/en/akt_history).

⁵⁸⁷ Teräs, K. and Bergholm, T., "Dockers of Turku, c. 1880-1970", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (84), 88-92.

grave shortage of labour, the local branch of the Finnish Transport Workers' Union managed to apply the closed shop system to a considerable extent until the strike of 1949⁵⁸⁸.

At the beginning of the 1960s, the extensive use of machines led to the conclusion of two different collective agreements. The dockers, who were employed on piece work wages and were not permanently employed, had their own national collective agreement. The drivers of loading machines and the mechanics in the repair shops were wholly permanently employed on hourly wages.

Due to divisions among unions, adaptation to technological change was postponed in Finnish ports. Competing unions were unwilling to take risks connected with substantial changes in working conditions. Only after trade union amalgamation in 1970, national collective agreements were signed in 1972, 1973 and 1976, which provided for decasualisation yet were bitterly contested by the rank-and-file. The three groups – ordinary dockers, drivers of machines and repair men – were all integrated into a single national agreement⁵⁸⁹.

- Regulatory set-up

773. Today, apart from a right of use over port land owned by the local Port Authority, port operators do not need any specific licence or authorisation⁵⁹⁰, and are not obliged to join a professional organisation. The latter rule is expressly confirmed in the Port Workers Agreement⁵⁹¹.

There are no legal restrictions on the number of cargo handlers in Finnish ports. In practice, however, in many smaller Finnish ports the cargo handling market is dominated by a single service provider⁵⁹².

As we have mentioned, several municipal port authorities rent out cranes to terminal operators. These cranes are manned by staff belonging to the port authority⁵⁹³.

⁵⁸⁸ Teräs, K. and Bergholm, T., "Dockers of Turku, c. 1880-1970", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (84), 95-96.

⁵⁸⁹ Teräs, K. and Bergholm, T., "Dockers of Turku, c. 1880-1970", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (84), 97; see also Bergholm, T., "Resistance and Adaptation: Trade Union Responses to Employers' Challenges at Finnish Ports", abstract for the Imeha Congress 2012, Ghent University.

⁵⁹⁰ See also Karvonen, T. and Tikkala, H., *Satamatoimintojen kehittäminen ja satamia koskevan lainsäädännön uudistaminen*, Helsinki, Liikenne- ja viestintäministeriö, 2004, http://www.lvm.fi/files/65_2004.pdf, 33.

⁵⁹¹ Port Workers Agreement for 2010-2012, Chapter I.1, § 3(1) and Chapter II.1, § 3(1); Foremen Agreement for 2010-2012, § 2.

⁵⁹² See *infra*, para 798.

⁵⁹³ See *supra*, para 765 and further *infra*, para 799.

A permit is needed for the construction or the extension of a private public port (§ 3 of Act No. 1156/1994), but this requirement is of only little practical importance⁵⁹⁴.

774. There are no pool systems or hiring halls in Finnish ports, but individual stevedoring companies run 'job centres' where the work is divided. No centralised port workers' register is maintained. As a rule, employers are free to recruit their workers. These workers may be employed permanently or for a fixed term, even on a daily basis or for a shift. After the permanent workers, the professional temporary workers enjoy priority however. They are not hired from a pool, but directly by individual companies. Occasional workers such as students are used as well.

A typical worker in the cargo handling sector starts off by working on a temporary basis and moves to a permanent position over time⁵⁹⁵.

In this respect, one also has to take into account that a number of Finnish (inland) ports are closed during the winter.

775. More precisely, the Port Workers Agreement contains two main parts: one for permanent workers (*vakinaiset työntekijät*) and one for professional temporary workers (*ammattityöntekijäkuntaan*) and temporary workers (*tilapäisten ahtaajien työsuhteiden*).

Chapter I of the Agreement applies to the employment relationships of permanent employees in the member companies of the Finnish Port Operators Association in the following ports (where over 90 per cent of all Finnish dock work is performed): Hanko, Hamina, Helsinki, Inkoo, Joensuu, Kaskinen, Kemi, Kokkola, Kotka, Lappeenranta, Loviisa, Naantali, Oulu, Pietarsaari, Pori, Rauma, Tornio, Turku and Vaasa (Chapter I.1, § 1). It does not apply to internal port transportation, maintenance of machinery, repair of containers and washing and cleaning operations (Chapter I.1, § 2).

Chapter II of the Agreement applies to employment relationships of member companies of the Finnish Port Operators Association and to employees and temporary dockers who belong to the group of professional employees. The Chapter regulates the 'professional employee system' which is used in ports not governed by Chapter I. The rules of Chapter II on temporary workers however apply in all ports, including the ones that employ permanent workers under Chapter I. However, ports not falling under Chapter I also have the right to employ permanent workers (Chapter II, § 1). The professional temporary port workers enjoy priority of engagement⁵⁹⁶.

⁵⁹⁴ See *infra*, para 799.

⁵⁹⁵ Nevala, A.-M., *An exhaustive analysis of employment trends in all sectors related to sea or using sea resources. Country report – Finland*, Birmingham, ECOTEC, 2006, <http://edz.bib.uni-mannheim.de/daten/edz-kr/gmf/06/EmploymentTrendsfinland.pdf>, 18.

⁵⁹⁶ § 5(2) of Chapter II.1 of the Port Workers Agreement for 2010-2012.

Practically, the permanent workers work 40 hours a week. Temporary workers are used in case of need and are hired on a daily (8-hour) basis. Professional temporary workers earn the same hourly wages as regular workers. These workers are used in only a few ports and represent no more than 1 or 2 per cent of the total workforce.

The Port Workers Agreement recommends the use of a voicemail system for the hiring of temporary and professional temporary port workers⁵⁹⁷. It also regulates the termination of the employment relationship (§ 6 of Chapter II.1).

⁵⁹⁷ See § 5(6) of Chapter II.1 of the Port Workers Agreement for 2010-2012.

Figure 76. Online Temporary Stevedore's Application Form of Rauma Stevedoring (source: Rauma Stevedoring⁵⁹⁸)

TEMPORARY STEVEDORE'S APPLICATION

PERSONAL DATA

Last name *

First names *

Date of birth
(dd.mm.yyyy)*

Street address *

Post code and post office *

Country

Telephone

Mobile phone

Driver's licence (a, b...)

Driver's licence granted in

MILITARY SERVICE

Military or non-military service and training branch

Fitness class

Year of discharge

Military rank

Special training

EDUCATION

Basic education **Year of graduation**

Other education
(school/college, year of graduation, completed courses/examinations/degrees)

⁵⁹⁸ <http://www.raumastevedoring.fi/en/tilapaisahtaja.html> (link found broken upon updating).

776. There are few specific requirements to become a port worker. The Port Authority of Rauma mentions the minimum age of 18 and a requirement to be trained in safety matters. As we shall explain below, training is legally required for crane drivers⁵⁹⁹ and in connection with the handling of dangerous goods⁶⁰⁰. Moreover, all workers are also expected to join the trade union⁶⁰¹.

The opportunity to join the group of professional employees is primarily offered to an employee or employees who earn their main income working in the port concerned⁶⁰².

777. Apparently, the collective agreements do not distinguish between port workers in the narrow sense (who are employed at the ship/shore interface) and warehouse or logistics workers employed within the port.

778. As we have mentioned⁶⁰³, the crane drivers have traditionally been and, in the main, still are on the payroll of the local port authority.

Private stevedoring firms may only employ crane drivers on a permanent basis⁶⁰⁴.

779. The Foremen Agreement defines a foreman as a person who, on the basis of his or her contractual employment relationship, permanently acts as a representative of the employer towards the employees and who, on the grounds of the employer's order, distributes, manages, supervises or observes the work, without participating in it him- or her-self⁶⁰⁵.

780. Port workers must carry out their tasks with due care⁶⁰⁶.

A foreman must be loyal to the employer and look after the employer's interests; the employer must respond reliably to the foreman and support him or her at work⁶⁰⁷.

⁵⁹⁹ See *infra*, para 785.

⁶⁰⁰ See *infra*, para 786.

⁶⁰¹ See *infra*, para 801.

⁶⁰² § 1(3) of Chapter II.1 of the Port Workers Agreement for 2010-2012.

⁶⁰³ See *supra*, para 765.

⁶⁰⁴ § 5 of Chapter I.2 of the Port Workers Agreement for 2010-2012.

⁶⁰⁵ § 1 of the Foremen Agreement for 2010-2012.

⁶⁰⁶ See § 19(6) of Chapter I.1 and § 19(5) of Chapter II.1 of the Port Workers Agreement for 2010-2012.

781. As a rule, unemployed port workers, including professional temporary workers, receive unemployment benefit.

- *Facts and figures*

782. No exact figures are available on the number of employers of port workers. The professional organisation Finnish Port Operators has 41 member companies operating in 25 different ports⁶⁰⁸ which are said to handle over 90 per cent of all general cargo (in tonnes). Some cargo handling companies have not joined the association, whose membership does not include industrial ports either.

783. According to the Ministry of Transport and Communications, there were 2,762 port workers and about 300 foremen in Finland on 31 December 2009. In 2012, it estimated the number of permanent port workers at 2,700 and the number of regularly employed casual or temporary workers at some 500, while the number of occasional workers varies and, in addition, some students are used.

The Finnish Port Operators informed us in October 2014 that, today, their member companies employ about 260 port foremen, 2,100 full-time stevedores, 150 temporary workers (on average) and 280 office staff (2,790 employees in total, 2,510 without office staff)⁶⁰⁹. In the port of Rauma, for example, there are about 400 port workers⁶¹⁰. Non-members of the Finnish Port Operators employ less than 100 workers.

⁶⁰⁷ § 3 of the Foremen Agreement for 2010-2012.

⁶⁰⁸ <http://www.satamaoperaattorit.fi/pages/en/about-us.php>.

⁶⁰⁹ See also <http://www.satamaoperaattorit.fi/pages/en/about-us.php>, where mention is made of 2,100 stevedores.

⁶¹⁰ In 1950, the port of Helsinki employed 807 regular workers, and approximately 8,600 casual workers (see www.baltic-heritage.net). In Turku, there were 430 port workers in 1949, 380 in 1952, 340 in 1954, and approximately 275 by the beginning of the 1970s (Teräs, K. and Bergholm, T., "Dockers of Turku, c. 1880-1970", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (84), 100). A report by ECOTEC for the European Commission from 2006 mentions the following figures on permanent employment in Finnish ports, without making a distinction between port workers and other staff however:

In 2012, Finnish port authorities employed 174 workers at port operations⁶¹¹. According to the Finnish Port Operators Association, this figure does not concern port workers as defined for the purposes of our study.

784. Almost all Finnish port workers are members of a union.

As a rule, port workers join the Transport Workers' Union (Auto- ja Kuljetusalan Työntekijäliitto, AKT), which has between 3,000 and 3,500 members in the sector. The union Technicians of the Stevedoring and Forwarding Sector (AHT, now merged into PRO) has about 300 members working in ports⁶¹².

The crane drivers are members of the Trade Union for the Public and Welfare Sectors (Julkisten ja hyvinvointialojen liitto, JHL). We could obtain no information on trade union density for this category.

The Port Authority of Rauma confirmed that the degree of unionisation is 100 per cent, with some 550 workers in AKT, and about 50 in the Trade Union for the Public and Welfare Sectors.

Table 30. Permanent employment at cargo handlers and port authorities in Finland, 2006 (source: ECOTEC)

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Cargo handling	-	2,491	2,511	2,573	2,582	2,561	2,511	2,491	2,494	2,587	2,640
Port authorities	1,025	1,007	1,139	1,093	1,092	1,055	1,043	995	972	942	919
Total	-	3,498	3,650	3,666	3,674	3,616	3,554	3,486	3,466	3,529	3,559

The same report mentions that a further 300-400 regular temporary workers were employed at cargo handling activities (Nevala, A.-M., *An exhaustive analysis of employment trends in all sectors related to sea or using sea resources. Country report – Finland*, European Commission, DG Fisheries and Maritime Affairs, August 2006, <http://edz.bib.uni-mannheim.de/daten/edz-kr/gmf/06/EmploymentTrendsfinland.pdf>, 16-17).

⁶¹¹ See <http://www.finnports.com/eng/statistics/?stats=yearly&T=1&year=2012>.

⁶¹² Another source confirms that "[m]ost of the employees of Finnish Ports" are members of AKT (see the Global Ports Investments PLC Prospectus of 24 June 2011, http://www.russianipo.com/prospectus_files/271_Globalport.pdf, 188). In 2000, AKT was said to organise 3,500 dockers (Hietanen, J., "Strikes break out as bargaining round nears conclusion", 28 April 2000, <http://www.eurofound.europa.eu/eiro/2000/04/feature/fi0004142f.htm>).

9.6.4. Qualifications and training

- *Regulatory set-up*

785. The Government Decree on Occupational Safety in Loading and Unloading of Ships provides that the operator of a lifting appliance, the driver of a transfer appliance, the signaller, and the waver must have good eyesight and hearing as well as sufficient professional skills (Section 7(1)). In addition, the operator of a port crane and a deck crane must have a relevant vocational diploma or an applicable part of such a diploma (Section 7(2)).

786. Pursuant to the Government Decree 251/2005 on the Transport and Temporary Storage of Dangerous Goods in a Port Area, the port authority and the port operator must have at least one person in charge who is familiar with the transport regulations on dangerous goods and the operations relating to the transport of dangerous goods (Section 7(1)). The port authority and the operator must ensure that the persons employed by them carrying out duties in connection with the transport of dangerous goods have the appropriate training covering the requirements of the transport and applicable to the responsibilities and tasks of the personnel. The training shall include:

- (1) *general awareness training* providing general information of the provisions relating to the transport of dangerous goods applied in the port in question;
- (2) *task-specific training*, where the personnel shall receive detailed training commensurate with the tasks and responsibility of the personnel on provisions relating to the transport mode of dangerous goods in question;
- (3) *safety training* where the personnel shall receive training in the hazards of dangerous goods commensurate with the risk of injury and exposure to the substance caused by a possible accident during transport, loading and unloading; the aim of the training shall be that the personnel is aware of the measures to be taken during the safe transport and the related handling of the substance as well as the measures to be taken in an emergency situation;
- (4) *training in the transport of radioactive materials*, where the personnel participating in the transport of these materials shall receive training on radiation risks relating to the transport of radioactive materials and the safety measures to be taken to shield from radiation and to protect others;
- (5) *training on safety measures*, where the personnel shall receive training on the safety hazards relating to the transport and the safety plan of the port;
- (6) *refresher training* given at regular intervals in amendments adopted in the provisions and regulations on the transport of dangerous goods (Section 7(2)).

The employer and the employee must have detailed information on all completed training referred to in this section. The information shall be ascertained upon commencing a new employment relationship (Section 7(3)).

787. Otherwise, no minimum requirements regarding skills and competences for port workers apply. Neither are there curricula for the training of port workers.

- *Facts and figures*

788. In practice, port training in Finland is mainly organised by official education institutions as well as at company level⁶¹³.

The Etelä-Kymenlaakso Vocational College (Ekami), a multi-disciplinary education institution with over 6,000 students based in Kotka, offers port-related training⁶¹⁴.

Port training is furthermore organised by Winnova, a vocational education and training institute in Rauma⁶¹⁵.

The South Karelia Vocational College also offers port training courses. This college is a secondary vocational educational institution⁶¹⁶. The College has a crane simulator.

Reportedly, all major stevedoring companies have developed a training system of their own.

789. Even if responses to the questionnaire varied, the following types of formal training were reported to be available:

- specialised training as part of a regular educational programme (secondary school);
- continued or advanced training after regular educational programme;
- induction courses for new entrants;
- courses for the established port worker;
- training in safety and first aid;
- specialist courses for certain categories of port workers such as crane drivers, forklift operators, tallymen and signalmen;
- training aimed at the availability of multi-skilled or all-round port workers;
- retraining of injured and redundant port workers.

⁶¹³ In 2000, Finland participated with Sweden and Germany in the ADAPT project on port training innovation (see Siltanen, M., "Baltic portwork in Finland", in Vainio, J. (Ed.), *Port training innovation*, Turku / Åbo, University of Åbo / University of Turku, 2000, 26-30).

⁶¹⁴ See www.ekami.fi.

⁶¹⁵ See www.winnova.fi.

⁶¹⁶ See www.ekamo.fi/en.

We received inconsistent information on the compulsory or voluntary nature of these courses, but all respondents agreed that training is compulsory for crane drivers, which is in conformity with the abovementioned regulations.

790. Workers participating in training courses continue to receive their normal wages⁶¹⁷. Workers possessing specific skills receive wage supplements.

9.6.5. Health and safety

- Regulatory set-up

791. The objectives of the Occupational Safety and Health Act are to improve the working environment and working conditions in order to ensure and maintain the working capacity of employees as well as to prevent occupational accidents and diseases and eliminate other hazards from work and the working environment to the physical and mental health of employees (Section 1). It sets out general rights and duties of employers and employees.

The Act also applies to 'port holders' (*sataman haltijaan*) (Section 7(10)). A separate Section is dedicated to the obligations of port holders and the owners and holders of vessels. It reads as follows:

(1) Anyone who is in charge of port management as well as the shipowner, ship master or other person in charge of a vessel are each for their part required, where appropriate, to follow the provisions of this Act when it concerns work which is performed in port, on land or on board a vessel in connection with loading or unloading a vessel used in sea traffic or inland waterway traffic or refuelling a vessel. A port also means a dock, quay or other similar place.

(2) What is provided in subsection 1 applies to a port where extensive loading and unloading of vessels or comparable operations are carried out. Provisions on ports referred to here may be given by Government decree (Section 62).

Yet another provision deals with the obligations of persons dispatching and loading goods (Section 60).

⁶¹⁷ See § 11 of Chapter I.2 of the Port Workers Agreement for 2010-2012.

792. The Government Decree on Occupational Safety in Loading and Unloading of Ships applies to the loading and unloading of ships as well as to handling of goods and any other port work immediately incidental thereto (Section 1(1)). The 'port holder' is responsible for the general planning and arrangements of occupational safety as well as the general safety and health of the working conditions and work environment in the port (Section 2(1)).

To reconcile the activities of employers and self-employed persons and to ensure the safety and health of those working in the port, the 'port holder' must 'determine' and assess the safety of the port area. In the 'determination' and assessment, the hazards that other port work causes to loading and unloading and the arrangements relating to the storage of dangerous goods must be taken into account (Section 2(2)).

The Government Decree contains provisions on, *inter alia*, the mandatory use of a signaller in case of insufficient view (Section 6), the planning of several work groups, work at height, traffic arrangements, quays, storage areas, container handling areas, access to the ship, mooring of ships, lighting, ventilation, safe working loads, inspections of cranes, dangerous goods, fumigation, etc.

793. Collective agreements reiterate that employers and employees must comply with applicable health and safety laws and regulations⁶¹⁸.

They also regulate the provision of protective clothing and safety footwear by the employer⁶¹⁹.


794. According to responses to our questionnaire, national transport and employment authorities, the police, the port authority, the harbour master, the terminal operators and the trade unions all contribute to the enforcement of applicable health and safety rules in ports.

795. It appears that some Finnish port operators are OHSAS 18001-certified.

⁶¹⁸ See § 23 of Chapter I.1 and § 23 of Chapter II.1 of the Port Workers Agreement for 2010-2012.

⁶¹⁹ § 12 of Chapter I.2 of the Port Workers Agreement for 2010-2012; compare § 15 of the Collective Agreement for Harbour and Warehouse Terminal Employees in the Forwarding Industry.

Figure 77. OHSAS 18001 certificate of Euroports, 2012 (source: Euroports⁶²⁰)

 Certificate
No. 2319-06

Inspecta

Inspecta Sertifointi Oy has granted this certificate as proof that
the occupational health and safety system of

**Euroports Finland Oy
Euroports Rauma Oy
Euroports Pietarsaari Oy Ab**

complies with the requirements of the standard

OHSAS 18001:2007

Certification covers

Stevedoring, Forwarding, Ship Agency Services and Warehousing.

The certificate is issued on 2012-12-31
(first issue 2003-01-23).

The certificate is valid until 2015-12-31.

Anne Qvintus

Anne Qvintus, Managing Director

The certificate is valid on condition that the occupational health and safety system of the organization
remains in compliance with the aforementioned standard and the General Regulations ABC 200.
The validity of the certificate can be checked on the Internet at www.inspecta.fi



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TRUST & QUALITY www.inspecta.com

⁶²⁰ http://www.euroports.fi/pdf/EN_18001.pdf.

- Facts and figures

796. In 2012, port workers and stevedores were involved in 461 occupational accidents (475 in 2011; for employees, number of workplace accidents without commuting accidents).

The Federation of Accident Insurance Institutions (FAII) maintains very detailed statistics on occupational accidents, from which the below are only a selection⁶²¹. Frequency rates can only be given by branch of business, not by occupation. As a result, it was impossible to provide a comparison of frequency rates between port labour and other sectors⁶²².

⁶²¹ The statistics were kindly forwarded to us by Statistics Finland.

⁶²² According to accidents statistics for 2008, the packing, storage and stevedoring sector was the 7th most dangerous sector of the Finnish economy. This may be inferred from the following figure:

Figure 78. Number of workplace accidents, employees only, by occupation (source: Federation of Accident Insurance Institutions (FAII))

OCCUPATION	YEAR							
	2005	2006	2007	2008	2009	2010	2011	2012
metal work in workshops etc	20636	21594	22254	22143	15496	15708	16690	16158
construction work (buildings)	11890	12262	13218	12466	9124	9682	10395	9599
healthcare work	4240	4551	5150	5455	5573	6200	6756	6865
cleaning, housekeeping, etc	5890	6187	5996	5986	5725	6115	6309	6242
road traffic occupations	6328	6663	6644	6581	5436	6026	6235	5847
selling of goods	4242	4575	4670	4852	4602	4862	4937	5042
office work	4196	4078	4171	4632	4157	4386	4577	4773
packing, storage and stevedoring*	5080	5434	5708	5622	4258	4574	4603	4543
canteen, cooking and hotel work	3311	3350	3399	3640	3326	3443	3695	3593
electrical work	4177	4266	4444	4413	3644	3626	3790	3381
teaching work	2077	2262	2320	2628	2468	2783	3012	3008
others	38926	40546	41109	40814	34568	37017	37255	36379
all occupations	110993	115768	119083	119232	98377	104422	108254	105430

(Ministry of Social Affairs and Health, *Occupational Safety and Health in Finland*, Helsinki, 2010, http://www.stm.fi/c/document_library/get_file?folderId=1087418&name=DLFE-13602.pdf, 28).

Table 31. Number of accidents⁶²³ involving stevedores (dock workers) in Finland by main branch of business⁶²⁴, 1999-2012 (source: Federation of Accident Insurance Institutions (FAII))

Main branch of business	Year of accident														TOTAL
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	
AGRICULTURE, FORESTRY AND FISHING	0	0	0	0	0	1	1	2	1	0	3	0	0	0	8
MANUFACTURING	15	19	12	9	6	13	9	11	15	5	2	6	2	2	126
CONSTRUCTION	1	0	0	1	1	0	0	0	1	0	0	0	0	1	5
TRADE, REPAIR OF MOTOR VEHICLES	1	0	0	0	0	1	0	2	0	0	0	2	0	1	7
TRANSPORTATION AND STORAGE	542	492	423	395	394	360	306	366	303	268	202	212	219	223	4,705
ACCOMMODATION, FOOD SERVICE ACT'S	0	0	8	15	13	21	0	0	0	0	0	0	0	0	57
INFORMATION AND COMMUNICATION	0	0	0	0	0	0	0	0	0	3	2	0	0	0	5
PROF, SCIENTIFIC AND TECHNICAL ACT	0	0	0	0	0	2	0	1	1	2	1	1	2	2	12
ADMIN AND SUPPORT SERVICE ACT	0	1	2	0	0	0	0	0	0	1	0	0	0	1	5
PUBLIC ADMIN, DEF, CMPLSRY SOC SEC	2	1	2	1	5	46	55	47	39	49	35	56	36	17	388
EDUCATION	0	0	0	0	0	0	0	1	0	1	2	0	0	9	13
HUMAN HEALTH AND SOC WORK ACT	0	0	0	0	0	0	0	0	1	1	0	0	1	0	3
ARTS, ENTERTAINMENT AND RECREATION	0	0	0	0	3	1	0	0	0	0	0	0	0	0	4
INDUSTRY UNKNOWN	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
MUNICIPALITIES	2	1	1	1	0	1	0	0	0	0	0	0	0	0	6
TOTAL	563	514	448	422	422	446	371	430	361	330	248	277	260	257	5,349

⁶²³ Length of disability: Fatal, Pension, 181-360, 91-180, 31-90, 15-30, 7-14, 4-6 calendar days of incapacity for work. Only workplace accidents are included.

⁶²⁴ The table shows figures for 'stevedores' which were filtered by the occupation code of the injured worker (for workers with multiple occupations, this shows the occupation with highest accident risk level). The table may also include some accidents occurring outside ports, as no data on the working environment are available. While occupation is an attribute of the worker, branch is an attribute of the company paying the salary. Because of the common use of contracting and subcontracting, accidents in several branches are shown.

Table 32. Number of accidents⁶²⁵ involving stevedores (dock workers) in Finland by branch of business, 1999-2012 (source: Federation of Accident Insurance Institutions (FAII))

Branch of business (2)	Year of accident														TOTAL
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	
INDUSTRY UNKNOWN	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
CROP AND ANIMAL PROD, HUNTING ETC	0	0	0	0	0	1	0	0	0	0	2	0	0	0	3
FORESTRY AND LOGGING	0	0	0	0	0	0	1	2	1	0	1	0	0	0	5
MANUFACTURE OF FOOD PRODUCTS	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
MANUFACTURE OF BEVERAGES	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
MANUF OF WOOD ETC, NOT FURNITURE	6	0	1	0	0	1	0	0	1	0	0	1	0	1	11
MANUF OF PAPER AND PAPER PRODUCTS	0	0	0	0	1	0	0	0	0	1	0	0	0	0	2
PRINT AND REPRO OF RECORDED MEDIA	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
MANUF OF COKE AND REFINED PETR PROD	2	3	2	2	1	1	2	1	1	0	0	1	0	1	17
MANUFACTURE OF CHEMICALS ETC	0	0	1	1	1	1	0	0	0	0	0	1	1	0	6
MANUF OF RUBBER AND PLASTIC PROD	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
MANUF OF OTHER NON-MET MINERAL PROD	1	0	0	0	0	0	0	1	0	0	0	0	0	0	2
MANUFACTURE OF BASIC METALS	3	10	1	6	3	7	6	4	8	3	2	2	1	0	56
MANUF OF FABRICATED METAL PRODUCTS	0	1	1	0	0	0	0	0	0	0	0	0	0	0	2

⁶²⁵ Length of disability: Fatal, Pension, 181-360, 91-180, 31-90, 15-30, 7-14, 4-6 calendar days of incapacity for work. Only workplace accidents are included.

MANUF OF MACHINERY AND EQPT NEC	2	4	5	0	0	1	1	4	2	1	0	1	0	0	21
MANUF OF OTHER TRANSPORT EQUIPMENT	0	0	0	0	0	1	0	0	2	0	0	0	0	0	3
REPAIR AND INSTALL OF MACH AND EQPT	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
CONSTRUCTION OF BUILDINGS	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
SPECIALISED CONSTRUCTION ACTIVITIES	1	0	0	1	1	0	0	0	0	0	0	0	0	1	4
Branch of business (2)	Year of accident														TOTAL
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2013	
TRADE AND REPAIR OF MOTOR VEHICLES	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
WHOLESALE, NOT MOTOR VEHICLES ETC	1	0	0	0	0	0	0	2	0	0	0	2	0	1	6
LAND TRANSPORT, PIPELINES	67	36	13	23	24	3	11	12	7	9	7	5	3	4	224
WATER TRANSPORT	3	10	4	3	3	0	1	2	1	1	1	1	0	0	30
AIR TRANSPORT	21	32	27	26	23	5	2	1	0	1	1	0	0	0	139
WAREHOUSING , SUPPORT FOR TRANSPORT	451	414	379	343	344	352	292	351	295	257	193	206	216	219	4,312
FOOD AND BEVERAGE SERV ACTIVITIES	0	0	8	15	13	21	0	0	0	0	0	0	0	0	57
COMPUTER PROG, CONSULTANCY ETC	0	0	0	0	0	0	0	0	0	3	2	0	0	0	5
ARCHIT ETC ACT, TECH TESTING ETC	0	0	0	0	0	0	0	0	0	2	1	1	1	2	7
SCIENTIFIC RESEARCH AND DEVELOPMENT	0	0	0	0	0	2	0	1	1	0	0	0	1	0	5
EMPLOYMENT ACTIVITIES	0	0	1	0	0	0	0	0	0	1	0	0	0	1	3
SERV TO BUILDINGS	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1

AND LANDSCAPE ACT															
OFFICE ADMIN AND SUPPORT ETC ACT	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
PUBLIC ADMINISTRATI ON ETC	2	1	2	1	5	46	55	47	39	49	35	56	36	17	389
EDUCATION	0	0	0	0	0	0	0	1	0	1	2	0	0	9	13
HUMAN HEALTH ACTIVITIES	0	0	0	0	0	0	0	0	1	1	0	0	0	0	2
RESIDENTIAL CARE ACTIVITIES	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
CREATIVE, ARTS AND ENTMNT ACT	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
SPORTS ETC RECREATION ACTIVITIES	0	0	0	0	2	1	0	0	0	0	0	0	0	0	3
MUNICIPALITIE S	2	1	1	1	0	1	0	0	0	0	0	0	0	0	6
TOTAL	563	514	448	422	422	446	371	430	361	330	248	277	260	257	5349

Table 33. Number of accidents⁶²⁶ involving stevedores (dock workers) in Finland by cause of accident, 1999-2012 (source: Federation of Accident Insurance Institutions (FAII))

Cause of accident	Year of accident															TOTAL
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012		
Unknown	563	514	448	400	0	0	0	0	0	0	0	0	0	0	0	1,925
No material agent or no information	0	0	0	0	10	12	21	17	18	9	10	8	8	11	124	
Ground level buildings/structures/surfaces	0	0	0	6	107	116	103	128	92	96	81	86	96	81	992	
Fixed parts of building, above ground	0	0	0	1	19	14	7	16	17	14	16	15	4	8	131	
Fixed ladders	0	0	0	0	5	6	1	2	5	2	3	2	2	2	30	
Columns/pylons/gangways/mezzanines/masts	0	0	0	0	2	1	2	7	0	4	2	3	1	2	24	
Other fixed structures above ground	0	0	0	0	1	1	1	1	2	1	2	0	0	0	9	
Mobile ladders/stepladders	0	0	0	0	1	3	5	1	4	2	0	1	0	1	18	
Improvised supports	0	0	0	0	0	2	0	2	2	0	2	2	3	2	15	
Mobile scaffolding	0	0	0	0	1	0	0	0	0	0	0	0	1	0	2	
Other mobile structures above ground	0	0	0	0	2	3	4	0	3	1	1	0	0	2	16	

⁶²⁶ Length of disability: Fatal, Pension, 181-360, 91-180, 31-90, 15-30, 7-14, 4-6 calendar days of incapacity for work. Only workplace accidents are included.

Temporary structures above ground level	0	0	0	0	1	0	1	1	0	0	1	0	1	0	5
Other buildings/structures above ground	0	0	0	0	0	2	1	2	2	3	2	3	2	2	19
Pits/wells/trenches/excavations etc.	0	0	0	0	1	0	0	1	1	0	0	2	0	0	5
Supply systems for materials/pipe networks	0	0	0	0	14	3	1	4	2	4	3	1	3	2	37
Motors/energy transmissions and storage	0	0	0	0	0	0	1	0	1	0	0	0	1	1	4
Hand tools, not powered	0	0	0	0	12	10	14	17	12	19	11	13	7	13	128
Mechanical hand-held/hand-guided tools	0	0	0	0	0	4	4	5	3	1	1	4	4	3	29
Hand tools (power source not known)	0	0	0	0	5	8	12	18	4	7	4	5	4	3	70
Portable/mobile machines, farm/ground work	0	0	0	0	0	0	1	1	0	0	2	0	0	0	4
Portable/mobile machines, construction	0	0	0	0	0	2	1	0	0	0	0	0	0	1	4
Mobile floor cleaning machines	0	0	0	0	1	1	0	0	0	0	0	0	0	0	2
Other portable/mobile machines	0	0	0	3	8	13	7	7	6	5	1	4	6	5	65
Machines, extracting/ground working	0	0	0	1	0	0	0	0	0	0	0	0	1	0	2
Machines for preparing materials	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Machines, chemical processes	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Machines, cold processes	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Machines, other processes	0	0	0	0	0	0	1	1	0	0	2	0	0	0	4
Forming machines, pressing/crushing	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Machine tools, surface treatment/drilling	0	0	0	0	0	2	2	0	1	0	2	1	0	0	8
Cause of accident	Year of accident														TOTAL
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	
Machine tools, sawing	0	0	0	0	0	1	5	2	0	2	0	1	0	0	11
Machine tools, cutting/clipping	0	0	0	0	0	2	1	0	0	0	0	0	1	0	4
Assembling machines	0	0	0	0	0	0	0	1	2	0	0	0	0	0	3
Other fixed machines	0	0	0	0	4	3	0	0	1	0	0	0	2	0	10
Fixed conveyors/handling equipment	0	0	0	0	1	1	0	0	0	1	0	0	0	1	4
Elevators/lifts/hoists/jacks etc.	0	0	0	0	0	0	1	0	0	1	0	0	1	0	3
Cranes/hoisting devices with suspended load	0	0	0	1	3	5	1	0	1	2	1	0	2	2	18
Non-lifting load transporting devices	0	0	0	2	6	2	3	6	5	1	1	3	0	1	30
Wheelbarrows	0	0	0	0	4	1	0	0	0	1	0	1	1	1	9
Hand trucks	0	0	0	0	0	0	0	1	1	0	0	0	0	0	2
Tilting conveyors/trolleys/carts	0	0	0	0	9	12	8	9	5	10	9	6	2	4	74
Pallet trucks	0	0	0	0	1	0	1	0	1	1	1	1	0	0	6
Forklift trucks	0	0	0	1	25	25	21	21	14	7	6	8	7	2	137
Other mobile handling devices	0	0	0	0	9	4	4	4	9	4	3	5	1	2	45
Lifting/securing/misc. handling devices	0	0	0	1	8	11	11	11	11	10	2	2	4	10	81
Fixed storage equipment/containers	0	0	0	0	1	0	1	0	1	1	1	1	0	2	8

Mobile storage equipment/containers	0	0	0	0	2	4	0	2	4	1	1	2	0	0	16
Storage pallets/pallet racks/shelving etc	0	0	0	0	0	0	0	0	1	1	1	1	0	4	8
Misc. mobile packaging, small/medium	0	0	0	0	2	4	1	1	4	4	0	2	0	0	18
Transport/storage systems not listed	0	0	0	0	8	10	6	9	4	4	3	6	5	3	58
Land vehicles	0	0	0	0	14	22	7	8	9	12	9	9	11	9	110
Other transport vehicles	0	0	0	0	4	5	5	2	2	5	3	0	4	3	33
Materials/products/components/debris/dust	0	0	0	3	93	86	67	91	70	48	39	48	47	41	633
Chemical/radioactive/biological substance	0	0	0	1	1	2	2	1	1	0	0	3	1	0	12
Safety devices and equipment	0	0	0	1	1	0	1	1	0	0	0	0	0	0	4
Office, personal etc. equipment, weapons	0	0	0	0	5	1	2	1	4	7	3	4	4	5	36
Living organisms and human-beings	0	0	0	0	4	4	2	2	3	4	5	5	3	0	32
Bulk waste	0	0	0	0	0	1	2	1	2	0	0	2	1	1	10
Physical phenomena, natural elements	0	0	0	0	3	4	2	1	2	7	2	6	5	1	33
Other material agents not listed	0	0	0	1	24	32	26	23	28	27	12	11	14	26	224
TOTAL	563	514	448	422	422	446	371	430	361	330	248	277	260	257	5,349

Table 34. Number of accidents⁶²⁷ involving stevedores (dock workers) in Finland by type of injury, 1999-2012 (source: Federation of Accident Insurance Institutions (FAII))

Type of injury	Year of accident														TOTAL
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	
Unknown or unspecified	0	0	0	0	3	3	4	2	6	9	2	4	5	8	46
Wounds and superficial injuries	0	0	0	0	37	68	66	69	49	47	39	43	43	46	507
Bone fractures	0	0	0	0	34	33	34	37	27	29	28	32	26	18	298
Dislocations, sprains and strains	0	0	0	0	212	215	154	189	168	160	122	119	118	127	1,584
Traumatic amputations (loss of body parts)	0	0	0	0	1	0	2	1	4	2	0	1	2	3	16
Concussion and internal injuries	0	0	0	0	129	115	98	123	99	77	53	75	61	51	881
Burns, scalds and frostbites	0	0	0	0	1	2	1	1	2	1	1	0	2	0	11

⁶²⁷ Length of disability: Fatal, Pension, 181-360, 91-180, 31-90, 15-30, 7-14, 4-6 calendar days of incapacity for work. Only workplace accidents are included.

Poisonings and infections	0	0	0	0	0	3	1	2	1	0	1	1	0	0	9
Effects of temperature, light, radiation	0	0	0	0	0	0	1	0	0	0	0	1	0	0	2
Multiple injuries	0	0	0	0	3	3	1	3	2	4	1	1	2	0	20
Other injuries	0	0	0	0	2	4	9	3	3	1	1	0	1	1	25
Unknown	563	514	448	422	0	0	0	0	0	0	0	0	0	0	1,947
TOTAL	563	514	448	422	422	446	371	430	361	330	248	277	260	257	5,349

Table 35. Number of accidents⁶²⁸ involving stevedores (dock workers) in Finland by sex, 1999-2012 (source: Federation of Accident Insurance Institutions (FAII))

Sex	Year of accident														TOTAL
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	
male	545	505	431	412	407	423	334	397	335	304	227	260	243	239	5,062
female	18	9	17	10	15	23	37	33	26	26	21	17	17	18	287
TOTAL	563	514	448	422	422	446	371	430	361	330	248	277	260	257	5,349

Table 36. Number of accidents⁶²⁹ involving stevedores (dock workers) in Finland by age group, 1999-2012 (source: Federation of Accident Insurance Institutions (FAII))

Age group	Year of accident														TOTAL
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	
15-24	63	60	33	44	40	66	48	71	46	41	22	28	20	18	600
25-44	321	295	262	224	232	231	187	206	191	166	123	135	127	124	2,824
45-64	179	159	153	154	150	148	135	152	123	120	103	114	113	114	1,917
YLI 64	0	0	0	0	0	1	1	1	1	3	0	0	0	1	8
TOTAL	563	514	448	422	422	446	371	430	361	330	248	277	260	257	5,349

⁶²⁸ Length of disability: Fatal, Pension, 181-360, 91-180, 31-90, 15-30, 7-14, 4-6 calendar days of incapacity for work. Only workplace accidents are included.

⁶²⁹ Length of disability: Fatal, Pension, 181-360, 91-180, 31-90, 15-30, 7-14, 4-6 calendar days of incapacity for work. Only workplace accidents are included.

Table 37. Number and frequency of occupational accidents in Finland, by branch of business, 2005-2013 (source: Federation of Accident Insurance Institutions (FAII); * indicates provisional data)

Year	Branch of business	Number of accidents	Hours actually worked (1000 h)	Frequency
2005	49 Land transport and transport via pipelines	3,655	96,264	38
2005	50 Water transport	361	17,106	21.1
2005	51 Air transport	163	11,501	14.2
2005	52 Warehousing and support activities for transportation	930	42,263	22
2005	53 Postal and courier activities	1,108	36,604	30.3
2006	49 Land transport and transport via pipelines	3,711	109,267	34
2006	50 Water transport	333	16,801	19.8
2006	51 Air transport	154	11,098	13.9
2006	52 Warehousing and support activities for transportation.	1,007	43,451	23.2
2006	53 Postal and courier activities	1,206	39,087	30.9
2007	49 Land transport and transport via pipelines	3,627	106,489	34.1
2007	50 Water transport	280	16,725	16.7
2007	51 Air transport	136	11,004	12.4
2007	52 Warehousing and support activities for transportation	1,112	44,924	24.8
2007	53 Postal and courier activities	1,154	37,180	31
2008	49 Land transport and transport via pipelines	3,454	105,494	32.7
2008	50 Water transport	299	15,798	18.9
2008	51 Air transport	124	12,966	9.6
2008	52 Warehousing and support activities for transportation	995	42,748	23.3
2008	53 Postal and courier activities	1,185	36,034	32.9
2009	49 Land transport and transport via pipelines	2,754	102,678	26.8
2009	50 Water transport	229	15,688	14.6
2009	51 Air transport	119	10,836	11
2009	52 Warehousing and support activities for transportation	718	37,344	19.2
2009	53 Postal and courier activities	948	33,679	28.1
2010	49 Land transport and transport via pipelines	2,945	105,289	28
2010	50 Water transport	223	16,950	13.2
2010	51 Air transport	57	8,025	7.1
2010	52 Warehousing and support activities for transportation	762	40,710	18.7
2010	53 Postal and courier activities	1,082	33,825	32
2011	49 Land transport and transport via pipelines	2938	99534	29,5
2011	50 Water transport	220	15255	14,4
2011	51 Air transport	47	6951	6,8
2011	52 Warehousing and support activities for transportation	803	41309	19,4
2011	53 Postal and courier activities	1038	30858	33,6

2012	49 Land transport and transport via pipelines	2680	94318	28,4
2012	50 Water transport	186	15464	12
2012	51 Air transport	40	6083	6,6
2012	52 Warehousing and support activities for transportation	894	41349	21,6
2012	53 Postal and courier activities	978	29791	32,8
2013*	49 Land transport and transport via pipelines	2340	95083	24,6
2013*	50 Water transport	166	16201	10,2
2013*	51 Air transport	45	7063	6,4
2013*	52 Warehousing and support activities for transportation	835	41136	20,3
2013*	53 Postal and courier activities	969	25875	37,5

We also received the following data on occupational diseases⁶³⁰.

Table 38. Recognised occupational diseases involving port workers in Finland, 2005-2010 (source: Finnish Registry of Occupational Diseases, Finnish Institute of Occupational Health)

Main disease group	2005	2006	2007	2008	2009	2010	Total
Asbestos-induced diseases		1	2	1	1	1	6
Allergic respiratory diseases						1	1
Skin diseases	1	2					3
Hearing loss	1	5	1	2	3	1	13
Repetitive strain injuries	1	5			1	2	9
Total	3	13	3	3	5	5	32

⁶³⁰ All tables cover the following professions according to Statistics Finland's Classification of Occupations 2001):

- 3422 Clearing and forwarding agents
- 8333 Crane, hoist and related plant operators, including port crane drivers
- 8334 Lifting-truck operators
- 9330 Transport labourers and freight handlers, including stevedores and port workers
- 31442 Harbour traffic controllers
- 41339 Other transport clerks, including stevedoring technicians and stevedoring foremen.

The above professions were considered in the following industries (Statistics Finland's Standard Industrial Classification TOL 2002 and 2008):

- Standard Industrial Classification TOL 2002:

- 63221 Harbours
- 63110 Cargo handling
- 63401 Forwarding and freighting

- Standard Industrial Classification TOL 2008:

- 52221 Harbours
- 52240 Cargo handling
- 52291 Forwarding and freighting

There are no separate data on port crane drivers.

We have not included slightly different statistics obtained from the Finnish Ministry for Transport and Communications.

Table 39. Suspected occupational diseases involving port workers in Finland, 2005-2010 (source: Finnish Registry of Occupational Diseases, Finnish Institute of Occupational Health)

Main disease group	2005	2006	2007	2008	2009	2010	Total
Asbestos induced diseases	1		1		1	1	4
Skin diseases	1	1	1				3
Hearing loss	3	5	4		1	2	15
Repetitive strain injuries	5	3		3			11
Total	10	11	6	3	2	3	35

Table 40. Recognised and suspected occupational diseases involving port workers in Finland, 2005-2010 (source: Finnish Registry of Occupational Diseases, Finnish Institute of Occupational Health)

Main disease group	2005	2006	2007	2008	2009	2010	Total
Asbestos induced diseases	1	1	3	1	2	2	10
Allergic respiratory diseases						1	1
Skin diseases	2	3	1				6
Hearing loss	4	10	5	2	4	3	28
Repetitive strain injuries	6	8		3	1	2	20
Total	13	24	9	6	7	8	67

9.6.6. Policy and legal issues

- Restrictions on employment

797. Responding to the questionnaire, the Ministry of Transport and Communications, the Finnish Port Operators Association and the Port Authority of Rauma all confirmed that operators from other EU countries are allowed to establish themselves and offer services in Finnish ports (on condition that Finnish collective agreements are complied with).

The applicable collective agreements confirm the authority of the employer to decide on recruitment and dismissal of workers⁶³¹ and guarantees freedom of association for both employers and employees⁶³².

Yet, it would appear that a number of restrictions prevail in the Finnish port labour market.

⁶³¹ See Chapter I.1, § 5(1) and Chapter II.1, § 5(1) of the Port Workers Agreement for 2010-2012; § 3 of the Foremen Agreement for 2010-2012.

⁶³² See *infra*, para 801.

798. First of all, we should point out that, in a number of Finnish ports, competition between cargo handlers is very weak.

In the late 1980s and the early 1990s, the Finnish Competition Office received complaints by companies trying to start up a cargo handling business using port workers covered by ILO Convention No. 137. The Convention has traditionally been considered implemented by the branch-wise national collective agreement. In a decision of 1991, the Office noted (in its grounds) that if the employers' organisation hinders the entry into the business or creates obstacles to the functioning of new companies, this can be deemed as falling under the Restrictive Practices Act. In this way, the Office indirectly recommended the employers' organisation to accept new undertakings as its members⁶³³.

In an authoritative research paper of 2011, Jussi Rönty, Marko Nokkala and Kaisa Finnilä explain that stevedoring firms have often advanced from several small companies into one single port operator. At present, many stevedoring firms in Finland are owned by the forest and steel industry, and shipping companies⁶³⁴. There is no legal or administrative limitation on the number of port service providers. Some stevedoring companies operate in several ports. In Finnish ports, often the stevedoring company is owned by the main shipper or customer of the port (mainly forest or steel industry). One major stevedoring company is owned by a leading Finnish shipping line. Competition in providing cargo handling services in ports has increased, but it is still typical of stevedoring services in most Finnish ports that one stevedoring company enjoys a dominant market position. Reasons for this are e.g. small cargo flows in small ports, long traditions and ownership bases. The owners also produce the main cargo flows for many ports. The trend seems to be that stevedoring firms operating in different ports but having the same owners are being amalgamated into bigger units⁶³⁵. Another significant feature in the Finnish model is that most ports in Finland are rather small in size internationally compared, so the number of port operators is very limited. In most cases there is only one 'main operator'. The operators and ports have traditionally been closely connected for a very long time and in many cases could be described as strategic partners. Hence, in practice new operators (mainly stevedoring companies) have no realistic opportunities to enter the market or at least it is very difficult. One other significant difference to the landlord model is that Finnish ports often own cranes, warehouses and other superstructure themselves, and also provide lifting, warehousing etc. services. In the landlord port model private operators would handle all of the needed operations. Of course, there are also ports that operate in a more 'purist' manner following the principles of the landlord or tool port models. The port of Helsinki in Vuosaari is an example of

⁶³³ Hellsten, J., "The Finnish Report / COLCOM Project", in Bruun, N. and Hellsten, J., *Collective Agreements on the Competitive Common Market. A Study of Competition Rules and Their Impact on Collective Labour Agreements*, COLCOM Report, June 2000, (93), 94, para 4.

⁶³⁴ See also Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen, Turku / Åbo*, University of Åbo / University of Turku, 2004, 105-106 and also 108 on industrial ports.

⁶³⁵ Rönty, J., Nokkala, M. and Finnilä, K., *Port ownership and governance models in Finland. Development needs & future challenges*, VTT Working Papers, <http://www.vtt.fi/inf/pdf/workingpapers/2011/W164.pdf>, 15.

a port utilising the landlord port model. There are also quite a few smaller municipal tool ports where only a limited number of small firms operate⁶³⁶.

Another source confirms that about 80 per cent of Finnish ports are operated as a monopoly at the local level, with only one operator. The majority of the monopolistic ports are small and may specialise in the handling of specific products or types of cargo⁶³⁷. However, the Finnish Port Operators Association points out that competition between several operators is not feasible in small ports or when the traffic volume is low.

The Finnish Port Operators Association stresses that inter-port competition remains fierce and that port users have numerous options.

In an interview, a manager at a major Finnish shipping group commented that the monopolies of local port operators are defended by the municipal port authorities who will not allow competition. Whereas, in principle, stevedoring is organised by private companies, it is practically extremely difficult for outsiders to obtain access to the market and start up a new stevedoring business. The justification that small cargo volumes render competition unfeasible is wrong, as nothing should prevent a company from operating facilities in different ports. Our interviewee considered the lack of competition in Finnish ports a more pressing problem than the rigidities of the port labour system.

799. In 2011, the attention of the Finnish Competition Authority was drawn to a situation where a municipally owned port seemed to favour its own cranes vis-à-vis privately owned crane companies and thereby allegedly breached competition rules by discrimination. The Authority also noted that a licence is needed for the establishment of new private ports, but the licence process has not been applied in practice⁶³⁸. The Finnish Competition Authority informed us that at this stage the former case, while still pending, is not considered a priority issue. It also stated that so far no other port labour-related competition cases have arisen.

Currently, port cranes are increasingly being transferred to the stevedoring companies. This has happened in, for example, Helsinki, Rauma and HaminaKotka.

800. The Ministry of Transport and Communications explains that port workers must be registered with their company, which in most cases is a member of the Finnish Port Operators

⁶³⁶ Rönty, J., Nokkala, M. and Finnilä, K., *Port ownership and governance models in Finland. Development needs & future challenges*, VTT Working Papers, <http://www.vtt.fi/inf/pdf/workingpapers/2011/W164.pdf>, 21.

⁶³⁷ See the Global Ports Investments PLC Prospectus of 24 June 2011, http://www.russianipo.com/prospectus_files/271_Globalport.pdf, 186.

⁶³⁸ See OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>, (123), 129 and 130-131.

Association. The Finnish Port Operators Association confirms that port workers must be registered and adds that the register is a register within the meaning of ILO Convention No. 137 and that the registered workers enjoy priority of employment⁶³⁹.

No respondent raised the issue of whether the current practice is in conformity with the ILO Convention No. 137 to which Finland is a Party. However, a thorough survey on the need for a reform of Finnish port legislation by Tapio Karvonen and Hannu Tikkala, carried out in 2004 on behalf of the Finnish Ministry of Transport and Communications, reveals that employers and unions do not agree on the exact scope of the priority of employment guaranteed under ILO Convention No. 137. They suggest that AKT interprets the reservation of port work for registered port workers as a monopoly for its own members⁶⁴⁰.

Responding to our questionnaire, the Ministry of Transport and Communications also reports that some years ago, the social partners carried out a survey to find out whether some form of pool system would be feasible in Finland, but that the conclusion was clearly negative.

801. As we have explained⁶⁴¹, and constitutional guarantees on freedom of association notwithstanding, closed shop practices in Finnish ports rest on a strong tradition. This is in line with the traditionally high national trade union density in Finland, which is believed to be the highest in the entire European Union⁶⁴².

The current Port Workers Agreement expressly states that workers and foremen are free to decide whether they will join the union or not⁶⁴³. The Agreement also authorises (and indeed obliges) the employer to deduct, with the employee's consent, the union membership fee from the wages and to directly transfer the amount to the union's account⁶⁴⁴. The union membership fees of foremen are borne by the employer⁶⁴⁵.

Responses to our questionnaire indicate that, to this day, almost all port workers are unionised⁶⁴⁶. The Ministry of Transport and Communication and the Port Authority of Rauma

⁶³⁹ However, the Port Authority of Rauma denied that workers must be registered and that they enjoy any exclusivity or priority. Probably, this is due to a misunderstanding, as port operators in Rauma are also obliged to register their workers.

⁶⁴⁰ Karvonen, T. and Tikkala, H., *Satamatoimintojen kehittäminen ja satamia koskevan lainsäädännön uudistaminen*, Helsinki, Liikenne- ja viestintäministeriö, 2004, http://www.lvm.fi/files/65_2004.pdf, 23 and 33.

⁶⁴¹ See *supra*, para 776.

⁶⁴² Estimated at 74 or over 90 per cent depending on the source (see Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>).

⁶⁴³ Port Workers Agreement for 2010-2012, Chapter I.1, § 3(2) and Chapter II.1, § 3(2); Foremen Agreement for 2010-2012, § 2.

⁶⁴⁴ § 25 of Chapter I.1 and § 25 of Chapter II.1 of the Port Workers Agreement for 2010-2012; compare § 25 of the Collective Agreement for Harbour and Warehouse Terminal Employees in the Forwarding Industry.

⁶⁴⁵ § 19 of the Foremen Agreement for 2010-2012.

⁶⁴⁶ See *supra*, para 776.

confirm that union membership is a factual requirement to become a port worker. The Ministry added that operators from other Member States are allowed to employ workers of their choice if these are registered and if there is an agreement with the local trade union branch.

According to the abovementioned port law reform survey by Tapio Karvonen and Hannu Tikkala from 2004, many stakeholders in the Finnish port sector identify the strong position of the port workers' union and the priority of employment for registered port workers as major issues. The latter restricts competition and increases costs⁶⁴⁷.

In an interview, a terminal operator said that the unions have far too much power and that they are not interested in creating jobs in ports, but only in ensuring the highest possible salaries in return for the least possible amount of work, which he considered "very sad".

In another interview, a major Finnish shipping group confirmed the extremely strong power of the unions, who are defending a very rigid port labour system. While Finnish port operators do not use a formal pool system as in Antwerp, they rely on a local network of permanent and temporary workers which is totally controlled by the union.

802. Karvonen and Tikkala also received complaints about a ban on self-handling in Finnish ports, more particular in connection with on-board lashing and unlashing operations⁶⁴⁸. Reportedly, the unions tolerate loading and unloading of coal by ship's crews as an exception⁶⁴⁹.

The unions opposed the proposed EU Port Services Directive because it would introduce unskilled labour performed by untrained ships' crews⁶⁵⁰.

The Finnish Port Operators confirmed that lashing and unlashing on board ro-ro ships is everywhere reserved for the port workers and clarified that there is no ban on self-handling in the law, but that it rests on tradition and usage.

One terminal operator told us that workers would not oppose cooperating with ship's crews for lashing and unlashing work but that the "enormously jealous" unions veto this in order to

⁶⁴⁷ Karvonen, T. and Tikkala, H., *Satamatoimintojen kehittäminen ja satamia koskevan lainsäädännön uudistaminen*, Helsinki, Liikenne- ja viestintäministeriö, 2004, http://www.lvm.fi/fileserver/65_2004.pdf, 6 and 58-59.

⁶⁴⁸ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) *All longshore activities.*

(b) *Exceptions:*

(1) *Opening and closing of hatches, and*

(2) *Rigging of ship's gear.*

⁶⁴⁹ This finds confirmation in an ESPO report for 2004-2005, which also mentions that the union can be particularly hostile against self-handling and lay a factual ban on it (European Sea Ports Organisation, *Factual Report on the European Port Sector*, Brussels, 2004-2005, 130).

⁶⁵⁰ Karvonen, T. and Tikkala, H., *Satamatoimintojen kehittäminen ja satamia koskevan lainsäädännön uudistaminen*, Helsinki, Liikenne- ja viestintäministeriö, 2004, http://www.lvm.fi/fileserver/65_2004.pdf, 6, 30, 33, 59 and 75.

defend their power base. Yet, at some Finnish terminals, the crew is tolerated to work together with the port workers, but in Denmark, Estonia and Poland, rules on self-handling are more liberal.

A manager at a shipping group confirmed that all on-board lashing work must be performed by port workers. For project cargo, too, a minimum gang of port workers must be used. However, there is no point in opening up all port work for ship's crews, since crew levels are constantly being reduced and most sailors are unable to carry out specialised cargo handling operations.

Another source related that in Finland, truck drivers are allowed to drive their own vehicles on and off ro-ro ships but that unmanned trailers must in all cases be loaded and unloaded by port workers, except at Viking Line terminals, where a special agreement with the trade union AKT allows the ferry line to use its own staff.

803. In its reply to the questionnaire, the Finnish Port Operators Association mentions a mismatch between supply and demand of workers which is mainly due to rigid rules on working time and the restrictions on the use of temporary workers.

Applicable collective agreements do not seem to impose manning scales, but stress the freedom of employers to decide on the composition of gangs and on the transfer of workers between different tasks⁶⁵¹.

804. As in other countries, cargo handling companies need a base of experienced temporary workers to meet peak demands⁶⁵². In this respect, the Finnish Port Operators complains that the

⁶⁵¹ § 5(2) of Chapter I.1 and § 5(3) of Chapter II.1 of the Port Workers Agreement for 2010-2012.

⁶⁵² The following is an excerpt from a 2003 interview with Finnsteve's human resources manager Markku Hakala (Pervilä, M., "Stevedores will always be in demand", *Full Ahead. Finnlines Group Magazine*, 2/2003, (12), 13):

In addition to permanent positions, Finland's ports still offer plenty of casual work, sometimes for just a day at a time. The former hiring halls, where people looking for work would assemble in the early morning, now go under the finer name of job centres.

"Nowadays we know our labour needs a day in advance," Hakala explains. "Sometimes we might even need casual day workers in Helsinki."

It is a large amount compared with the 500 permanent stevedoring jobs on Finnsteve's payroll.

"There's no point expecting to get day work with no previous experience," he adds. Because they operate large and expensive machines, and for safety reasons, even casual workers have to be chosen carefully and properly trained for the job. This is Markku Hakala's responsibility.

"As a general rule most of the temporary workers we train in using the machines apply for permanent jobs. On the other hand, there are people whose lifestyle suits temporary work – students, for example."

Finnsteve's permanent workers, who are union members, have long grasped the fact that temporary workers do not threaten their positions. The reverse is more likely to be true, because using temporary workers has evened out the demand for and supply of labour, so stevedoring companies no longer have to resort to layoffs and dismissals when times are hard.

working hours system does not take into account the considerable fluctuations of port traffic. For a major Finnish shipping group, the availability of workers and gangs is by far the biggest issue. Our interviewee said that in some cases gangs must be ordered 3 days in advance, which is totally unrealistic, especially in the tramping business. Yet, ordered workers must always be paid. Overtime is possible but very expensive. Coordination problems may also arise due to different working time regulations of port workers and crane drivers employed by port authorities⁶⁵³. Reportedly, the latter problem is sometimes solved through extra payments by the operator or by double manning of the cranes by the port authority during breaks. The Finnish Port Operators Association commented that the coordination problem has now been solved.

The Port Workers Agreement obliges employers in Chapter I-ports to employ at least 90 per cent of workers on a permanent basis⁶⁵⁴. The number of temporary employees must not exceed 10 per cent of the total workforce⁶⁵⁵. However, the Agreement expressly prohibits the use of temporary agency workers in these ports (Chapter I.1, § 2). Reportedly, stevedoring is the only sector of the Finnish economy where collective agreements have imposed a total ban on temporary agency work⁶⁵⁶. In Chapter II-ports, 90 per cent of the workers must be professional port workers⁶⁵⁷. Here, temporary agency workers may be relied upon, for whom Chapter II sets out specific working time arrangements⁶⁵⁸.

The Ministry of Transport and Communications, the Port Authority of Rauma and Finnish Port Operators confirmed the existence of a ban on the use of temporary agency workers.

Pursuant to the collective agreements for 2010-2012, a working group was set up to prepare the implementation of the EU Temporary Agency Work Directive⁶⁵⁹.

805. The Port Authority of Rauma mentions that port workers cannot be temporarily transferred between employers. According to the Ministry of Transport and Communications, local transfers are possible in agreement with the local trade union branch, but this happens very rarely.

⁶⁵³ On the latter issue, see Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 115.

⁶⁵⁴ In 2005, unions complained that the minimum of 90 per cent permanent workers was violated by employers, with the biggest cargo handler in Helsinki employing one fourth of its workers on a part-time basis (see Tirsén, D. and Bergerheim, A., "Dockworkers in Finland wage three-day strike", *The Militant* 16 May 2005, <http://www.themilitant.com/2005/6919/691912.html>).

⁶⁵⁵ Port Workers Agreement for 2010-2012, Chapter I.1, § 1(3).

⁶⁵⁶ See Jokivuori, P., "Finland: Temporary agency work and collective bargaining in the EU", 19 December 2008, <http://www.eurofound.europa.eu/eiro/studies/tn0807019s/fi0807019g.htm>; see also European Foundation for the Improvement of Living and Working conditions, *Temporary agency work and collective bargaining in the EU*, Dublin, 2009, www.bollettinoadapt.it, 30. Reportedly, temporary agency work had gained a somewhat poor reputation in Finland already in the 1970s, when there were labour shortages in the stevedoring and construction industries (X., "Implicit regulation and contingent resistance: The battle for the temp worker discipline", www.abdn.ac.uk, 4).

⁶⁵⁷ § 1(2) of Chapter II.1 of the Port Workers Agreement for 2010-2012.

⁶⁵⁸ § 7(C) of Chapter II.1 of the Port Workers Agreement for 2010-2012.

⁶⁵⁹ Item 6 of the Protocol of Signature to the Foremen Agreement for 2010-2012.

Transfers between ports are possible, especially when a port is closed for the winter, but, again, this does not occur frequently.

The national Port Workers Agreement obliges workers to be available for work in other ports, provided that travel and working time do not become excessive⁶⁶⁰.

In 2011, a company operating terminals in both Hamina and Kotka reportedly reached an agreement with the unions on the transfer of workers between the two sites, which would facilitate a more flexible approach and enable the company to balance workloads⁶⁶¹.

Since 1 February 2012, port operators are allowed to hire out workers among themselves, but the prohibition on agency work remains in place.

We have not investigated general Finnish labour law on the assignment or hiring out of workers.

806. The Ministry of Transport and Communications, the Finnish Port Operators Associations and the Port Authority of Rauma all agree that rules on employment are properly enforced in Finnish ports, with the main role being played by national authorities, the employers' association and the trade unions. In cases of dispute, the Labour Court or a conciliator may intervene.

807. Several sources suggest that, as compared with other branches of the economy, workers in the cargo handling sector are well remunerated and that the level of staff turnover is low⁶⁶². In their recent comparative analysis of port governance models, Jussi Rönty, Marko Nokkala and Kaisa Finnilä mention the high labour costs among the weaknesses and threats for traditional municipal ports, since these port administrations are also the major employers of port labour. The high level of skill among these workers is considered an opportunity⁶⁶³. However, the authors do not mention port labour-specific issues in relation to the other governance models.

⁶⁶⁰ See § 19(3) of the Port Workers Agreement for 2010-2012.

⁶⁶¹ X., "Finnish container traffic downturn prompts labour unrest", *WorldCargo News* 27 April 2011, <http://www.worldcargonews.com/htm/w20110427.587105.htm>.

⁶⁶² See, for example, Nevala, A.-M., *An exhaustive analysis of employment trends in all sectors related to sea or using sea resources. Country report – Finland*, Birmingham, ECOTEC, 2006, <http://edz.bib.uni-mannheim.de/daten/edz-kr/gmf/06/EmploymentTrendsfinland.pdf>, 18.

⁶⁶³ Rönty, J., Nokkala, M. and Finnilä, K., *Port ownership and governance models in Finland. Development needs & future challenges*, VTT Working Papers, <http://www.vtt.fi/inf/pdf/workingpapers/2011/W164.pdf>, 87-88.

- *Restrictive working practices*

808. According to the Finnish Port Operators Association, limited working hours are a major problem in the Finnish ports⁶⁶⁴.

The applicable collective agreements describe several possible shift systems, including a 3-shift system, and state that the choice between these alternatives should be made taking into account local circumstances, the availability of workers in summertime, the organisational needs, the necessary skills and the opinion of workers⁶⁶⁵. They also insist that the workers must be available to carry out the jobs assigned to them, that they must perform all work for which they are skilled or trained, and that working time regulations must be scrupulously complied with⁶⁶⁶.

The Finnish Port Operators comment that, practically, the choice between shift systems is very limited, and that continuous shift work is very expensive as all workers at the company must receive a wage increase of 8.25 per cent. As a result, only one port operator relies on non-stop shift work for the loading and unloading of ships. Also, for some shift arrangements an agreement with the local branch of the trade union is required.

In an interview, the managing director of a major stevedoring company complained that the almighty unions do not accept any flexibility of working hours, and that a drawback of nation-wide collective bargaining is that it ignores local differences which can be huge. He advocated the conclusion of company-specific agreements tailored to the needs and the know-how of each terminal. He also mentioned that, when the work volume is low, it is impossible to redistribute the workers over several teams.

809. Although the frequency of industrial action is beyond the scope of the present study, the Ministry of Transport and Communications and the Finnish Port Operators Association both note that trade unions in ports have, compared with other sectors, a relatively high propensity to strike. Browsing media reports, we found indications that Finnish ports were hit by serious strikes in at least 2000, 2001, 2003, 2004, 2005, 2006, 2010, 2011 and 2012. Finland is considered "famous" for its dockers' strikes⁶⁶⁷. The strike frequency was also identified as a

⁶⁶⁴ See already Karvonen, T. and Tikkala, H., *Satamatoimintojen kehittäminen ja satamia koskevan lainsäädännön uudistaminen*, Helsinki, Liikenne- ja viestintäministeriö, 2004, http://www.lvm.fi/files/65_2004.pdf, 30, 58-60 and 71.

⁶⁶⁵ § 2 of Chapter I.3 of the Port Workers Agreement for 2010-2012; see further Chapter III.3 of the Agreement and the Special Annex on 3-shift work to the Foremen Agreement for 2010-2012.

⁶⁶⁶ See § 19 of Chapter I.1 and § 19 of Chapter II.1 of the Port Workers Agreement for 2010-2012).

⁶⁶⁷ The latter according to Matutis, V., "The cheapest ports in the Eastern Baltic", 29 February 2012, <http://www.jura24.lt/en/news/port/the-cheapest-ports-in-the-eastern-baltic-411348>.

problem in the 2004 report on port law reform⁶⁶⁸. The Finnish Port Operators say that sudden illegal strikes affect the reliability of Finnish ports.

It occurs frequently (often over 10 times a year) that the Finnish Labour Court imposed fines on AKT for illegal industrial action⁶⁶⁹. In 2012, for example, AKT was fined for failure to give advance notice of a strike at the ports of Helsinki and Kotka⁶⁷⁰. Occasionally, Finnish management and employers have demanded stricter and more specific rules on industrial action, particularly about the right of employees to strike in key sectors of the economy such as transport, chemicals and also stevedoring, because industrial action in these sectors can paralyse society. However, some observers believe that it would be difficult, if not impossible, to define the so-called key sectors⁶⁷¹.

The managing director of a large stevedoring company also mentioned illegal strikes as a major handicap and commented that the unions laugh at the low fines courts impose on them and that Parliament is unwilling to alter the sanctioning system.

The overall impression that relations between the employers' association and the trade unions could be better is confirmed by the relatively high frequency of court disputes between these protagonists.

- Qualification and training issues

810. In 2003, a stevedore stated that the availability of skilled labour has always been a problem for Finnish stevedoring, because the State does not offer suitable training for the sector, and the job of educating workers has fallen on the companies themselves⁶⁷². A 2006 report for the European Commission mentions, however, that according to industry representatives, the cargo handling sector is not facing any particular skill shortages⁶⁷³. Since

⁶⁶⁸ Karvonen, T. and Tikkala, H., *Satamatoimintojen kehittäminen ja satamia koskevan lainsäädännön uudistaminen*, Helsinki, Liikenne- ja viestintäministeriö, 2004, http://www.lvm.fi/files/65_2004.pdf, 58-59.

⁶⁶⁹ See, for example, Labour Court of Finland, 29 June 2010, TT: 2010-64, R 62/10, *Satamaoperaattorit ry vs. Auto- ja Kuljetusalan Työntekijäliitto AKT ry*.

⁶⁷⁰ See Ikonen, J. and Jussila, H., "Finland: Failure To Give Advance Notice", 16 July 2012, <http://www.mondaq.com/x/187094/employee+rights+labour+relations/Failure+To+Give+Advance+Notice>.

⁶⁷¹ See, for example, X., "Stevedoring strike ends – society must safeguard its functioning in the future", 19 March 2010, http://pda.ek.fi/www/en/news/index.php?we_objectID=11147; Jokivuori, P., "Social partners disagree on fines for illegal industrial action", 19 July 2011, <http://www.eurofound.europa.eu/eiro/2011/05/articles/fi1105011i.htm>; X., "Finnish debate on strike rights pointless", *Baltic Review* 25 March 2010, <http://baltic-review.com/2010/03/finnish-debate-on-strike-rights-pointless/>.

⁶⁷² Pervilä, M., "Stevedores will always be in demand", *Full Ahead. Finnlines Group Magazine*, 2/2003, (12), 13.

⁶⁷³ Nevala, A.-M., *An exhaustive analysis of employment trends in all sectors related to sea or using sea resources. Country report – Finland*, Birmingham, ECOTEC, 2006, <http://edz.bib.uni-mannheim.de/daten/edz-kr/gmf/06/EmploymentTrendsFinland.pdf>, 18.

2009, when the demand for workforce dropped substantially, it is relatively easy to recruit new port workers.

Recent collective agreements stress the need for continued training of port workers⁶⁷⁴.

- Health and safety issues

811. The Ministry for Transport and Communications, the Finnish Port Operators Association and the Port Authority of Rauma concur that rules on health and safety are satisfactory and that they are properly enforced⁶⁷⁵.

In 2009, a university student made recommendations on a further improvement of safety management systems in ports including more systematic risk analyses and data exchanges between employers⁶⁷⁶.

However, we received no signs of major problems in relation to health and safety. Yet, as in other EU countries, media reports suggest that port work remains dangerous and that serious accidents continue to occur⁶⁷⁷.

9.6.7. Appraisals and outlook

812. The 2004 survey by Tapio Karvonen and Hanny Tikkala reported that more than half of the interviewed representatives of port authorities (56 per cent) feel that law and practices relating to the loading and unloading of goods in Finnish ports are effective. Nearly 20 per cent stated that the legislation is effective, but that practices must be changed. Ten per cent was of the opinion that both need improvement. A clear majority of port operators (65 per cent) expressed their satisfaction with current laws and practices – a result ascribed by the authors to the near-monopoly situation in many ports. However, two thirds of shipowners responded that either the law or practices, or both, needed change, and only a quarter of respondents from this sector

⁶⁷⁴ See Item 10 of the Protocol of Signature to the Foremen Agreement for 2010-2012.

⁶⁷⁵ Comp. earlier Karvonen, T. and Tikkala, H., *Satamatoimintojen kehittäminen ja satamia koskevan lainsäädännön uudistaminen*, Helsinki, Liikenne- ja viestintäministeriö, 2004, http://www.lvm.fi/files/65_2004.pdf, 30-31, where mention is made of a rather vague assignment of responsibilities in Art. 62 the Occupational Safety and Health Act.

⁶⁷⁶ Koivistoinen, A., *Turvallisuusjohtamisjärjestelmien toteutus satamissa ja niissä toimivissa yrityksissä*, Kymenlaakso university of applied sciences, research and development department, 2009, http://www.merikotka.fi/metku/Koivistoinen_2009.pdf, 39 p.

⁶⁷⁷ See, for example, FNB, "Hamnarbetare dog i arbetsolycka i Hangö", *HBL.fi* 18 July 2010, <https://hbl.fi/nyheter/2010-07-18/hamnarbetare-dog-i-arbetsolycka-i-hango>.

were satisfied with the current situation. Limited working times, strike propensity and excessive union power were mentioned as the biggest issues. Responses relating to stowage, transshipment, intra-terminal transport and storage were not significantly different. As regards passenger handling services, no particular complaints were noted. The authors concluded that as the organisation of ports and stevedoring is rooted in tradition, it is difficult for parties to give up certain privileges and practices, but that ports should adapt to the needs of the overall transport chain⁶⁷⁸.

813. In an unofficial statement prepared by an external expert for the purposes of our study, the Ministry of Transport and Communications brands the Finnish port labour system and the relationship between employers and workers and their respective organisations as unsatisfactory. The Ministry clarifies that the latter complaint is supported by a common opinion in Finland and that again and again collective bargaining turns out to be a most difficult process.

The report by the Ministry also states that the current regime impacts negatively on the competitive position of the ports. However, it mentions no issues related to legal uncertainty.

814. The Finnish Port Operators Association believes that the current regime of port labour is satisfactory and that legal uncertainty is not an issue. The relationship between employers and their trade unions is again described as unsatisfactory. For the organisation, port labour, as a whole, does not impact on the competitiveness of Finnish ports.

815. In its reply to the questionnaire, the Port Authority of Rauma considers the current port labour regime satisfactory and is of the opinion that it offers sufficient legal certainty. It describes the relationship between port employers and port workers in the port of Rauma as good but, for unknown reasons, it also ticks a negative impact of the system on the competitive position of the port.

816. One source related that some port authorities have moved port fences and gates – which also serve as ISPS borders – as close to the quay as possible, in order to restrict the scope of collective agreements on port labour, since outside port areas, work can be organised in a much more flexible and cheaper way.

⁶⁷⁸ See Karvonen, T. and Tikkala, H., *Satamatoimintojen kehittäminen ja satamia koskevan lainsäädännön uudistaminen*, Helsinki, Liikenne- ja viestintäministeriö, 2004, http://www.lvm.fi/files/65_2004.pdf, 58-61 and 75-76.

817. We were informed by the Ministry for Transport and Communications and the Finnish Port Operators Association that the current Government has proposed to privatise Finnish ports as from 1 January 2014. Under this scheme, all port authorities will become private companies and both Acts No. 955/1976 and 1156/94 will be repealed. In addition, a proposal has been formulated to abolish the requirement to obtain a permit to construct or expand a private public port.

818. With regard to possible future EU action, the Finnish Ministry of Transport and Communications made the following – again unofficial – remark (which we left *verbatim*):

Ports are vital nodes in the free trade in the EU. If the level of services is unsatisfactory or the level of costs in cargo handling or in any other port services are unjustified high it causes an obstacle to the free movement of goods, passengers and services. High cargo handling costs are a hidden “private” customs duty.

If the common markets (sic) still is a target, as it should be, EU should continue and speed up in removing obstacles. EU has a role as a legislator but also in guiding the development of European transport network. In some cases it has minor financing resources as well. In TEN-T policy EU should clearly set requirements both for the core TEN-T network but also for the comprehensive TEN-T network infrastructure. A road or railway section that ends or starts from a port that is not open equally to all community operators or clients should not have a status as a part of TEN-T. All TEN-T ports should be open 24 hours per day 7 days a week, there should be several options to choose the service provider and self handling should be possible as well. Especially the TEN-T core network ports should be open and providing cargo handling services on 24/7 basis, if there is not transport enough are they really worth (sic) of the core network status? This doesn't mean that the port should work in 3 shifts. The services should be flexible and available in demand. There could be set other requirements and criteria too.

We must also keep in mind that over capacity is undesirable too. The client should get the service he or she is willing to pay – no over or under performance.

The previous exercise with the port service directive gave a lesson. First even the threat of rules for market opening had the most positive effect in previous hundred years on the port sector and port services. Much has happened during those processes in the European port sector. Secondly Commissions fairly good proposal and good target turned against the original aim (sic). In the Council and Parliament readings everything went up side down. The Member States and Members of European Parliament made all efforts to limit the market opening at the minimum. Something should be done in minor steps.

An interviewee at the Ministry said that they would oppose EU initiatives at further regulating port labour as a specific profession, as the market for cargo handling must be fully open to innovation, automation and self-handling.

819. The Finnish Port Operators Association notes that the labour regime in Finnish ports is very different from that in many other European ports. For this reason, it argues there is a high risk that EU actions would not be suitable for Finland and that instead of taking direct action, the EU should support social dialogue at different levels.

820. A major terminal operator said that definitely something must be done at EU level. There must be freedom to organise work in ports. The current behaviour of the union restricts competition and might be contrary to EU law.

9.6.8. Developments between January 2013 and September 2014

820A. We were informed that the ban on temporary agency work in Finnish ports has as yet not been lifted.

9.6.9. Synopsis

821.		
SYNOPSIS OF PORT LABOUR IN FINLAND⁶⁷⁹		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Over 50 seaports, 3 main ports • Mixed landlord / toolport model • 105m tonnes • 12th in the EU for containers • 50th in the world for containers • Over 40 employers • Appr. 2,790 port workers • Trade union density: 95-100% 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • Party to ILO C137 • 2 national CBAs, for port workers and foremen • Few company CBAs • One port operator in smaller ports • Terminals employ permanent and temporary workers, a small percentage are 'professional temporary workers' • Crane drivers employed by port authorities or terminals • No pools or hiring halls • Workers are registered by their individual employer • Terminals run job centres to allocate work 	<ul style="list-style-type: none"> • Dominant position of stevedoring companies and difficulties for outsiders to gain market access • Doubts over implementation of ILO C137 • Closed shop and excessive union power • Ban on self-handling • Ban on temporary agency work • Mismatch between supply and demand of workers • Limited working hours and lack of flexibility • High strike propensity
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Training by several official training institutions • Training by all major terminals 	<ul style="list-style-type: none"> • National law only requires training for crane drivers and handling of dangerous goods • CBAs regulate continued training 	<ul style="list-style-type: none"> • No specific issues
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Detailed accident statistics available but comparison with other sectors impossible 	<ul style="list-style-type: none"> • Specific Regulations on Loading and Unloading and on Handling of Dangerous Goods in Ports • Party to ILO C152 • Provisions in CBAs 	<ul style="list-style-type: none"> • No specific issues

⁶⁷⁹ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.7. France

9.7.1. Port system⁶⁸⁰

822. Metropolitan⁶⁸¹ France has some 50 commercial seaports, including 7 main ports.

France's main ports are managed by State-controlled port authorities designated by law as Grands Ports Maritimes ('Major Sea Ports') (formerly *ports autonomes*). This category of ports includes Bordeaux, Dunkirk, Le Havre, La Rochelle, Marseilles, Nantes-Saint-Nazaire and Rouen⁶⁸².

In terms of total throughput, Marseilles Fos is the leading port of France and the first Mediterranean port. It handles all types of traffic, including considerable volumes of crude oil and oil products as well as passenger traffic from cruises and regular shipping lines. Le Havre is the second port of France, its leading container port and an important oil port as well. The third biggest port is Dunkirk, which is mainly a dry bulk and industrial port.

In 2004, the management of other French (commercial, fishing and pleasure boating) ports was decentralised, which means that they now fall under the responsibility of regional and local authorities. Practically speaking, commercial ports that are not managed by a Grand Port Maritime are in most cases governed by an administrative Region (*région*), a Department (*Département*) or a cooperative structure set up by decentralised authorities (*groupement* or *syndicat mixte*) who may in their turn grant a concession to a Chamber of Commerce or a private company.

In 2012, the gross weight of seaborne goods handled in French ports was about 303 million tonnes⁶⁸³. The total throughput in the Grands Ports Maritimes in the same year amounted to 276

⁶⁸⁰ For general information on the French port system, see <http://www.developpement-durable.gouv.fr/Organisation-carte-et-fiches-d.html>; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 273-321. For statistics, see <http://www.developpement-durable.gouv.fr/Trafics-des-principaux-ports.html> and http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

⁶⁸¹ In the present study, we shall not consider the regime of port labour in French overseas territories. On the applicability of EU law in these territories, see especially <http://legifrance.gouv.fr/Droit-francais/Guide-de-legistique/III.-Redaction-des-textes/3.6.-Application-et-applicabilite-des-textes-outre-mer/3.6.3.-Applicabilite-Outre-mer-du-droit-de-l-Union-europeenne>. On 1 January 2013, Grands Ports Maritimes were created for Guadeloupe, Martinique, French Guyana and La Réunion.

⁶⁸² Recently, the three Seine ports of Le Havre, Rouen and Paris established an Economic Interest Group (*Groupement d'intérêt économique*).

⁶⁸³ See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

million tonnes, about 78 per cent of the annual traffic. In the container market, French ports ranked 7th in the EU and 26th in the world in 2011⁶⁸⁴.

823. The Grands Ports Maritimes are landlord ports. As we will explain below⁶⁸⁵, French legislation recently introduced a ban on the provision of cargo handling services by these port authorities. As a result, cargo handling in French ports is mostly performed by private companies. Yet it should be noted that some port authorities hold shares in a number of these companies.

9.7.2. Sources of law

824. First and foremost, port labour in France is governed by provisions of the following three Law Codes:

- the Transport Code (*Code des Transports*);
- the Maritime Ports Code (*Code des Ports Maritimes*);
- the Labour Code (*Code du Travail*).

French Law Codes are usually composed of two sections: a Legislative Section (*partie législative*) and a Regulatory Section (*partie réglementaire*). The first one contains fundamental provisions while the regulatory rules are more of an implementing nature. This typical division of provisions results from constitutional requirements but is considered rather artificial and ineffective by authoritative lawyers, and often complicates legislative reform projects, also in maritime matters⁶⁸⁶.

825. The Legislative Section of the Transport Code was promulgated on 28 October 2010⁶⁸⁷ and entered into force on 1 December 2010. It comprises *inter alia* provisions which previously formed a part of the Legislative Section of the Maritime Ports Code. The latter was first adopted in 1956⁶⁸⁸ and brought together all legislative and regulatory provisions on the

⁶⁸⁴ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

⁶⁸⁵ See *infra*, paras 842 and 853.

⁶⁸⁶ See especially Bonassies, P., "La loi maritime du doyen Rodière doit-elle être réformée ?", *Droit maritime français* 2009, (809), 810, para 2.

⁶⁸⁷ Ordonnance n° 2010-1307 du 28 octobre 2010 relative à la partie législative du Code des Transports.

⁶⁸⁸ Décret n° 56-321 du 27 mars 1956 portant codification sous le nom de code des ports maritimes des textes législatifs les concernant. The latter was replaced by Décret n° 78-487 du 22 mars 1978 portant codification des textes législatifs concernant les ports maritimes (première partie: Législative) et revision du code des ports maritimes.

management of French sea ports, including, as from 1958, on port labour⁶⁸⁹. It was amended by, *inter alia*, the 1992 and 2008 Acts on the reform of port labour which we will analyse below⁶⁹⁰. The legislative provisions on port labour of the Maritime Ports Code which were transferred to the new Transport Code make up a separate chapter of the latter (Legislative Section, Part Five, Book III, Title IV, Chapter III).

The Regulatory Section of the Transport Code has as yet only been adopted partially. The intention is to transfer the currently applicable provisions of the Regulatory Section of the Maritime Ports Code (Regulatory Section, Book V) to the Regulatory Section of the Transport Code at a later stage⁶⁹¹. Once this is achieved, the regime of ports will be governed solely by the relevant parts of Transport Code, and the Maritime Ports Code will cease to apply. But today, port labour continues to be governed by two separate legal instruments: the Transport Code for the basic provisions and the Maritime Ports Code for the implementing regulations.

826. A third relevant instrument is the Labour Code. The importance of this Code to the port sector increased significantly following the 1992 port labour reform which subjected port labour to a large extent to general employment law⁶⁹². Yet, to this day the remaining specific rules on port labour contained in the Transport Code and the Maritime Ports Code continue to function as a *lex specialis* which takes precedence over general labour law.

The Labour Code also contains a number of specific provisions on port labour, which deal with the joint management of labour relations and paid holidays; these matters are however beyond the scope of the present study⁶⁹³.

827. Safety in port labour in France is mainly regulated by the Labour Code and the Ship Safety Regulations⁶⁹⁴. The latter contain specific provisions on the safety of hoisting gear.

Special safety rules apply to situations where several employers cooperate at loading and unloading operations⁶⁹⁵.

⁶⁸⁹ See Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 3, para 5.

⁶⁹⁰ See *infra*, para 839 *et seq.*

⁶⁹¹ See <http://www.developpement-durable.gouv.fr/Code-des-ports-maritimes-partie.html>.

⁶⁹² See *infra* para 839.

⁶⁹³ See *supra*, para 25.

⁶⁹⁴ Arrêté du 23 novembre 1987 relatif à la sécurité des navires; see especially Division 214 of the Règlement.

⁶⁹⁵ See Arrêté du 26 avril 1996 pris en application de l'article R. 237-1 du code du travail et portant adaptation de certaines règles de sécurité applicables aux opérations de chargement et de déchargement effectuées par une entreprise extérieure; see further Ferreira, M., Le Roy, A. and Laine, P., *Les manutentions portuaires. Paysage institutionnel et réglementation applicable*, Paris, INRS, 2005, 62 p., <http://www.inrs.fr/accueil/produits/mediatheque/doc/publications.html?refINRS=ED%20943>, 51-56. Currently, the relevant rules are laid down in Art. R4515-1 *et seq.* of the Labour Code.

Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers was transposed by two different legislative instruments adopted in 2004 and 2005⁶⁹⁶.

828. France has ratified ILO Conventions No. 137⁶⁹⁷ and No.152^{698,699}. Previously, it was also bound by ILO Convention No. 32⁷⁰⁰.

829. Next, port labour in France is governed by a large number of collective labour agreements.

The main agreement is the National Collective Labour Agreement known as the CCNU (Convention Collective Nationale Unifiée "Ports & Manutention") which was signed on 15 and 16 April 2011 and entered into force on 3 May 2011. The CCNU applies to all companies and institutions in Metropolitan France which (mainly) carry out one of the following activities:

- (1) administration and/or operation, maintenance and policing of commercial and fishing sea ports;
- (2) cargo handling (French *manutention portuaire*) in commercial sea ports;
- (3) operation and/or maintenance of equipment for the handling of dry bulk and general cargo or of dry dock equipment;
- (4) operation and/or maintenance of equipment for the loading and unloading of liquid bulk provided they are carried out by a subsidiary of a subject entity, even if it holds a minority share only;
- (5) operation and/or maintenance of dredging equipment and port facilities (bridges, locks, ...) provided they are carried out by a Grand Port Maritime, one of its subsidiaries or a concessionnaire (Art. 1 CCNU⁷⁰¹).

⁶⁹⁶ Ordonnance n° 2004-691 du 12 juillet 2004 portant diverses dispositions d'adaptation au droit communautaire dans le domaine des transports; Décret n° 2005-255 du 14 mars 2005 portant dispositions d'adaptation au droit communautaire dans le domaine portuaire et modifiant le code des ports maritimes.

⁶⁹⁷ Décret n° 81-245 du 9 mars 1981 portant publication de la convention internationale du travail n° 137 concernant les répercussions sociales des nouvelles méthodes de manutention dans les ports, adoptée par la conférence à sa cinquante-huitième session, à Genève, le 25 juin 1973. It appears that in respect of this Convention, no approving Act was adopted.

⁶⁹⁸ Loi n° 85-611 du 18 juin 1985 autorisant l'approbation de la Convention internationale du travail n° 152 concernant la sécurité et l'hygiène du travail dans les manutentions portuaires; Décret n°86-1274 du 10 décembre 1986 portant publication de la Convention internationale du travail n° 152 concernant la sécurité et l'hygiène du travail dans les manutentions portuaires, faite à Genève le 25 juin 1979.

⁶⁹⁹ See Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 7, para 20.

⁷⁰⁰ Décret n° 55-314 du 14 mars 1955 portant application aux navires des dispositions prévues par la convention n° 32 du Bureau international du travail concernant la protection des travailleurs occupés au chargement et au déchargement.

⁷⁰¹ See also the Accord du 30 juin 2009 relatif au champ d'application et aux bénéficiaires.

In principle, the CCNU applies to all workers, port workers, office staff, technicians, supervisors and executives (French *cadres*) (Art. 2 CCNU). The CCNU was extended to all companies and their workers by a Decree of 6 August 2012⁷⁰².

The Agreement contains provisions on *inter alia* minimum guaranteed wages, working time, employment contracts and vocational education and training. In an Annex it also contains a draft early retirement agreement. The Agreement is about 150 pages long.

At port level, port labour is further regulated by local collective agreements dealing with various aspects of port labour such as holidays, wages and bonuses, working hours and shift systems, the composition of gangs, the exchange of workers between employers, collective bargaining procedures, etc.⁷⁰³. Most of these agreements were not officially publicised. Exceptions are the agreements for the ports of Bordeaux⁷⁰⁴, Dunkirk⁷⁰⁵ and Montoir - Saint-Nazaire⁷⁰⁶, which are annexed to the CCNU. Rouen has no port-wide agreement, but only company agreements. The Port Association of Rouen believes that this conforms better to the spirit of the 1992 and 2008 reform measures.

Our discussion of provisions in collective agreements below is based on an analysis of the CCNU and the three publicised local agreements. We had no access to any other agreements.

830. Official authorities and the parties to collective agreements acknowledge that local usages (*us et coutumes*) continue to play an important role in French ports⁷⁰⁷.

⁷⁰² Arrêté du 6 août 2012 portant extension de la convention collective nationale unifiée "ports et manutention" et d'accords et d'un avenant conclus dans le cadre de ladite convention collective (n° 3017).

⁷⁰³ Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 11, para 36.

⁷⁰⁴ See, for example, Emploi, RTT et salaires des dockers (Bordeaux) - Accord du 11 juillet 2000.

⁷⁰⁵ See especially Conditions d'emploi et de rémunération particulières des personnels dockers des entreprises de manutention dans les ports maritimes du département du nord - Avenant du 18 avril 2006. This agreement is only relevant to the port of Dunkirk (see its Art. 1.1).

⁷⁰⁶ Accord du 30 octobre 2006 relatif à l'organisation du travail sur le port de Montoir - Saint-Nazaire.

⁷⁰⁷ See, *inter alia*, Le Garrec, M.-Y., annot. of Court of Appeal of Bordeaux 6 January 1997, *Droit maritime français* 1997, (439), 441; Art. 4.1 of the Agreement for Montoir - Saint-Nazaire of 30 October 2006, on the definition of effective working time; compare also Rodière, R., *Traité général de droit maritime. Les gens de mer*, Paris, Dalloz, 1978, 291-292, para 331.

9.7.3. Labour market

- Historical background

831. The historical development of port labour arrangements in France is similar to that in many other European countries⁷⁰⁸. What is more, the urge to liberalise port labour during the French revolution immediately spread to other countries where French political principles and laws were enforced by the French occupier or where they were adopted by lawmakers and port managers on a more or less voluntary basis⁷⁰⁹.

832. During the Ancien Régime, port labour in French ports used to be controlled by monopolistic corporations. Such entities existed in, for example, Le Havre and Marseilles. In Marseilles, La Société des Portefaix dated from the 14th century. It was a guild and, as such, both an industrial association and a religious brotherhood⁷¹⁰. The Grands Corps des Brouettiers du Havre, which united the barrowmen, was founded in 1635⁷¹¹. In 1790, the coopers and the sailmakers (who also made sacks for merchandise handling) of Le Havre were recognised as sworn corporations. The *bremens* or carriers of liquid products, and the coal porters and measurers were considered as 'people of the arm' (*gens de bras*) entitled to be registered and regulated. Each master barrowman, *bremens* or porter was helped by one or two boys (*garçons*) and an occasional day-labourer (*journalier*) as necessitated by the size of the job⁷¹².

⁷⁰⁸ On the history of port labour in French ports, see, *inter alia*, Barzman, J., "Dock labour in Le Havre 1790-1970", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, 57-83; Barzman, J., "Gens des quais", in X., *Sur les quais. Ports, docks et dockers de Boudin à Marquet*, Paris / Le Havre / Bordeaux, Somogy / Musée Malraux / Musée des Beaux-Arts, 2008, 47-51; Barzman, J., "Conflits et négociations au Havre avant et après les grandes réformes portuaires", *L'Espace Politique*, 16 | 2012-1, <http://espacepolitique.revues.org/index2242.html>; Gurrea, A., "Résumé de l'activité syndicale depuis le début du siècle des Dockers du Port de Bordeaux", <http://bacalanstory.blogs.sudouest.fr/media/02/01/160491036.pdf>, 13 p.; Jensen, V.H., *Hiring of Dock Workers and Employment Practices in the Ports of New York, Liverpool, London, Rotterdam, and Marseilles*, Cambridge (Mass.), Harvard University Press, 1964, 251-276; Le Du, E. and Galbrun, X., *100 ans d'Union au service des ports français 1907-2007*, Paris, UNIM, 2007, 60 p.; Loew, M.R., *Les dockers de Marseille*, Rhone, Economie et Humanisme l'Arbresle, 1945, 107 p.; Sewell, W.H., "Uneven Development, the Autonomy of Politics, and the Dockworkers of Nineteenth-Century Marseille", *American Historical Review* 1988, 604-637; X., "L'évolution des ports autonomes (1947 - 2008)", <http://www.vie-publique.fr/politiques-publiques/reforme-port-autonome/chronologie/>.

⁷⁰⁹ See already *supra*, para 385.

⁷¹⁰ Jensen, V.H., *Hiring of Dock Workers and Employment Practices in the Ports of New York, Liverpool, London, Rotterdam, and Marseilles*, Cambridge (Mass.), Harvard University Press, 1964, (251), 254 with further references. For even more background, see Gillès de Pélichy, Ch., *Le régime du travail dans les principaux ports de mer de l'Europe*, Louvain / Brussels / Paris, Polleunis & Ceuterick / Louis Lagaert / Guillaumin & Cie, 1899, 277-295.

⁷¹¹ Gillès de Pélichy, Ch., *Le régime du travail dans les principaux ports de mer de l'Europe*, Louvain / Brussels / Paris, Polleunis & Ceuterick / Louis Lagaert / Guillaumin & Cie, 1899, 261.

⁷¹² Barzman, J., "Dock labour in Le Havre 1790-1970", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (57), 61.

833. Under French revolutionary law, these port labour corporations were – or were at least supposed to be – abolished, in particular by virtue of (1) the Act of 2-17 March 1791 (also known as the *Décret d’Allarde*) which stated that every person is free to conduct any business or to practice any profession, trade or occupation which he deems fit, provided that applicable police regulations were complied with; and (2) the Act of 14 June 1791 (the *Loi le Chapelier*) which prohibited members of the same branch of business from associating for the purpose of regulating their common interests.

Nevertheless, the dockworkers of early 19th century Marseilles were still openly organised in a mutual aid society that was actually a continuation of their Ancien Régime corporation. By means of this society, which was formally established in 1814, they tightly restricted entry into the trade, minutely controlled all work done on the docks, and maintained wages superior not only to those of other unskilled labourers but to those of virtually all skilled workers as well⁷¹³. In defence of this situation, the dockworkers' patron argued that even under the Ancien Régime the dockworkers' association had not had “the character of a privileged corporation”; and that its statutes had been “purely the result of measures of public interest decreed [...] for the maintenance of an order necessary among men of that profession”. In any case, the authorities treated the dockworkers' society very differently from other trades, and its survival has been considered an anomaly from both a national and a local perspective⁷¹⁴. As the dockworkers operated in public spaces controlled by the municipality, the regulation of dock work was seen as a simple exercise of the municipality's police authority⁷¹⁵. Still, the monopoly and the restrictive practices of the Marseilles dockworkers were increasingly challenged. In 1819 and 1820, for example, the dockworkers protested that sailors were being used to unload ships, thereby depriving them of their work⁷¹⁶. Also, some work was performed by *robeirols*, labourers who waited around on street corners, ready to undertake assorted carrying tasks⁷¹⁷. In the 1840s, the author of a compendium on the commerce of the city proposed that the city's merchants act to rid themselves of the monopoly of the dockworkers “[that has] always weighed on the commerce of Marseilles” by simply ignoring the regulations of the dockworkers' society and hiring other workers of their choice. The restrictive practices of dockworkers' society were a blatant violation of the Criminal Code and the proscription of corporations in the *Loi Le Chapelier*⁷¹⁸. In the 1850s and 1860s, the dockworkers' corporation was confronted with competition by the *Compagnie des Docks et Entrepôts de Marseille* (Dock and Warehouse Company of Marseilles) which staffed its new docks and warehouses with unskilled labourers and, later on, by members of the dockworkers' society. As a result, the corporation faded into an ordinary mutual aid society that administered sickness and retirement benefits for its

⁷¹³ Sewell, W.H., “Uneven Development, the Autonomy of Politics, and the Dockworkers of Nineteenth-Century Marseille”, *American Historical Review* 1988, (604), 604.

⁷¹⁴ Sewell, W.H., “Uneven Development, the Autonomy of Politics, and the Dockworkers of Nineteenth-Century Marseille”, *American Historical Review* 1988, (604), 612.

⁷¹⁵ Sewell, W.H., “Uneven Development, the Autonomy of Politics, and the Dockworkers of Nineteenth-Century Marseille”, *American Historical Review* 1988, (604), 613.

⁷¹⁶ Sewell, W.H., “Uneven Development, the Autonomy of Politics, and the Dockworkers of Nineteenth-Century Marseille”, *American Historical Review* 1988, (604), 616.

⁷¹⁷ Sewell, W.H., “Uneven Development, the Autonomy of Politics, and the Dockworkers of Nineteenth-Century Marseille”, *American Historical Review* 1988, (604), 617.

⁷¹⁸ Sewell, W.H., “Uneven Development, the Autonomy of Politics, and the Dockworkers of Nineteenth-Century Marseille”, *American Historical Review* 1988, (604), 619.

members⁷¹⁹. Free hiring became universal in the port; the hireling was substituted for the professional workman with a contract maintained by his society. The day labourer and the unrestricted right of employer choice were the common features of the new arrangement for hiring⁷²⁰.

In Le Havre, the merchant-shipowners, who had a relation with artisan corporations of the port and controlled the city government, believed that keeping a municipal registry of port professions fell in the purview of their port police powers, and tolerated and protected the port corporations until the 1840s. In the next decade, the transition to an unregulated situation was however well under way. The number of casual workers had multiplied and their origin had diversified. The regulated port trades had lost sole access to the bonded warehouse of the customs service (in 1830) and had to compete with firms of other origins. Trades that previously operated in the city outside the port, such as carters (*voituriers-banneliers*), were now allowed in the harbour area. The Compagnie des Docks et Entrepôts du Havre (Dock and Warehouse Company of Le Havre), which started operations in 1856, combined a group of permanent staff with workers employed casually, by the day, on the basis of a preference list, and a third group employed on the same basis but without any priority. Most port workers were, however, hired on a daily basis by employers who preferred to maintain no permanent staff, rent the necessary equipment and hire casual teams upon arrival of the ship⁷²¹.

In 1928, a victorious strike forced employers to abide by trade union standards on wage rates, speciality rates and the number of men on a team, and union members began to refuse to work with non-members. Between 1928 and 1936, these matters were regulated in collective agreements, which were concluded in most French ports. In 1929, a first proposal for an Act on the establishment of a docker's card was introduced, but it did not materialise. But in the 1930s, individual ports started to issue worker's cards⁷²².

A national Decree of 13 May 1939, which was adopted after a fire on board a passenger ship, imposed, for safety reasons, possession of an official worker's card on all dockers and other workers⁷²³.

⁷¹⁹ Sewell, W.H., "Uneven Development, the Autonomy of Politics, and the Dockworkers of Nineteenth-Century Marseille", *American Historical Review* 1988, (604), 625-627; see also Jensen, V.H., *Hiring of Dock Workers and Employment Practices in the Ports of New York, Liverpool, London, Rotterdam, and Marseilles*, Cambridge (Mass.), Harvard University Press, 1964, (251), 254-255.

⁷²⁰ Jensen, V.H., *Hiring of Dock Workers and Employment Practices in the Ports of New York, Liverpool, London, Rotterdam, and Marseilles*, Cambridge (Mass.), Harvard University Press, 1964, (251), 255.

⁷²¹ Barzman, J., "Dock labour in Le Havre 1790-1970", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (57), 62-63 and 77.

⁷²² See also Barzman, J., "Gens des quais", in X., *Sur les quais. Ports, docks et dockers de Boudin à Marquet*, Paris / Le Havre / Bordeaux, Somogy / Musée Malraux / Musée des Beaux-Arts, 2008, (47), 51. In the port of Bordeaux, the first registration card was issued in 1936 (Gurrea, A., "Résumé de l'activité syndicale depuis le début du siècle des Dockers du Port de Bordeaux", <http://bacalanstory.blogs.sudouest.fr/media/02/01/160491036.pdf>, 2).

⁷²³ Le Du, E. and Galbrun, X., *100 ans d'Union au service des ports français 1907-2007*, Paris, UNIM, 2007, 18.

834. An Act of 28 June 1941⁷²⁴, adopted by the Vichy Régime, provided for the registration of workers as professional dockers in all French ports and their hiring according to a rota kept by a Bureau Central de la Main-d'Oeuvre (BCMO) or Central Labour Office. The new system ensured priority of engagement for registered port workers but also recognised classified occasional or supplementary workers⁷²⁵.

835. After WW 2, the Act of 6 September 1947⁷²⁶ repealed the 1941 Act but essentially confirmed the substance of the Vichy arrangements⁷²⁷. Under the new Act, all French port workers belonged to a pool and were classified either as (1) *professionnel* (regular) or (2) *occasionnel* (occasional) workers. All the workers had to be hired on a daily basis, either for a shift (French *un shift*), which corresponded to an entire day, or for a half-day shift (French *une vacation*).

The *professionnels* enjoyed a priority in employment, but their classification entailed obligations not required of the latter; in particular presenting himself regularly for employment at the local BCMO hiring hall, observing the conditions fixed by the BCMO, working exclusively as a dockworker and accepting the employment offered. When the *professionnel* dockworker reported for employment but found none, he was eligible for a payment for reporting, called *indemnité de garantie* (guarantee compensation). The latter system was administered by the jointly managed National Dock Workers Guarantee Fund (Caisse Nationale de Garantie des Ouvriers Dockers, CAINAGOD), which paid the individual unemployment compensations and which was funded by levies paid by employers based on a percentage of the gross pay of all dockworkers. The *professionnels* were given a worker's card named *Carte G* (with the G referring to *garantie*). Following submission of recommendations from the BCMO, the Minister of Labour fixed by decree the maximum number who might be classified as *professionnels*. The BCMO locally fixed the conditions to be met by the workers in order to secure and retain registration cards. Each port had a BCMO. These tripartite bodies were presided over by the director of the Port Authority. Their boards were further composed of representatives of the Government, employers and unions.

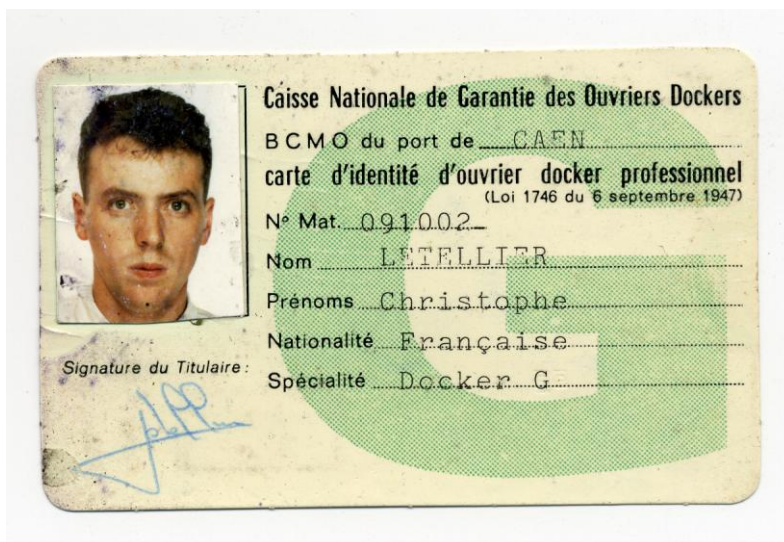
⁷²⁴ Loi du 28 juin 1941 relative à l'organisation du travail de manutention dans les ports maritimes de commerce.

⁷²⁵ See, among others, Jensen, V.H., *Hiring of Dock Workers and Employment Practices in the Ports of New York, Liverpool, London, Rotterdam, and Marseilles*, Cambridge (Mass.), Harvard University Press, 1964, (251), 265-266.

⁷²⁶ Loi n° 47-1746 du 6 septembre 1947 sur l'organisation du travail de manutention dans les ports.

⁷²⁷ Our description of the 1947 system is largely based on Jensen, V.H., *Hiring of Dock Workers and Employment Practices in the Ports of New York, Liverpool, London, Rotterdam, and Marseilles*, Cambridge (Mass.), Harvard University Press, 1964, (251), 265-276.

Figure 79. Specimen of a 'Carte G' for a professional port worker in France, issued on the basis of the Port Labour Act of 6 September 1947 (source: www.metiers-portuaires.fr and Mrs Karine Le Petit)



The conditions of registration and retention of identification cards (the *Carte O*) of *occasionnel* dockworkers were also fixed by the BCMO. These men were eligible for employment whenever the number of *professionnel* dockworkers was insufficient to satisfy the demand. They were not required to present themselves for employment on the docks and, unlike the *professionnel*, could work elsewhere in the port without special authorisation, but they enjoyed no *indemnité de garantie* when they reported and were not employed.

In some ports such as Marseilles, there was, in addition, a third group of workers known as *complémentaires*, who were unregistered but who were assembled at the docks whenever there was a need for their services.

836. In Marseilles, a 1959 survey revealed that 43 per cent of the men worked for one employer only and that 62 per cent did not work for more than two employers.

In 1966, an official report pointed out that the lack of flexibility in port labour impacted negatively on the competitive position of the French ports. The employers' association UNIM proposed the creation of permanent employment conditions for dockers (*permanentsation*) which would also incite employers to finance specialised training for their workers. The unions feared, however, that the dockers would be trapped into precarious employment conditions. In

1974, experiments with permanent employment failed⁷²⁸.

837. In the 1980s, enhanced accuracy of ship sailing schedules, technological innovations in cargo handling, non-respect of an official 25 per cent cap on unemployment rates, excessive requirements on gang composition, numerous restrictive working practices, a public service-oriented approach towards the organisation of dock labour, and a State and employer-sponsored preference for industrial peace rather than international competitiveness resulted in massive unemployment among port workers and an overall inefficiency of the French port system, which made an overhaul of the 1947 arrangements a vital necessity⁷²⁹.

Voluntary early retirement plans (*plans Le Guellec*) implemented in the first half of the 1980s contributed to a significant reduction of the workforce but were insufficient to ease the situation.

838. In December 1986, a first Report to the Government on French ports policy by Jacques Dupuydauby⁷³⁰ described severe inefficiencies in the organisation of port labour in French ports. Still, the employers' association UNIM did not advocate the abolition of the 1947 Port Labour Act, but merely wished to put an end to its all too rigorous implementation, "*i.e.* to remove its sedimentary deposit and various other appendages which accumulated through the years under pressure of the quay" (*c'est à dire déshabillée de sa gangue de sédimentations et ajouts divers accumulés au fil des ans sous la pression du quai*). Cargo handlers were in a weak bargaining position, though, because ship owners were ready to accept everything when their ship was taken hostage and public authorities only pleaded reason, industrial peace and realism. Even worse, trade union CGT tried to use the "mythical and sacred"⁷³¹ Port Labour Act as a springboard for an extension of their monopoly to other activities. The Reporter described the 1947 Port Labour Act as vague and imprecise, causing interpretative difficulties. He denounced the closed shop system⁷³² and found that the dockers had no other employer than themselves while the State had taken responsibility to manage them but did not exercise any authority either. Also, the Report provided details on massive unemployment exceeding the legal maximum rate of 25 per cent, without measures being taken. It described how the workers slowed down the introduction of new technologies and how the unions opposed multi-skilling

⁷²⁸ See Le Du, E. and Galbrun, X., *100 ans d'Union au service des ports français 1907-2007*, Paris, UNIM, 2007, 29-31; see also Baudelaire, J.-G., *Administration et exploitation portuaires*, Paris, Eyrolles, 1979, 352; Rodière, R., *Traité général de droit maritime. Les gens de mer*, Paris, Dalloz, 1978, 287, para 325.

⁷²⁹ See Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 4, paras 7-11.

⁷³⁰ Dupuydauby, J., *La filière portuaire française. Mission de réflexion et de propositions*, 1 December 1986 (to our knowledge unpublished).

⁷³¹ See also Bordereaux, L., "Le service public portuaire français", 8 November 2004, <http://www.estudiovillano.com/archivos-estudio-villano-abogados/estudio-villano-le-service-public.pdf>.

⁷³² See further *infra*, para 884 *et seq.*

and imposed "largely plethoric" numbers of gang members. It reported on "malthusian" working practices which artificially increased the workload and entitled workers to a maximum of financial bonuses⁷³³. The excessive cost of port labour incited cargo owners to organise preparatory work such as the stuffing and stripping of containers as much as possible outside port areas. The management costs of the National Unemployment Fund CAINAGOD were excessive due to, *inter alia*, substantial overstaffing. Furthermore, the Dupuydauby Report highlighted the excessive social protection granted to the workers employed by the port authorities, especially the crane drivers, under the Green Agreement (*convention verte*)⁷³⁴. Even if the latter workers did not enjoy a legally entrenched monopoly, they practised a savage corporatism (*un corporatisme farouche*) and opposed any intervention by outsiders in the manning of cranes and gantry cranes belonging to private port operators. Their various restrictive practices and their strike propensity contributed further to the unattractiveness of French ports. The productive Belgian port of Antwerp was often referred to as a model, despite its very similar legal regulations on port labour. The Report concluded with a number of recommendations, *inter alia*, the termination of the tripartite management system, which often placed employers in a minority situation; the return to general labour law conditions based on permanent employment contracts; the adaptation of gangs to real needs and the restoration of the authority of the employer to decide on their composition; a port-based approach towards management of the workforce instead of a nation-wide one; a further reduction of the workforce; multi-skilling, full performance of actual working times; and the re-organisation of CAINAGOD⁷³⁵.

839. Spurred by a major strike in Dunkirk in 1990 and pressured by employers' association UNIM⁷³⁶ which argued that the system of casual employment of registered workers had become "a formidable rigidity-generating engine" (*une formidable machine à générer des rigidités*) and that it had created "an uncontrollable workforce" (*une main-d'oeuvre incontrollable*)⁷³⁷, the Government pushed through Act n° 92-496 of 9 June 1992⁷³⁸ which aligned the rules governing port labour with general labour law as governed by the Labour Code⁷³⁹. More in particular, the port workers could now become *mensualisés*, *i.e.* be employed on the basis of a contract of employment for an indefinite period with a cargo handling company which ensured monthly pay. As a result, the workers would depend on their individual employer rather than on the BCMO,

⁷³³ See further *infra*, para 890.

⁷³⁴ A first version of this Agreement was signed in 1947; it was updated in 1975 and 1989.

⁷³⁵ Dupuydauby, J., *La filière portuaire française. Mission de réflexion et de propositions*, 1 December 1986, 35-50 and 68-76.

⁷³⁶ See Le Du, E. and Galbrun, X., *100 ans d'Union au service des ports français 1907-2007*, Paris, UNIM, 2007, 38-39; see also Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 5, para 13.

⁷³⁷ UNIM, *Livre Blanc de la Manutention Portuaire*, s.l., 2005, 9.

⁷³⁸ Loi n° 92-496 du 9 juin 1992 modifiant le régime du travail dans les ports maritimes. This Act was accompanied by Décret n° 92-1130 du 12 octobre 1992 portant modification du livre V du code des ports maritimes (deuxième partie: Réglementaire) relatif au régime du travail dans les ports maritimes.

⁷³⁹ Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 1, para 1 and 5, para 14.

and employment relations would be governed primarily by the Labour Code, not by the special legal provisions on port labour. In addition, no new port worker's cards were issued. Casual employment of registered workers did not disappear however: it continued to exist, but only for those dockworkers who were already in possession of a professional card on 1 January 1992 and who did not sign a permanent contract with their employer. The 1992 reform scheme was essentially of a transitional nature⁷⁴⁰, as casual employment of registered worker is set to disappear not earlier than the year 2020⁷⁴¹. As a result, the current regime of port labour in France is a mix of general labour law principles and a specific regime⁷⁴² and is considered to "straddle two epochs"⁷⁴³. Be that as it may, following the 1992 reform, which was supplemented by costly social plans, the number of French port workers fell significantly and most of the remaining casual workers indeed signed a long-term contract of employment⁷⁴⁴. In 2007, *i.e.* 15 years after the reform, 3,800 out of 4,734 port workers had become permanent workers, and only 280 continued to work as professional casual workers; this workforce was supplemented by a further 650 occasional workers. Commenting on the first version of the present report, the Union des Ports de France stressed that today the Carte G system is already largely obsolete in French ports.

⁷⁴⁰ Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 1, para 4.

⁷⁴¹ Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 9, para 26.

⁷⁴² Comp. Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 3, para 1.

⁷⁴³ See Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 7, para 18.

⁷⁴⁴ See Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 5, para 15 and 7, para 18.

Figure 80. Following the 1992 reform of port labour in France, most hiring halls for dockers became derelict. From left to right and from top to bottom, the halls of Calais (now a winter shelter for the homeless), Dunkirk (proposed for listing as a monument to the history of docker culture, but demolished in 2004), Le Havre (converted into a training centre for the local basketball club) and Sète (source: photos by the author (Calais) and G. Lemenager (Le Havre) and from websites⁷⁴⁵).



840. A further step in the modernisation of port labour was the conclusion in 1993 of the first National Collective Agreement on Port Labour (CCNU)⁷⁴⁶. As many of its provisions were inspired by the provisions of Labour Code, it brought port labour further into line with general labour law⁷⁴⁷.

⁷⁴⁵

<http://www.panoramio.com/photo/16720111>.

<http://www.archicool.com/actu/breves/06102003.shtml>;

⁷⁴⁶ Convention collective nationale de la manutention portuaire du 31 décembre 1993; see also Arrêté du 29 septembre 1994 portant extension de la convention collective nationale de la manutention portuaire complétée par un avenant; see further Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 10, para 29.

⁷⁴⁷ Cour des comptes, *Rapport public thématique sur Les ports français face aux mutations du transport maritime : l'urgence de l'action*, July 2006, <http://www.ladocumentationfrancaise.fr/rapports-publics/064000535/index.shtml>, 45; see also Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 5, para 14 and 10, para 32.

841. Whereas the companies were now allowed to hire their own port workers and the role of the BCMOs was significantly reduced, these improvements only concerned so-called 'horizontal' cargo handling. As a matter of fact, at many quays and terminals 'vertical' cargo handling, *i.e.* the loading and unloading of ships by means of cranes and other hoisting gear, was still reserved to workers belonging to the local port authority, even in certain cases where the cranes were owned by a private company. Because quay workers employed by the cargo handler – including straddle carrier drivers – and crane and gantry crane drivers employed by the port authority fell under different collective agreements, their working hours did not coincide, which led to serious delays and higher costs. In Marseilles, cranes were operated by a team of two crane drivers, resulting in only 14 hours of productive working time per crane operator per week. Crane services offered by the port authorities were underpriced, which was made possible by cross-subsidisation from the revenues generated by the captive petroleum traffic, especially at Marseilles⁷⁴⁸ and might have raised state aid issues. Yet, in many ports, cargo handlers paid significant gratuities to the individual crane drivers⁷⁴⁹. The dual control of operations also increased the risk of accidents and caused liability problems in the case of damage to or loss of the cargo and in the event of strikes⁷⁵⁰. Awareness grew that the division of responsibilities was specific to the French port system and perhaps unique in the world. The absence of a single chain of command was identified as one of the main reasons why French ports were less efficient than competing ports such as Barcelona, Genoa, Antwerp, Rotterdam and Hamburg⁷⁵¹. Further factors negatively affecting the competitiveness of French ports included a general lack of productivity and reliability due to an unreasonably high strike propensity and a higher cost of cargo handling services than in other ports⁷⁵².

⁷⁴⁸ Slack, B. and Frémont, A., "Transformation of Port Terminal Operations: From the Local to the Global", *Transport Reviews* 2005, Vol. 25, No. 1, http://www.tandfonline.com/doi/pdf/10.1080/0144164042000206051#.U06Yqfl_u3c, (117), 126.

⁷⁴⁹ On the latter issue, see also *infra*, para 909.

⁷⁵⁰ In 1987, the Port Authority of Rouen was held liable for not having informed cargo handling companies of a forthcoming strike among its crane drivers. As a result, the handlers had hired and paid dockers for whom there was no work (Court of Appeal of Rouen, 11 June 1987, *Droit maritime français* 1988, 527).

⁷⁵¹ In 1999 and 2001, the port of Dunkirk had already unified the operation of its main terminals and in 2005, the port of Le Havre attempted to solve the problem by assigning crane drivers to terminals for a period of 3 years.

⁷⁵² See *Parliamentary Documents, Sénat, Rapport fait au nom de la commission des Affaires économiques sur le projet de loi portant réforme portuaire (urgence déclarée), Par M. Charles Revet, Sénateur, Session ordinaire de 2007-2008, no. 331, 15-18; Parliamentary Documents, Assemblée Nationale, Rapport fait au nom au nom de la Commission des Affaires Économiques, de l'Environnement et du Territoire sur le projet de loi, adopté par le Sénat, après déclaration d'urgence, portant réforme portuaire (n° 907), par M. Jean-Yves Besselat, Député, 11 June 2008, no. 954, <http://www.assemblee-nationale.fr/13/rapports/r0954.asp>, 13-17; see also Baudelaire, J.-G., *Administration et exploitation portuaires*, Paris, Eyrolles, 1977, 352; Bolliet, A., Gressier, C., Laffitte, M. and Genevois, R., *Rapport sur la modernisation des ports autonomes*, Inspection générale des Finances / Conseil général des Ponts et Chaussées, July 2007, <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/084000035/0000.pdf>, 25-30; Cour des comptes, *Rapport public thématique sur Les ports français face aux mutations du transport maritime : l'urgence de l'action*, July 2006, <http://www.ladocumentationfrancaise.fr/rapports-publics/064000535/index.shtml>, 61-68; Cour des Comptes, *Le Grand port maritime de Marseille: blocage social et déclin, rapport public annuel 2011 - février 2011*, 343; Slack, B. and Frémont, A., "Transformation of Port Terminal Operations: From the Local to the Global", *Transport Reviews* 2005, Vol. 25, No. 1, http://www.tandfonline.com/doi/pdf/10.1080/0144164042000206051#.U06Yqfl_u3c, (117), 125.*

842. For these reasons, a second port labour reform scheme was laid down in Act No. 2008-660 of 4 July 2008⁷⁵³. It transformed the Ports Autonomes into more effective Grands Ports Maritimes and completed the 1992 labour reform by transferring the responsibility for vertical cargo handling from the Ports Autonomes⁷⁵⁴ to the individual cargo handling companies. The goals of the new reform were threefold:

- to improve the productivity of cargo handling operations;
- to encourage private investments in French ports;
- to restore the confidence of customers in the ports⁷⁵⁵.

- *Regulatory set-up*

843. The currently applicable specific legal regime of port labour applies to commercial maritime ports where professional casual port workers (*ouvriers dockers professionnels intermittents*) are employed and which have been designated by the competent authority upon advice by the most representative social partners (Art. L5343-1 of the Transport Code)⁷⁵⁶.

The list of ports was laid down in a Decree of 25 September 1992⁷⁵⁷ and includes Dunkirk, Calais, Boulogne, Le Tréport, Dieppe, Fécamp, Le Havre, Rouen, Honfleur, Caen, Cherbourg, Saint-Malo, Roscoff, Brest, Douarnenez, Concarneau, Lorient, Nantes - Saint-Nazaire, La Rochelle, Bordeaux, Bayonne, Port-Vendres, Port-la-Nouvelle, Sète, Marseilles, Toulon, Nice, Bastia and Ajaccio (Art. 1 of the Décret).

844. The law further specifies that in the listed ports, port workers are either professional port workers (*ouvriers dockers professionnels*) or occasional port workers (*ouvriers dockers*

⁷⁵³ Loi n° 2008-660 du 4 juillet 2008 portant réforme portuaire; Décret n° 2008-1032 du 9 octobre 2008 pris en application de la loi n° 2008-660 du 4 juillet 2008 portant réforme portuaire et portant diverses dispositions en matière portuaire.

⁷⁵⁴ The Act did not apply to other ports.

⁷⁵⁵ *Parliamentary documents*, Assemblée Nationale, *Rapport fait au nom au nom de la Commission des Affaires Économiques, de l'Environnement et du Territoire sur le projet de loi, adopté par le Sénat, après déclaration d'urgence, portant réforme portuaire (n° 907), par M. Jean-Yves Besselat, Député*, 11 June 2008, no. 954, <http://www.assemblee-nationale.fr/13/rapports/r0954.asp>, 16; see also Ministère de l'Ecologie, de l'Energie, du Développement durable et de l'Aménagement du territoire, *Plan de relance des ports. Dossier de presse*, 8 April 2008, http://www.developpement-durable.gouv.fr/IMG/spipdgmt/pdf/dossier_de_presse_cle2cd51f-1.pdf. For an in-depth commentary, see Rézenthel, R., "Une nouvelle stratégie pour le développement des "grands ports maritimes" français", *Droit maritime français* 2008, 943-951 and 1060-1066.

⁷⁵⁶ On the current interpretation of this particularly confusing provision, see *infra*, para 896.

⁷⁵⁷ Arrêté du 25 septembre 1992 désignant les ports maritimes de commerce de la métropole comportant la présence d'une main-d'oeuvre d'ouvriers dockers professionnels intermittents et portant constitution de bureaux centraux de la main-d'oeuvre.

occasionnels). Professional port workers are employed either on a permanent basis (*mensualisés*) or a casual basis (*intermittents*) (Art. L5343-2 of the Transport Code).

845. The professional permanent port workers conclude a contract of employment for an indefinite period with their employer. Cargo handlers wishing to recruit professional port workers on a permanent basis must give priority to professional casual port workers, or, in the absence thereof, to occasional port workers who regularly⁷⁵⁸ worked in the port during the previous year (Art. L5343-3 of the Transport Code).

Professional port workers employed on a permanent basis retain their professional card and remain registered as long as they are bound by their contract of employment⁷⁵⁹. They furthermore retain their professional card if their contract is terminated after the trial period or if they are made redundant for economic reasons, provided the latter is not followed by re-employment or if it is followed by re-employment as a professional dockworker. When a port worker is made redundant for other reasons, the BCMO decides whether the dockworker can keep his professional card (Art. L5343-3 of the Transport Code)⁷⁶⁰.

Permanently employed dockers work under the full authority of their employer who may give directions and impose sanctions⁷⁶¹.

846. A professional casual port worker is a port worker who possessed a professional card on 1 January 1992 and who has not signed a contract of employment for an indefinite period. The employment contract between the employer and the professional casual port worker is concluded for the duration of a half-day shift or for a longer duration and is renewable (Art. L5343-4 of the Transport Code).

Every professional casual port worker is obliged to regularly present himself for employment and check in in accordance with the conditions laid down by the BCMO. He is also obliged to accept the proposed assignments, unless he has a particular reason to refuse one and this is accepted by the BCMO (Art. L5343-5 of the Transport Code).

⁷⁵⁸ Occasional port workers are assumed to have worked regularly in the port if they performed at least 100 half-day shifts during the past 12 months (Art. R511-2-1 of the Maritime Ports Code).

⁷⁵⁹ See also Barton, H. and Turnbull, P., "Labour Regulation and Competitive Performance in the Port Transport Industry: The Changing Fortunes of Three Major European Seaports", *European Journal of Industrial Relations* 2002, Vol. 8, No. 2, (133), 144.

⁷⁶⁰ The BCMO has to take into account several factors, such as the reasons for the redundancy, seniority, family responsibilities, perspectives towards reintegration into the labour market, professional skills and unemployment rates among casual workers. Refusal decisions must be reasoned (see Art. R511-2-2 of the Maritime Ports Code).

⁷⁶¹ Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 20, para 72. In this respect, permanent employment differs fundamentally from casual employment (see Bordereaux, L., "Statut du docker et relations contractuelles de travail", *DMF* 1995, (606), 610-612).

In each BCMO, the number of professional casual port workers is limited: (1) the number of half-day shifts during which port workers are unemployed (French *nombre des vacances chômées*) in the previous 6 months, divided by the total number of half-day shifts over the same period may not exceed 30 per cent in BCMOs with less than 10 professional casual port workers, 25 per cent in BCMOs with less than 30 workers, 20 per cent in BCMOs with between 30 and 100 of workers and 15 per cent in BCMOs with more than 100 workers; (2) in the BCMOs of the Grands Ports Maritimes and the remaining Ports Autonomes, the total number of professional casual port workers may not exceed 15 per cent of the total number of professional workers in BCMOs of the Ports Autonomes with more than 700 port workers on 1 January 1992, and 20 per cent in all other ports (Art. L5343-15 of the Transport Code and Art. R521-7 of the Maritime Ports Code).

If the total number of professional casual port exceeds the limits, a number of workers will be struck from the register in accordance with criteria⁷⁶² determined by a collective labour agreement or, in absence thereof, by the president of the BCMO (Art. L5343-16 of the Transport Code). De-registered workers are entitled to special compensation. Where at least 10 dockworkers are dropped from the register in a period of 30 days, the employers must state the measures they intend to take in order to facilitate re-employment of the workers (Art. L5343-17 of the Transport Code and R521-8 of the Maritime Ports Code).

Professional casual port workers are bound to their employer by a specific fixed-term contract of employment⁷⁶³.

Since 1992 no new professional cards have been issued⁷⁶⁴ and the last card holders are expected to have disappeared from the scene by 2020⁷⁶⁵.

847. The occasional port workers make up a supplementary workforce, which is called upon in case of shortages of professional casual workers only. Occasional port workers are not obliged to present themselves for recruitment in the companies and are allowed to work elsewhere than in the port without special authorisation. They enjoy no job guarantee (Art. L5343-6 of the Transport Code and Art. 2 of the CCNU). The employment contract between the operator and the occasional port worker is also concluded for a fixed term and is governed by the provisions of the Labour Code⁷⁶⁶. But where an occasional worker is obliged, contrary to the law, to report

⁷⁶² The criteria that have to be taken into account are the seniority, the family responsibilities, prospects for reintegration into the labour market, professional competence and the possibility of becoming employed on a permanent basis.

⁷⁶³ See *inter alia* Le Garrec, M.-Y., "La reconnaissance du statut d'ouvrier docker professionnel intermittent", *Droit maritime français* 2000, (849), 851.

⁷⁶⁴ Rézenthel, R., "633. Manutention portuaire", in Beurier, J.-P. (Ed.), *Droits maritimes*, Paris, Dalloz, 2008, (865), 867, para 633.16.

⁷⁶⁵ See *supra*, para 839.

⁷⁶⁶ Le Garrec, M.-Y., "La reconnaissance du statut d'ouvrier docker professionnel intermittent", *Droit maritime français* 2000, (849), 851-852.

twice a day for employment, law courts may conclude that he is bound by a contract of employment for an indefinite term⁷⁶⁷.

848. For all cargo handling activities specified in the implementing regulations, employers not relying exclusively on professional permanent port workers must give preference to professional casual port workers and, in the absence of such workers, to occasional port workers (Art. L5343-7 of the Transport Code).

In commercial maritime ports which appear on the list mentioned above⁷⁶⁸, the use of professional or occasional port workers is compulsory for (1) the loading and unloading of ships and barges at public berths and for (2) the handling in places subject to public use (storage depots, sheds or warehouses) of incoming and outgoing goods carried by sea (Art. R511-2, first indent of the Maritime Ports Code).

As a departure from the latter rule, the following operations may be carried out without port workers: (1) the loading and unloading ship's appurtenances and of supplies; (2) the loading and unloading of inland waterway vessels using ship's gear or by the owner of the goods employing his own personnel; (3) handling related to public works in the port concerned; (4) the reception of goods in storage depots or in sheds as well as the loading of goods by the personnel of the owners of the goods; (5) the unloading of fish from fishing ships and boats by the crew or by the ship owner's personnel (Art. R511-2, second indent of the Maritime Ports Code).

849. In each commercial maritime port subject to the specific legal regime of port labour, a Central Port Employment Office (Bureau Central de la Main-d'Oeuvre du Port, BCMO) was set up (Art. L5343-8 of the Transport Code and Art. 2 of the Decree of 25 September 1992⁷⁶⁹).

⁷⁶⁷ Supreme Court (Cour de cassation), 10 March 2009, *Droit maritime français* 2009, 668, annot. Bordereaux, L.; see also, however, Supreme Court (Cour de cassation) 26 November 2002, *Droit maritime français* 2003, 405 and 408 (two judgments), with annot. Bordereaux, L., "De l'articulation du Code des ports maritimes et du Code du travail: les dockers occasionnels entre droit spécial et droit commun du travail".

⁷⁶⁸ See *supra*, para 843.

⁷⁶⁹ On this Decree, see *supra*, para 843. To be precise, Art. 2 of the Decree provides for the establishment of the following BCMOs:

Dunkerque, Calais, Boulogne, Le Tréport, Dieppe, Fécamp, Le Havre, Rouen, Honfleur, Caen, Cherbourg, Saint-Malo, Roscoff, Brest, Douarnenez, Concarneau, Lorient, Saint-Nazaire (installations portuaires du Port autonome de Nantes - Saint-Nazaire situées sur le territoire des communes de Saint-Nazaire, Montoir-de-Bretagne, Donges, Frossay et Saint-Viaud), Nantes (installations portuaires du Port autonome de Nantes - Saint-Nazaire situées sur le territoire des communes de Nantes, Rezé et Bourguenais), La Rochelle, Bordeaux - Le Verdon, Bayonne, Port-Vendres, Port-la-Nouvelle, Sète, Marseille-Ouest (installations portuaires du Port autonome de Marseille situées sur le territoire des communes de Chateauneuf-lès-Martigues, Martigues, Port-de-Bouc, Fos-sur-Mer, Port-Saint-Louis-du-Rhône et Arles), Marseille-Est (installations portuaires du Port autonome de Marseille situées sur le territoire de la commune de Marseille), Toulon, Nice, Bastia et Ajaccio.

The BCMO is a jointly managed body composed of:

- the president or director of the port authority, who also chairs the BCMO;
- 3 representatives of the professional casual port workers⁷⁷⁰;
- an equal number of representatives of the cargo handling companies⁷⁷¹;
- in an advisory capacity, two representatives elected by the professional permanent port workers who have retained their professional card (Art. L5343-8 of the Transport Code).

The BCMOs are charged with (1) the registration of casual professional workers and of the permanent professional workers who have retained their card; (2) the organisation of and the control over the hiring of casual and occasional workers; (3) the distribution of work among the casual professional workers; and (4) all registration which are necessary to ensure payment to casual and occasional workers of applicable social benefits (Art. R511-4 of the Maritime Ports Code).

The BCMO is a public institution (*service public à caractère administratif*). It is not acting as an employer of port workers. From a legal point of view, the BCMO is only an agent that represents employers⁷⁷².

850. The National Dock Workers Guarantee Fund (French La Caisse Nationale de Garantie des Ouvriers Dockers, CAINAGOD)⁷⁷³ has the following tasks:

- (1) maintaining, for each BCMO, the register of the professional casual port workers and of the professional permanent port workers who were allowed to retain their professional card;
 - (2) keeping up to date, for each BCMO, the list of employers who use professional casual port workers;
 - (3) the collection of the contributions paid by the employers;
 - (4) the payment to the workers, through the BCMOs or other intermediary bodies of the guaranteed allowance;
 - (5) the management of the available funds (Art. L5343-9 of the Transport Code).
- CAINAGOD also finances the organisation of the local BCMOs (Art. L5343-13 of the Transport Code).

The Management Board of CAINAGOD is composed of an equal number of representatives of the Government, the employers and the professional casual workers (Art. L5343-10 of the Transport Code)⁷⁷⁴.

⁷⁷⁰ See also Art. R511-3-1 of the Maritime Ports Code.

⁷⁷¹ See also Art. R511-3 of the Maritime Ports Code.

⁷⁷² Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des jurisclasseurs: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 12, paras 40-42; see also Court of Appeal of Rennes, 5 January 1995, *Droit maritime français* 1995, 633.

⁷⁷³ On the legal status of CAINAGOD, see Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des jurisclasseurs: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 14, paras 50-51.

CAINAGOD is funded by a levy on the employers, the proceeds of the management of its funds, the proceeds of allowed loans and gifts (Art. L5343-10 of the Transport Code). The amount of the levy on the employers is determined for each BCMO by an inter-ministerial decree of the Minister for Maritime Ports and the Minister for Labour (Art. R521-5 of the Maritime Ports Code). Its level must ensure the financial equilibrium of each BCMO (Art. L5343-12 of the Transport Code).

An unemployed professional casual port worker receives a compensatory fee, called *indemnité de garantie* (Art. L5353-18 of the Transport Code). The amount of this fee is determined by the Ministers in charge of Labour and Maritime Ports (Art. R521-1 of the Maritime Ports Code)⁷⁷⁵. The amount is limited to an equivalent of 300 half-day shifts (Art. R521-2 of the Maritime Ports Code). The *indemnité de garantie* is not subject to social security taxes (Art. L5343-20 of the Transport Code).

Occasional port workers are only eligible to receive a general unemployment benefit on the basis of the Labour Code (Art. L5343-22 of the Transport Code and Art. 2 of the CCNU).

851. Legally, employers in French ports are not obliged to join a professional association or a pool management entity such as a BCMO. However, they have to comply with the priority of employment (*priorité d'embauche*)⁷⁷⁶ and contribute to the financing of CAINAGOD and the Paid Holidays Fund which ensure payment of the *indemnité de garantie*.

852. Sanctions on employers infringing the laws and regulations on port labour include a warning and a fine of up to 4,500.00 EUR. Workers found in breach of these rules may receive a warning as well, or either temporarily or definitively lose their professional card. Infringements are recorded by agents designated by the president of the BCMO. Sanctions can only be imposed after trial (Art. L5344-2, L5344-3 and L5344-4 of the Transport Code; Art. R531-1 of the Maritime Ports Code). The revenue is used for social purposes⁷⁷⁷.

It should be added that the CCNU and local agreements set out specific conciliation and interpretation mechanisms (see Art. 11 of the CCNU and, for example, Art. 13.1 *et seq.* of the Special Conditions for Dunkirk).

⁷⁷⁴ See also Art. R521-3 of the Maritime Ports Code.

⁷⁷⁵ See Arrêté du 21 février 2011 fixant le montant de l'indemnité de garantie des ouvriers dockers professionnels intermittents Arrêté du 21 février 2011 fixant le montant de l'indemnité de garantie des ouvriers dockers professionnels intermittents.

⁷⁷⁶ Today, three different meanings can be attached to the term *priorité d'embauche*: (1) the general priority of port workers to perform port work; (2) the priority of permanent workers above occasional workers; and (3) the priority of holders of a 'carte G' to obtain permanent employment.

⁷⁷⁷ Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 9, para 25.

853. Since the reform of 2008, the Grands Ports Maritimes are not allowed to man their own equipment for ship-related loading, unloading, handling and storage operations. They were obliged to cease these activities within 2 years after the adoption of their strategic plan (*projet stratégique*). The Grands Ports Maritimes were also obliged to transfer ownership of their equipment to cargo handling companies (Art. 7 of Act n° 2008-660). To this end, the Grands Ports Maritimes were allowed to transfer ownership directly to terminal operators who had made investments in their terminal, or who had handled significant volumes at it. In the absence of such operators or if negotiations were unsuccessful, the port authority had to launch an open bidding procedure. If the latter was still unsuccessful, and provided that the Strategic Plan anticipated this alternative, the Grand Port Maritime could entrust a subsidiary with the relevant tasks for a maximum period of 5 years (Art. 9 of Act n° 2008-660). The handing over of the equipment was supervised by a special Evaluation Committee set up within the French Parliament. Furthermore, a local collective agreement had to be concluded in order to lay down criteria for the transfer of the crane drivers to the terminal operators. Failing this, the Chairman of the Grand Port Maritime would issue these criteria (Art. 10 of Act n° 2008-660). Before 1 November 2008, all concerned parties also had to conclude a national framework agreement on the re-employment of the workers by the terminals (Art. 11 of Act n° 2008-660). Should no such agreement be concluded in a timely manner, the 2008 Act provided for a default regime which entitled workers to re-employment within the port authority in the event the terminal operator made them redundant for economic reasons within a period of 7 years (Art. 12 of Act n° 2008-660).

The Framework Agreement was actually signed on 30 October 2008⁷⁷⁸ and declared binding on all port authorities, cargo handling companies and port workers by a Decree of 28 November 2008⁷⁷⁹. The Agreement *inter alia* recognises the right of all workers to voluntarily return the port authority within a period of 3 years. Workers may even return at a later stage, should they be made redundant for economic reasons within a period of 14 years. The Agreement also contains further provisions on early retirement in relation to the handling of asbestos.

In 2011 the European Commission decided that the procedure for the transfer of equipment from French Port Authorities to the private sector offered sufficient guarantees that equipment would be sold at the market rate and that such transfers did not, therefore, constitute state aid⁷⁸⁰.

⁷⁷⁸ Accord-cadre interbranches du 30 octobre 2008 conclu en application de l'article 11 de la loi du 4 juillet 2008 portant réforme portuaire.

⁷⁷⁹ Décret n° 2008-1240 du 28 novembre 2008 pris en application de l'article 11 de la loi n° 2008-660 du 4 juillet 2008 portant réforme portuaire.

⁷⁸⁰ State aid case C 13/2009; see "State aid: The Commission approves equipment transfer procedure under French port reform" (IP/11/803 of 29 June 2011) as well as OJ 30 May 2009, C 122/16.

- *Facts and figures*

854. According to the employer organisation Union Nationale des Industries de la Manutention (UNIM), there are currently about 100 port employers in France.

855. UNIM stated that approximately 5,000 people were employed in cargo handling activities in 2012, including 4,370 port workers.

UNIM and trade union CNTPA concur that the CCNU, which covers also administrative and maintenance staff of both port companies and port authorities, applies to between 9,000 and 10,000 port workers *sensu lato*.

The table below gives an overview of the evolution of the number of professional port workers (*sensu stricto*) holding a 'Carte G' between 1950 and 2013⁷⁸¹.

⁷⁸¹ A wealth of scattered historical data is available in other publications, but they do not always allow a useful comparison. The Court of Auditors mentions that the total number of French port workers fell from 14,200 in 1980 to 8,300 in 1990 and 4,200 end 2004 (Cour des comptes, *Rapport public thématique sur Les ports français face aux mutations du transport maritime : l'urgence de l'action*, July 2006, <http://www.ladocumentationfrancaise.fr/rapports-publics/064000535/index.shtml>, 41). In 1992, 8,234 professional port workers were employed; in 1997, 3,868 workers; in 2004, 3,057 workers (2,571 permanent and 486 casual workers); and in 2010, 1.352 workers (1.034 permanent and 318 casual workers) (see Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 6, para 15 and 8, para 23). For 2001 and 2002, the following figures were reported (ECOTEC, *Employment trends in all sectors related to the sea or using sea resources. Country Report. France*, European Commission, DG Fisheries and Maritime Affairs, August 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/france_employment_trends_en.pdf, 8):

Table 41. Number of port workers in France, 2001-2002 (source: ECOTEC Research & Consulting based on Ifremer)

2001			2002		
Autonomous Ports	Ports of National Interest	Total	Autonomous Ports	Ports of National Interest	Total
3,417	997	4,414	3,401	985	4,386

For 2007, the following details are available (taken from Bolliet, A., Gressier, C., Laffitte, M. and Genevois, R., *Rapport sur la modernisation des ports autonomes*, Inspection générale des Finances / Conseil général des Ponts et Chaussées, July 2007, <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/084000035/0000.pdf>, Annex IV, 3):

Table 42. Total number of professional port workers holding a 'Carte G' in French ports, 1950-2013 (source: CAINAGOD)

	1950	1960	1970	1980	1990	2000			2011			2012			2013			
						Casual workers	Permanent workers	Total	Casual workers ⁷⁸²	Permanent workers	Total	Casual workers ⁷⁸³	Permanent workers	Total	Casual workers ⁷⁸⁴	Permanent workers	Total	
BCMO	Casual workers																	
Ajaccio	61	67	58	18	19		14	14	1	13	14		13	13		13	13	

Table 43. Number of professional dockers (permanent and casual) in the 7 metropolitan Ports Autonomes of France, 2007 (source: UNIM and Canaigod)

Port	Casual port workers holding a G card prior to the 1992 reform	Situation on 1 January 2007						
		Permanent workers			Casual workers			Total
		G card	No G card	Total	Registered and active	Non-active	Total	
Marseilles East / Fos	2,017	328	466	794	234	26	260	1,054
Le Havre	2,108	530	1,191	1,721	-	13	13	1,734
Dunkirk	1,072	146	189	335	-	17	17	352
Nantes Saint-Nazaire	320	40	115	155	9	-	9	164
Rouen	787	96	40 ⁷⁸¹	136	6	7	13	149
Bordeaux	290	16	39	55	-	-	-	55
La Rochelle	148	30	43	73	-	2	2	75
Total for autonomous ports	6,742	1,186	2,083	3,269	249	65	314	3,583
All ports	8,293	1,566	2,200	3,766	284	138	422	4,188

⁷⁸² Among whom 86 inactive workers.

⁷⁸³ Among whom 86 inactive workers.

⁷⁸⁴ Among whom 86 inactive workers.

Bastia	68	70	52	30	34	16	5	21	9	4	13	9	4	13	9	4	13
Bayonne	50	52	50	58	38		13	13		7	7						
Bordeaux	1,894	1,443	900	580	230		76	76		7	7	3	5	5		5	5
Boulogne-sur-Mer	536	452	390	412	252	10	91	101	11	1	12	11	1	4	3	1	4
Brest	175	56	48	97	83	29	14	43	3	15	18	3	1	12	11	1	12
Caen	22	13	25	45	41		24	24	3	10	13	3	15	18	3	12	15
	1950	1960	1970	1980	1990	2000			2011			2012			2013		
						Casual workers	Permanent workers	Total	Casual workers	Permanent workers	Total	Casual workers	Permanent workers	Total	Casual workers	Permanent workers	Total
BCMO	Casual workers																
Calais	259	249	159	110	80	1	37	38		24	24	2	23	25	24	0	24
Cherbourg	333	120	47	53	50		16	16	1	9	10		4	4		4	4
Concarneau				110	112	9	49	58	8		8	8		8	8		8
Dieppe	413	539	544	481	168	10	57	67	4		4	4		4	4		4
Douarnenez					17	2	3	5									
Dunkirk	1,684	1,900	1,646	1,774	1,004	19	487	506	15	41	56	7	12	19	6	3	9
Fécamp	34	31	26	17	12	1	4	5	1		1	1		1	1		1
Le Havre	4,282	3,400	3,487	3,510	2,124	7	1,041	1,048	6	289	295	4	256	260	4	225	229
Honfleur				32	20		3	3	1		1						
Lorient	121	101	106	189	234	4	56	60	3	29	32	3	25	28	3	14	17
Marseilles - Fos	4,477	3,526	2,834	3,266	2,055	500	565	1,065	130	175	305	113	142	255	84	124	208
Nantes - Saint Nazaire	629	585	464	463	323	5	125	130	5	18	23	5	16	21	5	12	17
Nice	83	66	70	87	62		4	4	2	1	3	1	1	2	1		1
Paris	540	460	177	65	1	1		1									
Port-la-Nouvelle	8	9	30	40	33	3	6	9		4	4		2	2		2	2
Port-Vendres	83	83	51	50	48		22	22	2	10	12	2	7	9	2	5	7
La Rochelle	334	302	282	242	174	4	49	53	2	9	11	2	6	8	2	5	7
Roscoff					12		6	6		5	5		5	5		5	5

Rouen		1,834	1,775	2,064	918	51	192	243	7	26	33	4	15	19	4	15	19
Saint-Malo	26	7	51	90	85	5	32	37	1	8	9	1	5	6	1	4	5
Sète	654	484	349	284	204		63	63	7	28	35	1	11	12	1	10	11
Toulon	48	42	36	25	13		4	4		4	4		4	4		4	4
Le Tréport					9	1	6	7		1	1		1	1		1	1
Le verdon				37	27					1	1						
Total	16,814	15,891	13,657	14,229	8,482	678	3,064	3,742	222	739	961	187	583	770	179	478	657

856. UNIM reports that almost all port workers (95 to 100 per cent) are members of a trade union. This confirms data published by the French Ministry of Employment in a Report of 2003⁷⁸⁵. This is in sharp contrast to the level of union membership in France as a whole which is believed to stand at a mere 8 percent, the lowest in the EU⁷⁸⁶.

The main port workers' union is Confédération Générale du Travail (CGT) which, however, preferred not to contribute to the present study. CGT explained to us that this is because the European Commission has shown no signs of a real willingness to start up a social dialogue on health and safety and on training and because the 'capitalist dictatorship' which is currently ruling Europe is, yet again, seeking to deregulate port labour. However, CGT mentioned that it represents more than 95 per cent of French port workers⁷⁸⁷. In response to this, the Union des Ports de France informed us that CGT represents appr. 67 percent of workers in the sectors of Ports and Handling.

In 2000, workers from Saint-Nazaire and Dunkirk founded Coordination Nationale des Travailleurs Portuaires et Assimilés (CNTPA), a new trade union who informed us that in 2011 they had 1,409 port workers among their members⁷⁸⁸.

The unions Force Ouvrière (FO) and Fédération Générale des Transports et de l'Équipement (FGTE-CFDT) do not seem to play a very significant role in the sector of port labour.

9.7.4. Qualifications and training

- Regulatory set-up

857. In 1974, French dockers won the right to receive continued training at national level. Such training came in response to a growing trend towards employment of non-port workers for the

⁷⁸⁵ According to this Report, up to 95 per cent of port workers at private companies and up to 75 per cent of crane drivers etc. employed by port authorities are members of a trade union (see Ministère de l'emploi, du travail et de la cohésion sociale, *La négociation collective en 2003*, Paris, Editions législatives, 2004, 261).

⁷⁸⁶ See <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

⁷⁸⁷ A former CGT Secretary in Bordeaux stated that 95 to 100 per cent of workers in French ports are CGT members (Gurrea, A., "Résumé de l'activité syndicale depuis le début du siècle des Dockers du Port de Bordeaux", <http://bacalanstory.blogs.sudouest.fr/media/02/01/160491036.pdf>, 4).

⁷⁸⁸ In 2003, the French authorities officially recognised CNTPA as a representative union, representing 26 per cent of French dockers (Galbrun, X., *La manutention portuaire en 2003. Rapport annuel d'activités*, Paris, UNIM, http://www.unim.org/cgi-bin/client/modele.pl?shop=unim&modele=agenda&cat=80&manuel_menu=gamme_80&manuel_par=33, 1/15).

operation of specialised equipment, which threatened to leave port workers with the unskilled manual jobs. Based on a collective agreement, a national and jointly managed training institution was established⁷⁸⁹.

858. Today, the Labour Code first of all obliges employers to provide training on safety issues. The Code also requires that all drivers of mechanical equipment be properly trained⁷⁹⁰.

859. The Transport Code allows CAINAGOD to use its funds for the financing of professional training activities (Art. L5343-14).

860. Under the CCNU, all port workers are classified into 6 categories, ranging from starter to executive. For each category, a certain minimum level of qualifications is required (see Art. 3.5 of the CCNU).

861. The CCNU also provides for the establishment of a Prospective Observatory on Skills and Qualifications (Observatoire Prospectif des Métiers et des Qualifications) which collects and analyses relevant data on skills, qualifications and training (Art. 8.G).

Next, the CCNU recognises the importance of training of port workers to ensure that they possess the necessary skills and know-how and that qualifications are valid with regard to third parties (*opposable aux tiers*). For employers training of port workers is considered fundamental in order to cope with the economic challenges faced by the sector⁷⁹¹.

Training in the cargo handling sector is structured around three elements:

- accession to a sectoral Joint Collecting Entity (Organisme Paritaire Collecteur Agréé, OPCA⁷⁹²);
- the priorities given to professional training and the financing thereof, as set out in an earlier collective agreement of 6 July 2005;
- the introduction of sectoral professional certifications by means of Professional Qualification Certificates (Certificats de Qualification Professionnelle, CQPs) which are

⁷⁸⁹ See Gurrea, A., "Résumé de l'activité syndicale depuis le début du siècle des Dockers du Port de Bordeaux", <http://bacalanstory.blogs.sudouest.fr/media/02/01/160491036.pdf>, 7-8.

⁷⁹⁰ See Ferreira, M., Le Roy, A. and Laine, P., *Les manutentions portuaires. Paysage institutionnel et réglementation applicable*, Paris, INRS, 2005, <http://www.inrs.fr/accueil/produits/mediatheque/doc/publications.html?refINRS=ED%20943>, 41-42.

⁷⁹¹ On the background, see *infra*, para 891.

⁷⁹² An OPCA is a means of collecting contributions made by the employers for the financing of training.

managed by the sectoral Joint National Employment Committee (Commission Paritaire Nationale de l'Emploi, CPNE) and registered at the National Repertory of Professional Certificates (Répertoire National des Certifications Professionnelles, RNCP), as set out in an earlier collective agreement of 19 December 2006 (Art. 9 CCNU).

Currently, professional training is further regulated by a collective agreement of 17 March 2011⁷⁹³.

862. The CQPs for port workers were created under national collective agreements of 6 July 2005⁷⁹⁴ and 19 December 2006⁷⁹⁵. The former expressly acknowledged, *inter alia*, the individual right to training of every worker (Art. 8).

Currently, the training scheme is governed by Annex No. 2 to the CCNU⁷⁹⁶ which essentially seems to confirm earlier provisions.

This agreement explains that training efforts made by individual companies are insufficient to assess the acquisition of skills by the port workers, and that the objectives of the national training regime are threefold: (1) the adaptation of CQPs to the actual needs of the cargo handling companies; (2) offering future port workers stable and long-term employment; (3) professional development of workers throughout their career (Preamble to Annex No. 2).

The CQPs aim to prove that the dockworker has all the necessary competences, skills and knowledge to carry out cargo handling jobs. The CQPs were defined and validated by the CPNE, based on the work by the Prospective Observatory on Skills and Qualifications (Art. 2 of Annex No. 2).

CQP training is offered to both existing and prospective workers. CQPs may also be obtained on the basis of acquired competences (Art. 3 of Annex No. 2).

There are CQPs for port work in general (which is a prerequisite to obtain a specialised CQP) and for specific jobs such as safety worker / signal man, port engine driver, tallyman, port engine instructor and quay supervisor (Art. 4 of Annex No. 2). A number of CQPs were registered in the National Repertory of Professional Certificates (Répertoire National des Certifications Professionnelles, RNCP)⁷⁹⁷.

Training courses may be organised either within the company or by a training provider (Art. 5 of Annex No. 2).

⁷⁹³ Accord du 17 mars 2011 relatif à la formation professionnelle.

⁷⁹⁴ Accord du 6 juillet 2005 relatif à la formation professionnelle.

⁷⁹⁵ Accord du 19 décembre 2006 relatif à la création de certificats de qualification professionnelle dans la manutention portuaire (filiale exploitation portuaire).

⁷⁹⁶ Avenant N° 2 du 17 mars 2011 relatif à la création des CQP.

⁷⁹⁷ See detailed descriptions of the certificates on <http://www.rncp.cncp.gouv.fr/>.

The award of a CQP is considered proof that the worker possesses the skills necessary to exercise a particular job (Art. 6 of Annex No. 2).

In sum, the main characteristics of CQP in the port sector can be described as follows:

- irrespective of the type of his contract of employment, every dockworker is required to have the CQP corresponding to his function;
- a CQP can be obtained through continued vocational training including an exam or through a specific procedure taking into account past experience (minimum 3 years);
- exams are organised at port level;
- the examining board is composed of an equal number of representatives from employers and employees and a representative of the training institution;
- the CQP certificate is officially delivered by a specific committee, the Commission Paritaire Nationale de l'Emploi (CPNE);
- the employers' association UNIM is responsible for logistics and the secretariat⁷⁹⁸.

A comprehensive Reference Book describes the prerequisites, minimum obligations, abilities and knowledge required for each CQP certificate. These requirements constitute binding obligations but are only minimum requirements. An individual port or company may decide to impose additional requirements.

863. Further provisions on professional training were indeed laid down in local collective agreements (see, for example, Art. 11.1 *et seq.* of the Special Conditions for Dunkirk).

864. Port workers driving special equipment must acquire a special certificate known as CACES (Certificat d'aptitude à la conduite en sécurité)⁷⁹⁹. These certificates supplement certificates required under other laws and regulations⁸⁰⁰.

⁷⁹⁸ Galbrun, X., *Training and qualification systems in the EU Port Sector. ETF Workshop – Limassol Cyprus. The French approach of CQP*, February 2009, <http://www.itfglobal.org/files/extranet/-75/15444/Galbrun.pdf>, 5.

⁷⁹⁹ The CACES were introduced through Décret n°98-1084 du 2 décembre 1998 relatif aux mesures d'organisation, aux conditions de mise en oeuvre et aux prescriptions techniques auxquelles est subordonnée l'utilisation des équipements de travail et modifiant le code du travail. For further information, see <http://www.ameli.fr/employeurs/prevention/la-formation/le-certificat-d-aptitude-a-la-conduite-en-securite.php>.

⁸⁰⁰ See Ferreira, M., Le Roy, A. and Laine, P., *Les manutentions portuaires. Paysage institutionnel et réglementation applicable*, Paris, INRS, 2005, <http://www.inrs.fr/accueil/produits/mediatheque/doc/publications.html?refINRS=ED%20943>, 43.

- Facts and figures

865. On 8 November 2012, UNIM informed us that, since the inception of the qualifications scheme in December 2006, some 25,104 CQP had been issued to permanent and occasional workers. On average, every worker holds 5 CQPs. In May 2014, the number of CQPs stood at 27,259.

866. Training of port workers takes place in the Port and Logistics Training Centre (Centre de Formation Portuaire et Logistique, CEFPOL)⁸⁰¹ as well as in the individual companies.

Training courses are also offered by AFT-IFTIM (a joint venture of 'Association pour le développement de la formation professionnelle dans le transport' and 'Institut de Formation aux Techniques d'Implantation et de Manutention')⁸⁰².

Trade union CNTPA informed us of the availability of the following types of formal training for port workers in France:

- specialised training as part of a regular educational programme (secondary school);
- continued or advanced training after regular educational programme;
- induction courses for new entrants;
- courses for the established port worker;
- training in safety and first aid;
- specialist courses for certain categories of port workers;
- training aimed at the availability of multi-skilled or all-round port workers;
- retraining of injured and redundant port workers.

9.7.5. Health and safety

- Regulatory set-up

867. In France, there are very few specific legal provisions regarding health and safety in port labour.

In most cases, general provisions on occupational health and safety apply. These are laid down in a comprehensive manner in the Labour Code.

⁸⁰¹ See <http://www.cefpol.fr>. A vocational training centre was established in Le Havre in 1973.

⁸⁰² See www.aft-iftim.com.

As we have mentioned above⁸⁰³, specific provisions on the safety of hoisting gear are laid down in the Ship Safety Regulations and, since 1996, special safety rules apply to situations where several employers cooperate at loading and unloading operations.

In 2003, special Recommendations were published on the inspection of older hoisting equipment used in ports⁸⁰⁴.

868. In each port where a BCMO was established, a port-wide Joint Committee for Health, Safety and Working Conditions had to be set up (Art. L5343-21 of the Transport Code; to avoid misunderstanding, it should be pointed out that such committees exist in all port facilities)⁸⁰⁵.

The establishment of these Committees is further regulated in the CCNU (Art. 8.D) and in local agreements⁸⁰⁶.

869. Some local collective agreements contain specific safety rules⁸⁰⁷.

870. Given the high accident rate, UNIM and the National Insurance Fund for Occupational Diseases of Workers in 2000 signed an agreement on prevention measures⁸⁰⁸. Today, this agreement is of little practical importance.

871. In 2005 the National Research and Security Institute (Institut National de Recherche et de Sécurité, INRS) published an excellent comprehensive brochure on the application of safety and health provisions of the Labour Code and other laws and regulations to port labour⁸⁰⁹.

⁸⁰³ See *supra*, para 827.

⁸⁰⁴ Caude, G. and Maria, M., *Recommandations applicables aux appareils de levage « anciens » dans les ports*, Paris, Centre d'Etudes Techniques Maritimes et Fluviales, 2003, 34 p., http://www.cetmef.developpement-durable.gouv.fr/IMG/pdf/PM_03-01_cle5761bd.pdf.

⁸⁰⁵ The initial legal basis for the establishment of such Committees was an *arrêté* of 8 April 1959.

⁸⁰⁶ See, for example, Art. 8 of the Agreement for Bordeaux of 11 July 2000.

⁸⁰⁷ See, for example, Art. 7 of the Agreement for Montoir - Saint-Nazaire of 30 October 2006 on the wearing of personal protective equipment.

⁸⁰⁸ See Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 6, para 17.

⁸⁰⁹ Ferreira, M., Le Roy, A. and Laine, P., *Les manutentions portuaires. Paysage institutionnel et réglementation applicable*, Paris, INRS, 2005, 62 p., <http://www.inrs.fr/accueil/produits/mediatheque/doc/publications.html?refINRS=ED%20943>. The study refers to the numbering of Articles in the previous version of Labour Code. A new version of the Code was published in 2010.

872. Following long and difficult negotiations, the social partners agreed in 2011 on a special scheme on Strenuosity (*pénibilité*). Under this scheme, a number of port workers' jobs were identified as particularly strenuous, entitling the workers (dockers and other workers employed in port facilities) who had been engaged in these activities for either 15 or 18 years to retire 2 or 3 years earlier, respectively, than other workers. The criteria used relate to specific working hours, productivity constraints, multi-skilling, the dangerous nature of goods handled and of the working environment, noise, temperature and climate constraints and physical constraints including movements and postures and concentration. The job categories concerned include crane and gantry crane drivers, lashers and maintenance personnel (see Annex 3 to the CCNU and also Annex 3 to the Framework Agreement of 30 October 2008)⁸¹⁰. The right to early retirement is thus based on an assumed exposure to certain occupational risks, not on an individual medical opinion.

873. In 1999, a similar scheme was adopted on the early retirement of workers involved in the handling of asbestos, known as ACAATA ('L'allocation de cessation anticipée d'activité des travailleurs de l'amiante'). The latter scheme is based on general national regulations the benefit of which was also granted to professional port workers, including crane drivers⁸¹¹. Before 1977, asbestos was indeed handled in most French ports.

Early retirement rights under the Strenuosity Scheme, ACAATA and other applicable regimes may be combined up to a maximum of 5 years (see again Annex 3 tot the CCNU)⁸¹².

On 1 January 2007, 1,263 workers had retired on the basis of the Asbestos Scheme⁸¹³. Several dockers pursued court cases against employers in order to obtain financial compensation⁸¹⁴.

⁸¹⁰ Personnel of the fishing port of Lorient demanded that the regime be applied to them too (X., "Grève des agents et dockers au port de pêche de Lorient", http://www.ouest-france.fr/actu/actuLocale_-Greve-des-agents-et-des-dockers-au-port-de-peche-de-Lorient_40811-2049002-----56121-aud_actu.Htm).

⁸¹¹ Art. 36 of Loi n° 99-1140 du 29 décembre 1999 de financement de la sécurité sociale pour 2000 (see Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 6, para 15); Art. 44 of Loi n° 2001-1246 du 21 décembre 2001 de financement de la sécurité sociale pour 2002; Arrêté du 7 juillet 2000 fixant la liste des ports susceptibles d'ouvrir droit à l'allocation de cessation anticipée d'activité des travailleurs de l'amiante en faveur des ouvriers dockers professionnels (repeatedly revised).

⁸¹² Asbestos Schemes were also concluded at local level (see, for example, the Agreement for Bordeaux of 12 December 2001).

⁸¹³ See further details in Bolliet, A., Gressier, C., Laffitte, M. and Genevois, R., *Rapport sur la modernisation des ports autonomes*, Inspection générale des Finances / Conseil général des Ponts et Chaussées, July 2007, <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/084000035/0000.pdf>, Annex IV, 4.

⁸¹⁴ In August 2005, the Social Security Court of Bordeaux awarded damages to 17 casual dockers of the port of Bordeaux. Some 10 cargo handlers and the port authority were held responsible (see X., "Amiante: la justice donne raison aux dockers contaminés", *TF1 News*, 18 August 2005, <http://lci.tf1.fr/france/2005-08/amiante-justice-donne-raison-aux-dockers-contamines-4859483.html>; X., "Dockers contaminés à l'amiante : la justice reconnaît la faute des employeurs", http://www.cgt-snet-provence.ouvaton.org/spip.php?page=imprimer_articulo&id_article=1126). On the joint responsibility of port employers towards casual dockers, see a judgment by the Supreme Court (Cour de cassation) of 4 November 2010, No. 09-69828.

Such compensation is also available from the National Fund for the Compensation of Asbestos Victims (Fonds d'Indemnisation des Victimes de l'Amiante, FIVA)⁸¹⁵.

- *Facts and figures*

874. The table below shows the number and frequency of occupational accidents in maritime ports⁸¹⁶.

⁸¹⁵ See briefly "Controversy over compensation for victims of asbestos", *Eironline* 12 August 2003, <http://www.eurofound.europa.eu/eiro/2003/07/feature/fr0307105f.htm>.

⁸¹⁶ For earlier data, see Bordereaux, L., *Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires*, in X., *Receuil périodique des jurisclasseurs: transport*, Paris, LexisNexis, fasc. 1192, 6, para 17.

Table 44. Occupational accidents in loading, unloading and handling of cargo in French seaports involving permanent and casual workers⁸¹⁷ (Risk code 631AA), 2009-2012 (source: L'Assurance Maladie - Risques Professionnels⁸¹⁸)

	2009	2010	2011	2012
Number of workers	5,660	6,250	6,421	6,388
Number of accidents resulting in interruption	662	654	657	680
Number of accidents resulting in incapacity	75	83	80	84
Number of fatal accidents	2	0	0	2
Number of lost days	78,591	69,091	73,725	64,303
Incidence rate (Indice de fréquence)	116.96	104.6	102.3	106.4
Frequency rate (Taux de fréquence)	114.63	108.2	87.5	92.7
Severity rate (Taux de gravité)	13.61	11.43	9.8	8.8
Severity index (Indice de gravité)	111.34	106.7	84.6	118.3

Detailed statistics are maintained on the number and types of occupational diseases as well. In 2012, for example, 1,716 working days were lost due to occupational diseases⁸¹⁹.

The table below allows a comparison of the safety records of ports, other more or less comparable activity sectors and the economy as a whole.

⁸¹⁷ The code covers "personnel mensualisé ou occasionnel".

⁸¹⁸ See www.risquesprofessionnels.ameli.fr.

⁸¹⁹ See especially <http://www.risquesprofessionnels.ameli.fr/statistiques-et-analyse/sinistralite-atmp/dossier/nos-statistiques-sur-les-maladies-professionnelles-par-ctn.html>.

Table 45. Incidence, frequency and severity rates of occupational accidents in loading, unloading and handling of cargo in French seaports involving permanent and casual workers⁸²⁰ (Risk code 631AA) and other comparable sectors, 2010-2012 (source: L'Assurance Maladie - Risques Professionnels⁸²¹)

Risk code	Incidence rate			Frequency rate			Severity rate			Severity index		
	2010	2011	2012	2010	2011	2012	2010	2011	2012	2010	2011	2012
631AA Loading, unloading and handling of cargo in French seaports involving permanent and casual workers	104.6	102.3	106.4	108.2	87.5	92.7	11.43	9.8	8.8	106.7	84.6	118.3
271ZE Manufacturing of cast iron and steel	10.7	12.2	10.5	7.3	8.9	7.6	0.71	0.65	0.63	19.2	25.2	23.31
452BC General contractors and construction of buildings (with the exception of individual houses)	89.0	89.7	84.6	58.2	58.6	56.6	3.99	3.99	3.96	62.7	55.0	53.40
611AB Maritime and coastal transport of persons and goods	11.5	8.2	11.2	7.4	5.8	8.0	0.37	0.54	0.46	10.9	7.0	10.65
612ZB Inland water transport of goods	29.9	39.9	32.6	18.1	25.3	20.0	1.66	1.85	1.97	1.1	20.6	2.86

⁸²⁰ The code covers "personnel mensualisé ou occasionnel".

⁸²¹ See www.risquesprofessionnels.ameli.fr.

Risk code	Incidence rate			Frequency rate			Severity rate			Severity index		
	2010	2011	2012	2010	2011	2012	2010	2011	2012	2010	2011	2012
745BD All categories of temporary employed personnel	55.4	53.9	51.6	41.2	42.4	40.4	2.43	2.30	2.43	30.1	25.8	26.92
926CH Professional athletes ⁸²²	340.9	365.7	386.0	270.6	321.7	340.5	9.84	11.60	12.14	34.2	43.1	44.33
All activities	36.6	36.2	35.0	23.3	24.3	23.5	1.32	1.4	1.4	15.7	15.5	15.3

⁸²² To be precise, this category concerns "Sportifs professionnels, y compris entraîneurs joueurs, quel que soit le classement de l'établissement qui les emploie: rugby, escalade, moto, handball, basket, hockey, équitation, volley-ball, football, ski, cyclisme".

875. Between 2006 and 2009, the European Commission, under the Sixth Framework Programme, funded the SECURCRANE project. This research project focused on port cranes to increase their performance and safety and human operator working conditions, thus eliminating the gap between theoretical and real productivity (lifts/hour) of cranes. SECURCRANE developed a remote crane control and an innovative anti-sway device, providing the operator with all information physically 'sensed and seen' in his position onboard so that a 3D television image supplies the driver at a remote site with the same information and functions as he had from the crane cabin seat⁸²³. In 2009 the first prototype of a SECURCRANE system was installed on a port crane in Le Havre and proved able to allow the remote control of the crane by means of CCTV 3D images, to practically eliminate the effects of the sway when the driver puts the control joystick to idle, and to monitor the handled cargo extracting and storing useful information⁸²⁴. It should be stressed that the SECURCRANE project is just one of the many EU-funded port labour-related projects.

9.7.6. Policy and legal issues

- *Overview*

876. Despite the far-reaching reform processes of 1992 and 2008, the following policy and legal issues continue to affect the French port system:

- (1) restrictions on employment;
- (2) the legal uncertainty over the scope of the port labour regime;
- (3) the transitional nature and incomplete implementation of consecutive port labour reform schemes;
- (4) restrictive working practices;
- (5) unattractiveness to short sea shipping and inland shipping;
- (6) doubts over the compatibility of the French port labour regime with EU law;
- (7) safety and health issues.

877. From the outset it should be noted that UNIM believes that rules on labour arrangements are properly enforced, and that the responsibility lies with national authorities, the employers and (perhaps mainly) the unions. Trade union CNTPA sees no enforcement problems either.

⁸²³ See http://ec.europa.eu/research/transport/projects/items/securcrane_en.htm.

⁸²⁴ "SECURCRANE. Design of an innovative system for the drive and control of port cranes for safe remote operation", <http://cordis.europa.eu/documents/documentlibrary/123859441EN6.pdf>.

- *Restrictions on employment*

878. Despite the 1992 and 2008 reforms, port labour in France continues to be subject to various restrictions on employment.

Relevant policy and legal issues include:

- (1) a restriction on the freedom to select permanently employed staff;
- (2) priority of employment of remaining professional casual workers;
- (3) priority of employment of registered occasional workers;
- (4) further local restrictions on the use of occasional workers;
- (5) local restrictions on the use of temporary workers;
- (6) local rules on the mandatory transfer of staff in case of change of service provider;
- (7) the obsolescence of ILO Convention No. 137;
- (8) closed shop situations;
- (9) priority rights for relatives;
- (10) restrictive rules on professional categories, composition of gangs and shift times;
- (11) restrictions on self handling.

879. First and foremost, cargo handling companies are not free to select their permanent staff, because they must give priority to professional casual workers and, if this yields no result, to occasional workers who have worked regularly in the port. These priority rights are laid down in the Transport Code⁸²⁵ and were reiterated in the CCNU, where they are overtly presented as a restriction on the freedom of employment⁸²⁶.

Furthermore, the normal power to dismiss employees is restricted by the obligatory reintegration of workers still holding a G card as casual BCMO workers⁸²⁷ which has, for that matter, also caused practical difficulties⁸²⁸.

⁸²⁵ See *supra*, para 845.

⁸²⁶ Art. 2 of the CCNU contains the following particularly explicit passage on permanently employed port workers:

Ils sont librement recrutés par leur employeur. Toutefois, *dans les ports visés par l'article L. 511-1 du code des ports maritimes, ils sont recrutés en priorité et dans l'ordre parmi les ouvriers dockers professionnels intermittents, puis parmi les ouvriers dockers occasionnels qui ont effectué au moins cent vacations travaillées sur le port au cours des douze mois précédant leur embauche, puis parmi toutes les autres personnes possédant les aptitudes nécessaires pour le poste à pourvoir* (emphasis added).

⁸²⁷ Cour des comptes, *La politique portuaire française*, October 1999, <http://www.lexpeek.com/document/598-politique-portuaire-francaise-rapport-cou/> (unpaged).

⁸²⁸ See, for example, Galbrun, X., *La manutention portuaire en 2002. Rapport annuel d'activités*, Paris, UNIM, http://www.unim.org/cgi-bin/client/modele.pl?shop=unim&modele=agenda&cat=188&manuel_menu=gamme_188&manuel_par=33, 1/21.

Numerous occasional workers attempted to obtain reclassification as a professional casual worker through court proceedings, in most cases in vain⁸²⁹. Occasional workers working regularly in the port, who enjoy a second-rank priority to obtain permanent employment, also claimed such priority for casual work, contrary to the intentions of the lawmaker. Ironically, this hybrid category of *super occasionnels* tried to be recognised as 'more' occasional than the others on the pretext that they are less occasional because they work more⁸³⁰.

On the other hand, the CCNU also confirms that in commercial and fishing ports, the conclusion of contracts of employment for a limited term – which is seriously restricted under general French labour law⁸³¹ – is normal practice. Yet, the law provides⁸³², and the CCNU confirms, that occasional workers cannot be hired on the basis of contracts for a definite period as long as professional casual workers are available. Where an occasional worker is hired for a fixed term which exceeds one shift or half-day shift and a professional casual worker becomes available in the course of this period, the latter shall be entitled to take up the job, and the occasional worker may be assigned, with his consent, to another job within the company (see Art. 6.B of the CCNU and the further details in that provision).

Despite the 1992 reform, local agreements may still set limits on the freedom of employers to rely on occasional workers. In Bordeaux, for example, a collective agreement signed on 25 October 2001⁸³³ regulates the employment of both regular and irregular occasional workers. In the preamble, the unions state that they wish to ensure that only occasional workers possessing practical knowledge be employed and that permanent employment be promoted, while the employers declared that following severe disruptions and persisting discontent of customers, the reliability of the port must be restored. The agreement provides that employers may rely on regular occasional workers but only to a maximum of 20 per cent of the number of permanent port workers. These occasional workers may perform various functions including forklift, shovel loader or tug master driver (but not certain others including those of supervisor, foreman, superstacker driver or worker in the holds). The workers must hold appropriate CQPs and CACES. They are entitled to guaranteed wages equivalent to 120 working days on an annual basis. If they work more than 70 days, they shall be employed permanently (Art. 1). All other occasional workers must be trained by a permanently employed port worker (who shall receive a premium to that end). This training is in preparation of later CQP training. The agreement obliges employers to distribute the work between permanent and occasional workers in a reasonable manner and sets out non-binding formulae to that end (Art. 2).

⁸²⁹ See, for example, Galbrun, X., *La manutention portuaire en 2002. Rapport annuel d'activités*, Paris, UNIM, http://www.unim.org/cgi-bin/client/modele.pl?shop=unim&modele=agenda&cat=188&manuel_menu=gamme_188&manuel_par=33, 1/23; see already *supra*, para 847.

⁸³⁰ Galbrun, X., *La manutention portuaire en 2001. Rapport annuel d'activités*, Paris, UNIM, http://www.unim.org/cgi-bin/client/modele.pl?shop=unim&modele=agenda&cat=188&manuel_menu=gamme_188&manuel_par=33, 23-24.

⁸³¹ See Art. L1242-1 *et seq.* of the Labour Code.

⁸³² See already *supra*, para 847.

⁸³³ Accord du 25 octobre 2011 relatif aux conditions d'emploi et à la revalorisation des salaires (Bordeaux).

880. Some local collective agreements set limits on the use of temporary agency workers. In this respect, we should recall that the prohibition to use temporary agency workers was mentioned as a serious problem in the second Dupuydauby Report of 1995⁸³⁴. In 1999, the Court of Auditors stated, however, that temporary agency workers were employed in the ports of Dunkirk, Saint-Malo, Lorient (fishing port), Caen, Rouen and Nice⁸³⁵. UNIM confirmed that employers are indeed allowed to rely on temporary work agencies, and that, today, this occurs mainly in Dunkirk, Rouen and Sète.

CAINAGOD explained that, whereas the law only identifies one category of occasional port workers, in practice two subcategories of occasional workers exist: the regularly employed occasional workers and the *tout-venants* ('all-comers'). In some ports, members of the first group continue to receive a 'Carte O' and enjoy priority over the latter. This practice results from local usages and has no legal basis. The *tout-venants* are often hired from temporary work agencies, but this is not a requirement. In practice, the use of these agencies often makes it impossible for other individuals to find employment as an occasional worker.

The local agreement for Dunkirk provides that in case of necessity, the cargo handling companies shall make every effort to sub-contract among themselves the performance of all or part of the jobs for which insufficient workers or skills are available. Such subcontracting is aimed at regulating the workload between companies and at stabilising employment of permanent workers. Where subcontracting still does not yield sufficient workforce, the company may rely on temporary agency workers⁸³⁶.

The social partners noted, however, that all temporary agency workers employed by port companies should receive sufficient professional training and particularly safety training. Thus it was agreed to establish a pool of temporary agency port workers within one or more temporary work agencies (*un pool d'ouvriers dockers intérimaires au sein des effectifs d'une ou plusieurs entreprises de travail temporaire*) and that the cargo handlers shall rely, should a need arise, exclusively on the members of this pool. The Paid Holidays Fund serves as an interface between cargo handlers and temporary work agencies and ensures compliance with the agreed rules as well as an even distribution of jobs among the temporary workers. The temporary agency workers concerned must undergo a medical and a psychotechnical check-up, attend safety training and professional courses and wear personal protective clothing and equipment. They may be assigned to any cargo handling company in the port. Specialised jobs may only be carried out by temporary workers trained for it. Temporary agency workers are not allowed to carry out executive work (*des fonctions d'encadrement*). The agreement further

⁸³⁴ See Dupuydauby, J., *Une volonté portuaire pour une ambition maritime. Rapport sur la filière portuaire*, <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/954151900/0000.pdf>, 30 September 1995, 8 and 10; on this Report, see *infra*, para 921.

⁸³⁵ Cour des comptes, *La politique portuaire française*, October 1999, <http://www.lexeeek.com/document/598-politique-portuaire-francaise-rapport-cou/> (unpagéd).

⁸³⁶ Art. 8.1 of the Special Conditions for Dunkirk.

elaborates *inter alia* on wages, sanctions and the integration of temporary agency workers freely chosen by the employer in his permanent staff⁸³⁷.

In Bordeaux, the employers and the unions agreed that, in order to reduce unemployment of permanent workers, the former may rely on subcontracting and/or sublease of employees within the limits set by the law. For certain job categories, all permanent workers have to be employed first however. Non-port workers may only be hired after priority has been given to port workers employed under either a contract for an indefinite term or a long-term contract. The latter may not be replaced by workers supplied by temporary work agencies⁸³⁸.

881. Furthermore, some local agreements stipulate that where a cargo handling company loses a liner traffic to another company, the latter is obliged to take over all the contracts of employment of the previous service provider. The number of workers employed by the new provider is at least equal to the previous workforce. Disputes are settled by an arbitral tribunal (Art. 8.2 of the Special Conditions for Dunkirk; compare a similar rule in Art. 12 of the Agreement for Montoir - Saint-Nazaire of 30 October 2006).

882. UNIM informed us that, in practice, workers are not transferred temporarily between ports.

883. In its reply to our questionnaire, UNIM reported that following the 1992 reform of port labour which transferred the port workers to cargo handling companies as salaried employees under a permanent employment contract, ILO Convention No. 137 has fallen into disuse and newly recruited port workers no longer need to be registered. UNIM further clarified that in 1992 a normal contract of employment was considered a better guarantee for port workers than a registration system. Already in 2000, the ILO noted that UNIM considered ILO Convention No. 137 obsolete in view of technological developments in the port industry and the reforms in the organisation of work in the port sector⁸³⁹. In 2002, the French Government actively participated in the debate on the General Survey of ILO Convention No. 137 within the ILO. The French representative referred to the 1992 reform which had brought port labour again under the scope of general labour law and stated that:

[...] registration no longer had any meaning when permanent employment was ensured, which was the principle adopted by the French Parliament in 1992. However, the disappearance of this notion of registration, the justification for which was particularly ambiguous and depended on vague national criteria, some of which were contrary to the

⁸³⁷ Title IX, Art. 9.1 *et seq.* of the Special Conditions for Dunkirk.

⁸³⁸ Art. 4 of the Agreement for Bordeaux of 11 July 2000.

⁸³⁹ International Labour Conference (88th Session 2000), *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), Geneva, International Labour Office, 417.

principle of the free movement of workers, had to be replaced by objective professional qualification criteria recognized by an international standard. This was all the more important since cargo handling had become a task requiring greater qualifications in view of the development of handling techniques, based on increasingly expensive machinery. As to improvements in training and safety, the training needs would be considerable⁸⁴⁰.

We have no information on the views of the Government and trade unions on the manner in which ILO Convention No. 137 is currently implemented in France.

884. Next, port labour in France – where, generally, trade union density seems to be one of the lowest of the European Union⁸⁴¹ – has long been considered a typical instance of a closed shop system.

Membership of the union was already a precondition to enter the profession long before the adoption of the 1941 Port Labour Act. In the Dunkirk of the 1920s, for example, the union card served as a semi-official port worker's card and the story goes that possession of such a card was checked before the worker could board the ship⁸⁴². In Le Havre, the registration procedure introduced in 1945 recognised as professional dockers all who had been issued such a card in 1939, thereby perpetuating the dominance of union members⁸⁴³.

In 1986, the first Dupuydauby Report stated that CGT had transformed the employment monopoly of the dockers into a trade union monopoly. Nothing could be done without this union: requirement to become a member in order to find employment, transmission of cards from father to son, monopoly on the management of the social funds, professional training and physical pressure upon non-members. The unionisation rate sometimes exceeded 100 per cent because the few members of the other unions had to hide the fact and join the CGT as well. Associations of cargo handlers and port authorities moreover accorded preferential treatment to CGT representatives⁸⁴⁴.

⁸⁴⁰ International Labour Conference (Ninetieth Session, 2002), No. 28, Part One, *Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations. Report of the Committee on the Application of Standards*, Provisional Record, <http://www.ilo.org/public/english/standards/reim/ilc/ilc90/pdf/pr-28p1.pdf>, 28, para 137; see also the statement *ibidem*, 28-29, para 134).

⁸⁴¹ According to one source, national density reaches a mere 8 percent, the lowest in the EU (see Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>).

⁸⁴² Le Du, E. and Galbrun, X., *100 ans d'Union au service des ports français 1907-2007*, Paris, UNIM, 2007, 16.

⁸⁴³ Barzman, J., "Dock labour in Le Havre 1790-1970", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (57), 77. See also the interesting interview with Mr Hamel, a retired docker on <http://colleges.ac-rouen.fr/pagnol-lehavre/anciensite/2005/memdochers1/memdockr1.html>.

⁸⁴⁴ Dupuydauby, J., *La filière portuaire française. Mission de réflexion et de propositions*, 1 December 1986, 41.

In 1992, one observer stated in dramatic terms that the iron monopoly of the union had confiscated the management of the workforce from employers as well as the maritime ambitions of the nation⁸⁴⁵.

In 1999, the Court of Auditors denounced the union monopoly (*monopole syndical*) and the discriminatory nature of the closed shop system⁸⁴⁶. In 2011, it added that the position of the almighty CGT in Marseilles had been reinforced by an Act of 20 August 2008⁸⁴⁷ which enabled a union to veto collective agreements signed by other unions⁸⁴⁸.

It does not come as a surprise, then, that the all-pervading influence of CGT in the world of port labour is a constant item in French legal literature too⁸⁴⁹ and that other trade unions regularly expose CGT's monopoly⁸⁵⁰. This is all the more remarkable since, generally, trade union density is not very high in France.

885. In 1983, French legal doctrine noted the incompatibility of the CGT-controlled closed shop in French ports with the European Convention on Human Rights⁸⁵¹.

886. In 1992, the European Committee of Social Rights asked for information on closed shop practices in France among dockers and in the book sector, and enquired what steps the Government had taken or planned to take to remedy the situation⁸⁵². The next year, the Committee noted, in relation to Article 5 of Part I of the 1961 European Social Charter on the right to organise:

As far as dockers are concerned, the Committee noted that the trade-union monopoly on recruitment had been made possible by the Act of 6 September 1947, which

⁸⁴⁵ Dupuydauby, J., *Une volonté portuaire pour une ambition maritime. Rapport sur la filière portuaire*, <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/954151900/0000.pdf>, 30 September 1995, 11, referring to François Grosrichard.

⁸⁴⁶ Cour des comptes, *La politique portuaire française*, October 1999, <http://www.lexeek.com/document/598-politique-portuaire-francaise-rapport-cou/> (unpaged).

⁸⁴⁷ Loi n° 2008-789 du 20 août 2008 portant rénovation de la démocratie sociale et réforme du temps de travail.

⁸⁴⁸ Cour des comptes, *Le Grand port maritime de Marseille: blocage social et déclin. Rapport public annuel 2011*, February 2011, http://www.ccomptes.fr/content/download/1550/15366/version/1/file/R_grand_port_maritime_marseille.pdf, 340.

⁸⁴⁹ See, for example, Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des jurisclassesurs: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 4, para 6; Rodière, R., *Traité général de droit maritime. Les gens de mer*, Paris, Dalloz, 1978, 296, para 338.

⁸⁵⁰ See, for example, X., "Grève des ports - Accord sur la pénibilité entre la CGT et le patronat", *Le Point* 18 February 2011, http://www.lepoint.fr/economie/greve-des-ports-accord-sur-la-penibilite-entre-la-cgt-et-le-patronat-18-02-2011-1297077_28.php.

⁸⁵¹ X., Observations on Supreme Court (Cour de cassation), 22 February 1983, *Bulletin des transports* 1983, (564), 565.

⁸⁵² European Committee of Social Rights, *France, Conclusions XII-2*, <http://hudoc.esc.coe.int/esc1doc/escsec/doc/200248/c-12-2-en/c-12-2-en-101.doc>.

stipulated that in order to be employed, dockers had to hold the appropriate licence ("carte profession[n]elle"), issued on the recommendation of the "Bureau central de la main d'œuvre" (BCMO), made up of an equal number of employers' and employees' representatives, all members of the Confédération générale du travail (CGT). In effect, therefore, only dockers belonging to the CGT could be recruited. The Committee observed that the new Act of 9 June 1992, supplemented by two implementing orders of 12 October 1992, had abolished the "carte profession[n]elle" requirement for the great majority of dockers, who would now be hired on a monthly basis, which should mean that only dockers working on a casual basis would continue to sign on at the BCMO. The Committee while noting from the report that the monopoly situation was in principle going to disappear in due course observed that dockers who held the "carte profession[n]elle" were still given priority in monthly hiring. It asked to be informed of the development of the situation with regard to an outstanding monopoly on recruitment which would not be in keeping with the Charter. It also wished to know whether some dockers would continue to be issued with the "carte profession[n]elle"⁸⁵³.

In 1995, the Committee found:

With regard to dock workers, whose situation had been modified by the Act of 9 June 1992 and the two Implementing Decrees of 12 October 1992, the Committee noted that the Central Labour Offices (bureaux centraux de la main d'oeuvre, BCMO) no longer issued dockers' cards, which used to mean that in practice only dockers belonging to the CGT were recruited and that dockers' representatives in the BCMO, responsible for recruiting casual dockers, were now elected by the registered dockers, which, according to the report, "should help to create the conditions for trade union pluralism in this profession".

Referring to information in press reports in 1993 and 1994, showing evidence of difficulties in applying the act and the decrees of 1992, apparently because of the CGT's de facto monopoly, the Committee wished that the next report would include information on these problems and the solutions found. It asked how long dockers holding the "carte profession[n]elle" would continue to have priority of recruitment. Moreover, since it had not received a reply to its question concerning the continuing recruitment monopoly which would not be in keeping with the Charter, the Committee reiterated this question. It asked for the next report to indicate, among other things, the proportion of dockers hired on a monthly basis, the proportion of those who had formerly held the "carte profession[n]elle", and the proportion of those recruited differently. Without this information, the Committee was unable to assess whether the situation in the dock work sector complied with the requirements of Article 5.

The Committee moreover regretted that the report did not contain any information on developments in trade union freedom during the reference period. It examined two judgments handed down by the Social Division of the Court of Cassation on 12 January and 4 May 1993, according to which if an employer challenged the appointment of a trade union representative, the names of the trade union members who had appointed

⁸⁵³ European Committee of Social Rights, France, Conclusions XIII-1, <http://hudoc.esc.coe.int/esc1doc/escsec/doc/200230/c-13-1-en/c-13-1-en-180.doc>.

the representative must be disclosed to the employer, unless a risk of reprisals had been established or the judge had established the existence of such a risk. This was the case even if the members had asked for their identity not to be revealed. Previously the Court of Cassation had seemed to accept the existence of such a risk without proof. The Committee wished to be informed of any developments in this area and, more generally, of any developments in trade union freedom. It also asked for information on the application of the provisions of the Act of 20 December 1993 on institutions representing staff in small or medium-sized firms⁸⁵⁴.

Still in 1995, the Committee noted the following in relation to Article 6 of Part I of the 1961 Charter on the right to bargain collectively:

With regard to the book and dock work sectors, in which closed shop systems operated (see conclusion under Article 5), and the questions asked in the previous conclusion (Conclusions XIII-1, p. 144) on collective bargaining and collective agreements in these sectors, the Committee took note of the information contained in the report's appendices.

It thus noted that in the dock work sector, an agreement and a national collective agreement had been signed in 1993 in accordance with the requirements of the Act of 9 June 1992 amending working arrangements in seaports. However, in view of the questions raised under Article 5, and of the uncertainty as to closed shop practices concerning dockers, the Committee was unable to assess whether the situation in this sector complied with the requirements of Article 6 para. 2⁸⁵⁵.

In 1998, the Committee reported the following on the *de jure* situation of the right to join or not to join a trade union under Article 5:

The Committee recalls with respect to the dock work sector, that the Act of 9 June 1992 and the two implementing decrees of 12 October 1992 aim to put an end to the recruitment monopoly of the Confédération générale du Travail (CGT): in fact they withdraw the obligation of holding a professional card delivered by the Central Labour Office (Bureau central de la main-d'œuvre — BCOM) composed of equal numbers of representatives of employers and workers (all members of the CGT) for carrying out loading and unloading work of ships. The professional dockers are to be paid either monthly, ie. recruited as full-time employees with a permanent contract, or periodically hired.

On the *de facto* situation, the Committee noted:

⁸⁵⁴ European Committee of Social Rights, *France, Conclusions XIII-3*, http://hudoc.esc.coe.int/esc1doc/escsec/doc/200838/133_conclusions_xiii3_english/0000079.doc.

⁸⁵⁵ European Committee of Social Rights, *France, Conclusions XIII-3*, http://hudoc.esc.coe.int/esc1doc/escsec/doc/200838/133_conclusions_xiii3_english/0000105.doc.

In its previous conclusion, the Committee observed as regards the dock work sector that there remained problems of implementation with respect to the Act of 9 June 1992 and the two implementing decrees of 12 October 1992 and requested explanations. The report states that out of the 3,908 dockers registered with the National Guarantee Fund for Dockworkers, 3,406 were paid monthly in February 1997 and that they all hold professional cards. Only around ten workers without cards were hired during the reference period, which is due to the situation in the sector.

The Committee is aware of the efforts made by the government to put an end to closed shop practices in the dock work sector. It defers its decision on this point pending information in the next report, with figures, on developments in the situation⁸⁵⁶.

Finally, in 2000 the Committee concluded in relation to Article 5 of the Charter:

As regards closed shop practices in the dock work sector, the Committee also deferred its conclusion asking for information, with figures, on the developments in the situation. It recalls that before the introduction of the Act of 9 June 1992, dockers' cards, so-called "G cards", were in practice issued only to members of the CGT. Following the 1992 reform this recruitment monopoly no longer exists. Workers may now be recruited in this sector without restriction and 90% of dockers are employed on a monthly basis directly by stevedoring firms. The report states, however, that results will take time, given the age of the people concerned. Dockers who used to have "G cards" are still at work until retirement, early retirement or progressive early retirement.

The Committee notes that all the representative national trade unions were involved in the negotiation of the collective national stevedoring agreement drawn up at the instigation of the Ministry of Labour. The agreement was signed between 31 December 1993 and 28 April 1994 by the CGC, CGT, CGT-FO, CFTC and CFDT.⁸⁵⁷ Under an Order of 29 September 1994 the agreement, together with its additional clauses, was extended to cover all dock workers. Its provisions are based on the principles of ordinary labour law and guarantee freedom of opinion and trade-union freedom in the broadest sense.

The Committee takes note of the positive development of the situation and asks to be informed in future reports of any remaining or reoccurring problems with closed shop practices in the dock work sector⁸⁵⁸.

⁸⁵⁶ See European Committee of Social Rights, *France, Conclusions XIV-1*, <http://hudoc.esc.coe.int/esc1doc/escsec/doc/200140/c-14-1-en/c-14-1-en-139.doc>. See also *Conclusions XIV-1*, <http://hudoc.esc.coe.int/esc1doc/escsec/doc/200140/c-14-1-en/c-14-1-en-141.doc>; *Conclusions XIV-1 Volume 1*, <http://hudoc.esc.coe.int/esc1doc/escsec/doc/200915/conc141vol1e/00000123.doc>; *Conclusions XIV-1 Volume 1*, <http://hudoc.esc.coe.int/esc1doc/escsec/doc/200915/conc141vol1e/00000125.doc>.

⁸⁵⁷ The *Confédération générale des cadres* (CGC), the *Confédération générale du travail* (CGT), the *Confédération générale du travail – Force ouvrière* (CGT-FO); the *Confédération française des travailleurs chrétiens* (CFTC) and the *Confédération française démocratique du travail* (CFDT).

⁸⁵⁸ European Committee of Social Rights, *France, Conclusions XV-1 Volume 1*, <http://hudoc.esc.coe.int/esc1doc/escsec/doc/200616/c151en1/00000130.doc>.

887. The current CCNU expressly provides for freedom of every worker to join a trade union of his choice. Membership of a union can be taken into account by no one, particularly in matters relating to employment, professional training, promotion, performance and distribution of work, wages, disciplinary measures or dismissal⁸⁵⁹. The effectiveness of such provisions was put in doubt by Professor Laurent Bordereaux⁸⁶⁰. Several port experts informed us that unionisation continues to be a factual requirement even for permanently employed port workers because otherwise all activities will be stopped.

888. All closed shop issues notwithstanding, UNIM informed us that the relationship between employers and workers and their unions is good, except in some ports where they may be labelled only satisfactory or even unsatisfactory. Trade union CNTPA said that relationships are satisfactory. Depending on the port, shipping lines label relations with unions good (Dunkirk), satisfactory or unsatisfactory.

889. The transmission of dockers' jobs from father to son would appear to be a historical constant in French ports, too⁸⁶¹, giving the workforce the appearance of a 'tribe' or a 'sect'⁸⁶². Tacit agreements have in many ports ensured priority of employment as an occasional worker to sons of professional workers. But the priority of relatives also found confirmation in express provisions of local collective agreements⁸⁶³. In 1996, a collective agreement concluded in Le Havre explicitly confirmed the obligation on employers to grant priority to sons of dockers. The local branch of the International League for Human Rights denounced these arrangements as contrary to human rights, particularly the non-discrimination principle. The *préfet* of the Region Haute-Normandie declared the agreement null and void⁸⁶⁴ and the public prosecutor added that

⁸⁵⁹ Art. 8.A of the CCNU; comp., for example, Art. 12.1.5 of the Special Conditions for Dunkirk.

⁸⁶⁰ Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes de transport*, Fasc. 1192, Paris, LexisNexis, 2005, 22-23, para 90.

⁸⁶¹ See Baudelaire, J.-G., *Administration et exploitation portuaires*, Paris, Eyrolles, 1977, 323; Barzman, J., "Dock labour in Le Havre 1790-1970", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (57), 68-69; Dupuydauby, J., *La filière portuaire française. Mission de réflexion et de propositions*, 1 December 1986, 41; Pigenet, M., "Modalités d'embauche et pratiques professionnelles. Aux sources des sociabilités militantes dans le syndicalisme docker", *Politix* 2003, Vol. 16, http://www.persee.fr/web/revues/home/prescript/article/polix_0295-2319_2003_num_16_63_1293, para 63, (79), 84; Sewell, W.H., "Uneven Development, the Autonomy of Politics, and the Dockworkers of Nineteenth-Century Marseille", *American Historical Review* 1988, (604), 611 and 614; Slack, B. and Frémont, A., "Transformation of Port Terminal Operations: From the Local to the Global", *Transport Reviews* 2005, Vol. 25, No. 1, http://www.tandfonline.com/doi/full/10.1080/0144164042000206051#U061Sv1_u3c, (117), 125.

⁸⁶² Pigenet, M., "Modalités d'embauche et pratiques professionnelles. Aux sources des sociabilités militantes dans le syndicalisme docker", *Politix* 2003, Vol. 16, No. 63, http://www.persee.fr/web/revues/home/prescript/article/polix_0295-2319_2003_num_16_63_1293, (79), 84.

⁸⁶³ See Bonassies, P. and Scapel, C., *Droit maritime*, Paris, L.G.D.J., 2010, 461, para 674 on a 1972 agreement for Marseilles-Fos.

⁸⁶⁴ X., "Au Havre, on ne sera plus docker de père en fils", *Libération* 7 February 1997, <http://www.liberation.fr/economie/0101206823-au-havre-on-ne-sera-plus-docker-de-pere-en-fils>.

the signing of the agreement was a criminal offence⁸⁶⁵. Similar arrangements were formalised in a local agreement in Bordeaux. In 1999, the Court of Auditors denounced these discriminatory practices as a case of 'family tropism' (*un tropisme familial*)⁸⁶⁶. In its 1995 White Paper on Port Stevedoring, employers' association UNIM wrote that the definition of a port worker had become "chromosomic" in that all work was reserved for relatives of other registered workers⁸⁶⁷. Today, the reality still is that in many cases children of port workers also become port workers. But as a result of the introduction of normal employment contracts and training requirements, relatives no longer have 'automatic' access to the profession.

890. As in many other Member States, various restrictive rules on professional categories, composition of gangs and shift times apply.

First of all, port workers are classified in 6 categories agreed upon at national level (see Art. 3.5 of the CCNU). Detailed job classifications are laid down in local collective bargaining agreements (see, for example, Annex II to the Special Conditions for Dunkirk).

As regards job categories, the CCNU enshrines the principle of multi-skilling (French *polyvalence*). Yet, this principle is not absolute; more in particular, training and other certificates of individual workers must be taken into account and local usages and agreements must always be complied with. What is more, multi-skilling can only be relied on if all professional permanent and casual workers possessing the relevant qualifications are effectively employed. In periods of low activity, the companies may assign their permanent workers to other jobs than cargo handling within the meaning of the law, but on condition that the worker agrees (Art. 3.2 of the CCNU; expressly reiterated in, for example, Art. 2.2 of the Agreement for Montoir - Saint-Nazaire of 30 October 2006). Some stakeholders say that in certain ports, the distinction between job categories is still being used to artificially create jobs. However, the trend over the past two decades was one of increasing multi-skilling. In Sète, for example, the classical distinction between general cargo workers (*dockers marchandises diverses*) and dry bulk workers (*dockers charbonniers*) has now disappeared⁸⁶⁸.

Further, local agreements contain rules on working hours, shifts, the transfer of workers to other jobs within a shift, minimum shift duration at night, the planning of operations, the booking of workers, the advising of workers on their next assignment (in some ports, voice servers and SMS messages are used), changes of shifts and working times and obligations and

⁸⁶⁵ See Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes de transport*, Fasc. 1192, Paris, LexisNexis, 2005, 4, para 6 and 26-27, para 113.

⁸⁶⁶ Cour des comptes, *La politique portuaire française*, October 1999, <http://www.lexpeek.com/document/598-politique-portuaire-francaise-rapport-cou/> (unpagéd).

⁸⁶⁷ UNIM, *Livre Blanc de la Manutention Portuaire*, s.l., 2005, 23.

⁸⁶⁸ See www.docksete.fr.

limits in relation to overtime. Some rules appear to ensure flexibility while others seem rather restrictive⁸⁶⁹.

The excessive manning scales in French ports before the 1992 reform and their negative impact on the competitive position of these ports vis-à-vis Antwerp, Rotterdam, Genoa and Barcelona were denounced by experts⁸⁷⁰ and legal doctrine⁸⁷¹ alike. Since the reform, the number of required gang members is reportedly more reasonable⁸⁷².

Some local agreements now insist that the composition of gangs (following joint consultation however) and the regulation of work are prerogatives of the employer⁸⁷³. However, one interviewee stated that in practice it is the port workers who decide on manning levels, in order to increase employment. UNIM commented that everything depends on the enforcement attitude of the individual employer.

The 2011 Agreement on the employment of occasional workers in the port of Bordeaux reminds the parties that the reliability of the port can only be ensured on the basis of full compliance with working hours and other provisions of collective agreements on the deployment of workers. It also stresses that the company is free to decide on the assignments and composition of gangs, and especially that it may adapt teams to the actual workload (Art. 4).

Reportedly, since the 2008 reform, port workers may replace crane drivers, but in several ports the latter will only continue to operate cranes⁸⁷⁴. Here again, the responsibility primarily rests with the individual employer.

891. French legal doctrine assumes that it is still prohibited to load and unload ships using the ship's gear or by the owner of the goods⁸⁷⁵.

⁸⁶⁹ See and compare, for example, Art. 6.3 *et seq.* of the Special Conditions for Dunkirk; Art. 7 of the Agreement for Bordeaux of 11 July 2000; Art. 5 of the Agreement for Montoir - Saint-Nazaire of 30 October 2006.

⁸⁷⁰ Dupuydauby, J., *La filière portuaire française. Mission de réflexion et de propositions*, 1 December 1986, 24, 46-47 and 64; on the payment of fictitious shifts, see Hilaire, L., "Le droit commun du travail conduit-il à la disparition du métier de docker ?", *Annuaire de droit maritime*, XIII, 1995, Paris / Nantes, Centre de droit maritime / A. Pédone, 1995, (147), 155.

⁸⁷¹ See Bonassies, P. and Scapel, C., *Droit maritime*, Paris, L.G.D.J., 2010, 461, para 674; Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 4, para 10.

⁸⁷² See Fischer, J., Monadier, P. and Allais, V., *Amélioration des conditions d'accès et de traitement des trafics fluviaux dans les zones et les ports maritimes*, Rapport no. 2003-0004-01, Conseil Général des Ponts et Chaussées, July 2003, <http://www.ladocumentationfrancaise.fr/rapports-publics/054000028/index.shtml>, 22, mentioning the disappearance of the job of *la chandelle*, i.e. supervision by a docker of the mechanical loading of grain.

⁸⁷³ See Art. 5.1 of the Agreement for Montoir - Saint-Nazaire of 30 October 2006.

⁸⁷⁴ X., "Fos : Les dockers deviennent portiqueurs", *Mer et marine* 27 June 2011, <http://www.meretmarine.com/fr/content/fos-les-dockers-deviennent-portiqueurs>.

⁸⁷⁵ Bonassies, P. and Scapel, C., *Droit maritime*, Paris, L.G.D.J., 2010, 462, para 675. U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

- (a) All longshore activities.
- (b) Exceptions:

In his 1993 Report on the French shipping industry, Henri de Richemont mentioned self-handling as an instrument to increase the attractiveness of short sea shipping, although he also found that self-handling was certainly not possible in all cases⁸⁷⁶.

In 2005, ESPO reported that self-handling is not possible, except, on the basis of custom or specific agreements, for the loading and unloading of ship supplies by the crew, motor vehicles by their drivers, and military equipment or supplies by local troops⁸⁷⁷.

Remarkably, the Professional Training Certificates (CQP) for port workers⁸⁷⁸ were introduced in 2005 in a overt joint effort by employers and unions to thwart the proposed EU Port Services Directive, to prevent the emergence of a cargo handling industry 'of convenience' and unfair competition by ship owners, and in particular to ban self-handling from French ports⁸⁷⁹.

Also in 2005, the French Parliament proposed to remove self-handling from the (then still pending) draft EU Port Services Directive, and insisted that the Directive prevent social dumping through mandatory application of national rules on safety as well as collective agreements⁸⁸⁰.

892. Replying to our questionnaire, shipping company DFDS stated that it is virtually impossible for an operator to choose their own staff, unless this is accepted by the stevedore

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- (1) Loading and discharge of the ship's own material and provisions if done by the ship's own equipment or by the owner of the merchandise using his own personnel,
 - (2) Opening and closing of hatches,
 - (3) Rigging of ship's gear,
 - (4) Operation of cargo-related equipment to shift cargo internally,
 - (5) Handling operations connected with shipbuilding and refitting, and
 - (6) Offloading fish by the crew or personnel for the shipowner.

⁸⁷⁶ De Richemont, H., *Un pavillon attractif, un cabotage crédible. Deux atouts pour la France*, October 2002 - March 2003, <http://www.ladocumentationfrancaise.fr/rapports-publics/034000144/index.shtml>, 93 and 122.

⁸⁷⁷ European Sea Ports Organisation, *Factual Report on the European Port Sector*, Brussels, 2004-2005, 133.

⁸⁷⁸ See *supra*, para 861.

⁸⁷⁹ First of all, this objective is overtly stated in each of the CQP descriptions in the national register RNCP (see <http://www.rncp.cncp.gouv.fr/>). The employer's association UNIM announced this policy objective at an ETF workshop in Limassol, Cyprus in February 2009 (see UNIM, "The French approach of CQP", February 2009, 3-4). See also Cour des comptes, *Rapport public thématique sur Les ports français face aux mutations du transport maritime : l'urgence de l'action*, July 2006, <http://www.ladocumentationfrancaise.fr/rapports-publics/064000535/index.shtml>, 45-46; see also Barzman, J., "Conflits et négociations au Havre avant et après les grandes réformes portuaires", *L'Espace Politique*, 16 | 2012-1, <http://espacepolitique.revues.org/index2242.html>, para 21. France informed the ILO that the certificates are intended "to create objective qualification standards in the profession whose validity can be upheld in relation to third parties, demonstrating that dock work is an individual occupation in its own right" (International Labour Office (100th Session, 2011), *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), ILC.100/III/1A, 2011, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_151556.pdf, 780).

⁸⁸⁰ See Philip, C., *Rapport d'information déposé par la Délégation de l'Assemblée nationale pour l'Union européenne, sur la proposition de directive du Parlement européen et du Conseil concernant l'accès au marché des services portuaires*, 20 December 2005, <http://www.ladocumentationfrancaise.fr/rapports-publics/064000111/index.shtml>, 71 and 79-80.

company and the union. DFDS mentioned the following restrictions on employment in the port of Dunkirk:

- prohibition on employment of temporary workers through employment agencies;
- prohibition on self-handling;
- prohibition on employment of non-nationals or workers employed by employers from other EU or non-EU countries;
- mandatory use of port-workers for non-port work;
- exclusive rights for certain categories of workers;
- mandatory composition of gangs;
- ban on multi-skilling or multi-tasking;
- exclusive rights of trade union members (closed shop).

DFDS says that these restrictions are serious competitive issues.

In an interview, another ro-ro company calling at Le Havre confirmed that here, ship's crews are not permitted to perform any work. He stated that only at Le Havre and Antwerp must cross bars to secure cargo on deck be tied down by port workers. Generally speaking, at Le Havre, considerably larger teams must be employed, while productivity remains seriously below the levels reached at Antwerp. As a result, port labour is very expensive.

- Legal uncertainty over the scope of the port labour regime

893. As in all other countries where port labour is governed by specific regulatory arrangements, difficult delimitation issues arise. These issues relate to both the geographical and the functional scope of the rules on port labour.

Generally speaking, employers defend the position that a worker is today defined as a port worker by his contract of employment, while unions campaign for a broad interpretation of the legal definition of port work and the ensuing prerogatives of the port workers.

The definition of the scope of the regime under Article R511-2 of the Maritime Ports Code has been the subject of considerable debate and legal disputes⁸⁸¹. The legal uncertainty surrounding the interpretation of this provision was already highlighted in the first Dupuydauby

⁸⁸¹ Bordereaux, L., "Le service public portuaire français", 8 November 2004, <http://www.estudiovillano.com/archivos-estudio-villano-abogados/estudio-villano-le-service-public.pdf>; Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des jurisclassesurs: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 16, para 59; see already Baudelaire, J.-G., *Administration et exploitation portuaires*, Paris, Eyrolles, 1977, 352; Rézenthel, R., annot. on Court of Appeal of Rouen, 7 June 1990, *Droit maritime français* 1992, (373), 373; Rodière, R., *Traité général de droit maritime. Les gens de mer*, Paris, Dalloz, 1978, 288-290, para 328.

Report of 1986⁸⁸² and in the 1999 Report on Ports Policy by the Court of Auditors. The latter mentions *inter alia* conflicts in several ports between cargo handlers, unions and road hauliers over *brouettage*, i.e. intra-port road transportation. The Court also reported that in Marseilles, the unions had managed to impose the dockers' monopoly for activities such as stuffing and stripping, the handling of inland barges and tallying, which they cannot legally claim⁸⁸³. In the early 2000s, the annual reports of employers' association UNIM condemned the continuing legal uncertainty, the interminable disputes with unions, and the endless and costly court cases over the scope of the reserved jobs (*emplois réservés*) of the port workers⁸⁸⁴. In 2006, the Court of Auditors noted that, even if since the 1992 reform the delimitation bears on the exclusive right of permanent workers, the number of disputes on the scope had increased significantly⁸⁸⁵.

Consecutive (and, to our knowledge, unpublished and thus not easily accessible) interpretative circulars issued by the French authorities since 1971 have apparently not restored legal certainty, although they reflect a clear preference for a narrow interpretation of the monopoly, because it restricts freedom of trade and commerce. For example, available official guidance results in an exemption for activities at industrial plants and for the handling of goods which are unrelated to maritime transit operations⁸⁸⁶.

A further contribution towards clarification was made in a long series of – sometimes strikingly inconsistent⁸⁸⁷ – court judgments⁸⁸⁸, itself indicative, of course, of the rather uncertain and contentious nature of the matter. Already in 1964, the Supreme Court of France had to point out that dockers do not enjoy an absolute monopoly that would prevent travellers from driving their own car onto a ro-ro car ferry; at the time, this type of ship was a new technological development which rendered the use of shoreside cranes manned by dockers superfluous and was regarded by the unions as a threat to the livelihood of the dockers⁸⁸⁹. Neither must

⁸⁸² Dupuydauby, J., *La filière portuaire française. Mission de réflexion et de propositions*, 1 December 1986, 39.

⁸⁸³ Cour des comptes, *La politique portuaire française*, October 1999, <http://www.lexeek.com/document/598-politique-portuaire-francaise-rapport-cou/> (unpaged).

⁸⁸⁴ See, for example, Galbrun, X., *La manutention portuaire en 2002. Rapport annuel d'activités*, Paris, UNIM, http://www.unim.org/cgi-bin/client/modele.pl?shop=unim&modele=agenda&cat=188&manuel_menu=gamme_188&manuel_par=33,1/19-1/21.

⁸⁸⁵ Cour des comptes, *Rapport public thématique sur Les ports français face aux mutations du transport maritime : l'urgence de l'action*, July 2006, <http://www.ladocumentationfrancaise.fr/rapports-publics/064000535/index.shtml>, 46.

⁸⁸⁶ See a discussion in Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 16-17, para 60; see also Le Garrec, M.-Y., annot. of Court of Appeal of Bordeaux 6 January 1997, *Droit maritime français* 1997, (439), 439.

⁸⁸⁷ See, for example, Galbrun, X., *La manutention portuaire en 2001. Rapport annuel d'activités*, Paris, UNIM, http://www.unim.org/cgi-bin/client/modele.pl?shop=unim&modele=agenda&cat=188&manuel_menu=gamme_188&manuel_par=33,24; Galbrun, X., *La manutention portuaire en 2002. Rapport annuel d'activités*, Paris, UNIM, http://www.unim.org/cgi-bin/client/modele.pl?shop=unim&modele=agenda&cat=188&manuel_menu=gamme_188&manuel_par=33,1/20.

⁸⁸⁸ For an overview of relevant case law, see Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 17-18, paras 61-64.

⁸⁸⁹ Supreme Court (Cour de cassation) 18 March 1964, *Droit maritime français* 1964, 458, with annot. by Tricaud, M. and Contentieux de la Cie Générale Transatlantique.

companies rely on port workers for the handling of goods supplied by lorries and train wagons at a storage and warehousing area in the port prior to their reception by the tallyman of the ship's stevedore⁸⁹⁰. Tallying, weighing, sampling, sorting and checking goods cannot be claimed exclusively by dockers either, because these activities must be distinguished from actual loading and unloading operations⁸⁹¹. Independent grain surveyors are not obliged to hire tallymen and the existence of two local agreements that provide otherwise was held not to amount to a legally binding usage⁸⁹². Yet, one Court ruled that tallying is within the dockers' monopoly, because it is an essential part of loading and unloading operations, and cargo handlers should be prevented from organising tally services outside the maritime public domain; in his dissenting observations on this judgment, Professor Bordereaux points out that tallying does not constitute a cargo handling activity and that the legislator never intended to create a monopoly covering all port work⁸⁹³. One Court also doubted that a company should hire a trimmer where the grain is actually trimmed in the holds by mechanical means⁸⁹⁴.

894. Next, the geographical scope of the legislative provisions on port labour is defined with reference to the (rather vague) concept of the *domaine public maritime* (maritime public domain)⁸⁹⁵. Furthermore, an exception is granted for cargo handling at private berths (*postes privés*). Interpretative guidance provided by the competent Minister back in 1971 suggests that public berths are those which open to all users⁸⁹⁶. This enables, for example, industrial plants to use their own staff. Companies who employ their own crane drivers cannot be forced to employ a second (and idle) crane driver belonging to the port workforce⁸⁹⁷. Although this has long been a particularly contentious issue, giving rise to considerable and again not very consistent case law⁸⁹⁸, transporting goods between quay areas and storage areas in the port

⁸⁹⁰ Supreme Court (Cour de cassation) 22 February 1983, *Bulletin des transports* 1983, 564, annot. X.

⁸⁹¹ Court of Appeal of Bordeaux 6 January 1997, *Droit maritime français* 1997, 432, with annot. by Le Garrec, M.-Y.; Court of Appeal of Poitiers 3 February 2004, *Droit maritime français* 2004, 396, with annot. by X.

⁸⁹² Court of Appeal of Rennes 27 February 1986, *Droit maritime français* 1987, 238, with annot. by Tinayre, A.; in the same case Supreme Court (Cour de cassation), 21 June 1988, *Bull. civ.* 1988, IV, no. 208, 143.

⁸⁹³ Court of La Rochelle 21 October 2003, *Droit maritime français* 2004, 88, with annot. by Bordereaux, L., "Pointage des marchandises et priorité d'embauche des dockers".

⁸⁹⁴ Court of Appeal of Bordeaux 6 January 1997, *Droit maritime français* 1997, 432, with annot. by Le Garrec, M.-Y.

⁸⁹⁵ On this notion, see *inter alia* Rézenthel, R., "Le régime domanial et la police des ports", *Droit maritime français* 1991, 620-633. The subsequent legislative improvements of the land use regime in French ports are beyond the scope of the present study.

⁸⁹⁶ See *inter alia* Bordereaux, L., "Le problème du champ d'application de la priorité d'embauche des dockers français", annot. of Court of La Rochelle, 28 March 2000, *Droit maritime français* 2001, (437), 439; Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 16-17, para 60. The particular vagueness of the criterion is also mentioned in Baudelaire, J.-G., *Administration et exploitation portuaires*, Paris, Eyrolles, 1977, 352.

⁸⁹⁷ See Court of Appeal of Bordeaux 6 January 1997, *Droit maritime français* 1997, 432, with annot. by Le Garrec, M.-Y.; Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 18, para 63.

⁸⁹⁸ See, for example, Galbrun, X., *La manutention portuaire en 2002. Rapport annuel d'activités*, Paris, UNIM, <http://www.unim.org/cgi->

(known as *brouettage*) apparently remains outside the scope of the priority rights of the dockers as well⁸⁹⁹. The Association of Freight Transport Users (Association des Utilisateurs de Transport de Fret, AUTF) informed us that at Le Havre, contrary to the law, *brouettage* within 25 kilometres from the port is still reserved for port workers.

895. Beginning in the 1980s, to bypass the 1947 Port Labour Act and avoid hiring registered dockers, some cargo handling firms set up warehouses further inland, outside the *domaine public maritime*, and employed part-time or short-term low-paid workers for storing, stripping and stuffing containers (*empotage - dépotage*)⁹⁰⁰. Some authors argued that the latter activity is beyond the reach of the port worker's priority of engagement⁹⁰¹.

Between 1997 and 1999, conflicts arose over the creation of logistics zones near the Normandie Bridge at Le Havre. The unions asserted that only stuffing and stripping in warehouses (*sous entrepôt*) could be entrusted to non-port workers, because the law reserved all ship-related work (*suite de navire*) for the port workers. The employers relied on a precedent in Rouen, where transportation companies had hired warehouse workers beyond the reach of collective bargaining agreements for the port sector. The French Minister for Transport decided in favour of the unions, however, and imposed a strict interpretation of the law⁹⁰². Similar difficulties arose at Boulogne-sur-mer, La Rochelle-Pallice⁹⁰³ and Marseilles⁹⁰⁴. In the latter port, employees of the port authority operate pipeline facilities at petroleum terminals which is considered unsafe by experts; they also won the right to man facilities at a new gas terminal, a claim which was vigorously opposed by Gaz de France, again for safety reasons⁹⁰⁵.

[bin/client/modele.pl?shop=unim&modele=agenda&cat=188&manuel_menu=gamme_188&manuel_par=33](http://www.ladocumentationfrancaise.fr/numero/2006/07/064000535/index.shtml), 1/20.

⁸⁹⁹ See Court of Appeal of Poitiers, 3 February 2004, *Droit maritime français* 2004, 396, annot. X.; Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 18, para 64; compare, however, *Parliamentary Documents*, Sénat, Rapport fait au nom de la commission des Affaires économiques sur le projet de loi portant réforme portuaire (urgence déclarée), Par M. Charles Revet, Sénateur, Sénat, Session ordinaire de 2007-2008, no. 331, 22, footnote 2.

⁹⁰⁰ Barzman, J., "Dock labour in Le Havre 1790-1970", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, 1, Aldershot, Ashgate, 2000, (57), 64.

⁹⁰¹ See Rézenthel, R., annot. of Court of Appeal of Rouen, 7 June 1990, *Droit maritime français* 1992, (373), 376, who even states that the manning of cargo handling equipment in ports is not covered by the monopoly.

⁹⁰² See Barzman, J., "Conflits et négociations au Havre avant et après les grandes réformes portuaires", *L'Espace Politique*, 16 | 2012-1, <http://espacepolitique.revues.org/index2242.html>, para 20.

⁹⁰³ See Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 18, para 65.

⁹⁰⁴ See Cour des comptes, *Rapport public thématique sur Les ports français face aux mutations du transport maritime : l'urgence de l'action*, July 2006, <http://www.ladocumentationfrancaise.fr/rapports-publics/064000535/index.shtml>, 46.

⁹⁰⁵ See Bolliet, A., Gressier, C., Laffitte, M. and Genevois, R., *Rapport sur la modernisation des ports autonomes*, Inspection générale des Finances / Conseil général des Ponts et Chaussées, July 2007, <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/084000035/0000.pdf>, 7; Cour des comptes, *Rapport public thématique sur Les ports français face aux mutations du transport maritime : l'urgence de l'action*, July 2006, <http://www.ladocumentationfrancaise.fr/rapports-publics/064000535/index.shtml>, 66; Robin, B.,

It would appear that in most other EU ports where port workers are enjoying preferential rights, the latter do not extend to the handling of petroleum or gas products.

At La Rochelle, the Court had to point out that no port workers must be hired for cargo handling operations at a 9,000-sq m logistics, storage and distribution area for goods transiting through the port, because, pursuant to French law, the land use agreement between the local Chamber of Commerce and the operator conferred rights *in rem (droits réels)* to the latter, which was indicative of the non-public, thus private use of the facilities⁹⁰⁶. On appeal, the judgment was reversed by the Court of Appeal of Poitiers which held that loading and unloading activities come within the scope of the priority of employment (*priorité d'embauche*), with the exception, however, of weighing, tallying, sampling and sorting operations⁹⁰⁷.

It must be respectfully submitted that the legal status of port premises and facilities under land law, which is based in France on typical concepts such as *domaine public* and *droit réel* and which serves other objectives (especially the balancing of the legal prerogatives of the land owner and stability of the rights of use granted to an investor), is perhaps an awkward criterion to determine the scope of specific laws and regulations on the organisation of labour. Furthermore, the exemption based on private rights of use may ultimately result in very broad exemptions, including, for example, for single user or dedicated container terminals or perhaps even terminals used by one terminal operator on the basis of a long-term exclusive contract. Carrying this argument further, the end result might well be that the *priorité d'embauche* of port workers only remains applicable at quays and facilities open to all users, which in most ports progressively disappear.

Be that as it may, we have knowledge of recent cases where the unions, perhaps in conjunction with competing local firms, have tried to force investors to use registered workers at new warehousing facilities.

896. Following the 1992 port labour reform, some observers argued that the specific legal provisions on port labour only apply in ports where professional casual workers are actually employed. Even if the wording of the law would appear to allow such an interpretation, the prevailing view seems to be that the specific provisions continue to apply in all designated ports, because they govern not just casual port labour⁹⁰⁸.

"Union wins jobs for Marseille Port workers at new gas terminal", <http://www.eurofound.europa.eu/eiro/2007/04/articles/fr0704059i.htm>.

⁹⁰⁶ Court of La Rochelle 28 March 2000, *Droit maritime français* 2001, 432, with annot. by Bordereaux, L., "Le problème du champ d'application de la priorité d'embauche des dockers français".

⁹⁰⁷ Court of Appeal of Poitiers 3 February 2004, *Droit maritime français* 2004, 396, with annot. by X.

⁹⁰⁸ See Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 8, para 22.

897. Whereas most courts and apparently all legal authors seem to agree with the Government and UNIM that the scope of the priority of employment must be interpreted narrowly because it derogates from the general law and restricts freedom of trade and commerce⁹⁰⁹, Robert Rézenthel observed that, through the decades, the unions have managed to extend the monopoly of port workers far beyond the initial intention of the lawmaker of 1947⁹¹⁰. Laurent Bordereaux confirms that in many ports trade unions indeed impose a broader interpretation of the monopoly of port workers than the law actually provides⁹¹¹.

In 2003, UNIM noted that the legal principles adopted in 1992 and daily practice continued to diverge widely⁹¹².

A 2003 report on the accommodation of inland ships in ports noted that exemptions for the handling at private berths and for the handling of barges by owners of goods or using deck gear had remained a dead letter due to pressure by the unions⁹¹³.

Also, the unions have advocated an extension of the *priorité d'embauche* and the national collective labour agreements on port labour to fishing ports, even if the legal regime only applies to commercial ports⁹¹⁴.

⁹⁰⁹ See, for example, Court of Appeal of Bordeaux 6 January 1997, *Droit maritime français* 1997, 432, with annot. by Le Garrec, M.-Y.; Court of La Rochelle 21 October 2003, *Droit maritime français* 2004, 88, with annot. by Bordereaux, L., "Pointage des marchandises et priorité d'embauche des dockers"; Court of Appeal of Poitiers 3 February 2004, *Droit maritime français* 2004, 396, with annot. by X.; Bordereaux, L., "Droit communautaire et manutention portuaire française. Une confrontation sans heurts", *Annuaire de droit maritime et océanique*, XVIII, 2000, Nantes / Paris, Centre de droit maritime et océanique / A. Pédone, 2000, (47), 86; Cour des comptes, *Rapport public thématique sur Les ports français face aux mutations du transport maritime : l'urgence de l'action*, July 2006, <http://www.ladocumentationfrancaise.fr/rapports-publics/064000535/index.shtml>, 47; Galbrun, X., *La manutention portuaire en 2001. Rapport annuel d'activités*, Paris, UNIM, http://www.unim.org/cgi-bin/client/modele.pl?shop=unim&modele=agenda&cat=188&manuel_menu=gamme_188&manuel_par=33, 25; Galbrun, X., *La manutention portuaire en 2002. Rapport annuel d'activités*, Paris, UNIM, http://www.unim.org/cgi-bin/client/modele.pl?shop=unim&modele=agenda&cat=188&manuel_menu=gamme_188&manuel_par=33, 1/20; Rézenthel, R., annot. of Court of Appeal of Rouen, 7 June 1990, *Droit maritime français* 1992, (373), 376.

⁹¹⁰ Rézenthel, R., annot. of Court of Appeal of Rouen, 7 June 1990, *Droit maritime français* 1992, (373), 373-374.

⁹¹¹ Bordereaux, L., "Le service public portuaire français", 8 November 2004, <http://www.estudiovillano.com/archivos-estudio-villano-abogados/estudio-villano-le-service-public.pdf>.

⁹¹² Galbrun, X., *La manutention portuaire en 2003. Rapport annuel d'activités*, Paris, UNIM, http://www.unim.org/cgi-bin/client/modele.pl?shop=unim&modele=agenda&cat=80&manuel_menu=gamme_80&manuel_par=33, 1/16.

⁹¹³ Fischer, J., Monadier, P. and Allais, V., *Amélioration des conditions d'accès et de traitement des trafics fluviaux dans les zones et les ports maritimes*, Rapport no. 2003-0004-01, Conseil Général des Ponts et Chaussées, July 2003, <http://www.ladocumentationfrancaise.fr/rapports-publics/054000028/index.shtml>, 22.

⁹¹⁴ See, for example, Galbrun, X., *La manutention portuaire en 2001. Rapport annuel d'activités*, Paris, UNIM, http://www.unim.org/cgi-bin/client/modele.pl?shop=unim&modele=agenda&cat=188&manuel_menu=gamme_188&manuel_par=33, 12-13.

- *Transitional nature and incomplete implementation of consecutive port labour reform schemes*

898. Serious doubts have been expressed as to the way in which the 1992 and 2008 reform schemes were put into practice.

899. First of all, the ports of Bastia, Marseilles, Rouen, Saint-Nazaire and Sète continue to run an operational BCMO. In all other ports, the BCMO still exists legally, but is in fact closed or dormant⁹¹⁵, and casual labour performed by registered workers has disappeared from the scene⁹¹⁶.

Today, casual labour performed by professional registered port workers is essentially a local phenomenon, typical at Marseilles⁹¹⁷.

The Court of Auditors highlighted the relatively high cost of maintaining CANAIGOD, compared to its limited activities⁹¹⁸.

900. Secondly, legal experts do not understand why the law continues to grant priority of employment to permanent workers. The relevant provision in the Transport Code⁹¹⁹ can only be understood as either a symbolic or a transitional rule⁹²⁰.

⁹¹⁵ Comp. Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 12-13, para 45.

⁹¹⁶ See already Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 25, para 100.

⁹¹⁷ See Cour des comptes, *Le Grand port maritime de Marseille: blocage social et déclin. Rapport public annuel 2011*, February 2011, http://www.ccomptes.fr/content/download/1550/15366/version/1/file/R_grand_port_maritime_marseill_e.pdf, 342; compare already Bolliet, A., Gressier, C., Laffitte, M. and Genevois, R., *Rapport sur la modernisation des ports autonomes*, Inspection générale des Finances / Conseil général des Ponts et Chaussées, July 2007, <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/084000035/0000.pdf>, 6; Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 24, para 99; Cour des comptes, *Rapport public thématique sur Les ports français face aux mutations du transport maritime : l'urgence de l'action*, July 2006, <http://www.ladocumentationfrancaise.fr/rapports-publics/064000535/index.shtml>, 48-49.

⁹¹⁸ Cour des comptes, *La politique portuaire française*, October 1999, <http://www.lexeek.com/document/598-politique-portuaire-francaise-rapport-cou/> (unpaged).

⁹¹⁹ See *supra*, paras 845 and 848.

⁹²⁰ See Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 18, para 66 and further references.

901. Thirdly, the 1992 provisions are unclear on the priority of employment of occasional workers over the "tout-venant", *i.e.* anybody who would present himself⁹²¹. This problem is to an extent solved by provisions in local collective agreements⁹²².

902. Fourthly, the process of creating permanent employment conditions for casual workers was in a certain sense bypassed by the establishment, particularly in ports such as La Rochelle and Nantes (where only few liner services call) of consortia of companies who took over these workers⁹²³. In Saint-Nazaire, a new company was established with a 58 per cent shareholding for the dockers which was run as a private BCMO. Similar entities were set up in Caen, Lorient and Saint-Malo⁹²⁴. In Brest the dockers set up a cooperative company which would compete with the stevedores who were obliged, however, to rely on its workforce themselves⁹²⁵. In Marseilles, the cargo handlers created consortia (GEMFOS and GEMEST) who employ an increasing percentage, today indeed a large majority (69 per cent in 2011) of the permanent staff and who function as parallel BCMOs eluding control by the port authority, a system which certainly runs counter to the intentions of the legislator⁹²⁶. Already in 1999, the Court of Auditors observed that the creation of consortia of employers acting as private BCMOs – while not objectionable in itself – was inconsistent with the objective of the 1992 reform to establish permanent relations between the workers and their individual employer⁹²⁷.

903. Fifthly, similar schemes were set up after the 2008 reform. In Bordeaux, 47 workers were taken over by a new company established by an international terminal operator, a local cargo handler and the port authority who hold 65, 15 and 20 per cent of the shares respectively. Here, the Court of Auditors saw a clear risk of the port becoming closed off to competition by third parties. In La Rochelle, the workers were transferred to a grouping of private companies which will have to merge with the existing grouping that already manages the dockers. At Le Havre, 210 drivers were transferred to the cargo handlers, but 117 workers were assigned to a

⁹²¹ See already *supra*, paras 848 and 879.

⁹²² See Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 19, para 67. For an example of such local agreements, see *supra*, para 879.

⁹²³ Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 8, para 23 and 20, para 71.

⁹²⁴ Cour des comptes, *La politique portuaire française*, October 1999, <http://www.lexeek.com/document/598-politique-portuaire-francaise-rapport-cou/> (unpaged).

⁹²⁵ Dupuydauby, J., *Une volonté portuaire pour une ambition maritime. Rapport sur la filière portuaire*, <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/954151900/0000.pdf>, 30 September 1995, 6.

⁹²⁶ See Cour des comptes, *Rapport public thématique sur Les ports français face aux mutations du transport maritime : l'urgence de l'action*, July 2006, <http://www.ladocumentationfrancaise.fr/rapports-publics/064000535/index.shtml>, 48; Cour des comptes, *Le Grand port maritime de Marseille: blocage social et déclin. Rapport public annuel 2011*, February 2011, http://www.ccomptes.fr/content/download/1550/15366/version/1/file/R_grand_port_maritime_marseill_e.pdf, 342-343.

⁹²⁷ Cour des comptes, *La politique portuaire française*, October 1999, <http://www.lexeek.com/document/598-politique-portuaire-francaise-rapport-cou/> (unpaged).

maintenance department within the port authority. In Marseilles, more than half of the transferred workers (215 out of 411) were assigned to Fluxel, a joint venture of the port authority and a number of private minority shareholders which operates at the oil terminals of Fos-Lavéra. Workers at a container terminal were transferred to a company in which the port authority holds 34 per cent of the shares. In Nantes / Saint-Nazaire, 127 port authority employees were transferred to GMOP, which is also a grouping of cargo handlers and the port authority. In Rouen, almost two thirds of the employees (26 out of 44) were transferred to a maintenance subsidiary which is almost completely controlled by the port authority. In Dunkirk, 23 workers were transferred to cargo handling companies, in conformity with the law⁹²⁸.

904. Sixthly, it should be noted that the 2008 reform measures did not apply to the smaller ports which do not belong to the category of Grands Ports Maritimes. In these ports, the dual system continues to apply, under which crane drivers are still employed by the local port authority – which is, for that matter, not preventing these ports from competing with the larger ones. In an interview, the CEO of UNIM said that the harmonisation between the Grands Ports Maritimes and the decentralised ports indeed remains an important challenge. However, the Union des Port de France informed us in June 2013 that it does not share this opinion.

- Restrictive working practices

905. French ports have a tradition of restrictive working practices, based on local *us et coutumes*⁹²⁹.

906. At least until the 1970s and 1980s, French port workers would engage in various restrictive practices under the heading of *freinage* or 'slowing down'. These customs of

⁹²⁸ See *Parliamentary documents, Sénat, Rapport d'information fait au nom du groupe de travail sur la réforme portuaire, de la commission de l'économie, du développement durable et de l'aménagement du territoire, Par M. Charles Revet, Sénateur, Session extraordinaire de 2010-2011, no. 728, <http://www.senat.fr/rap/r10-728/r10-7281.pdf>, 27; Cour des comptes, "La réforme portuaire : une mise en oeuvre marquée par des compromis", in *Rapport public annuel*, February 2012, <http://www.ccomptes.fr/index.php/Publications/Publications/Rapport-public-annuel-2012>, 129-130 and 134-136.*

⁹²⁹ An interesting instance of such *us et coutumes* is the demand by Bordeaux dockers to receive a special bonus for "wear and tear on fingers" in a case where the merchant forbade the use of cargo hooks to handle coffee bags and imposed full manual handling (Le Du, E. and Galbrun, X., *100 ans d'Union au service des ports français 1907-2007*, Paris, UNIM, 2007, 42). Also, cases were reported of forced payment of idle workers (see one however undated case in Giulio, F., *Les conséquences de la réforme portuaire sur les entreprises de manutention*, Mémoire de Master II de Droit Maritime et des Transports, Université de droit, d'économie et des sciences d'Aix-Marseille, 2008-2009, http://www.cdmtdroit.univ-cezanne.fr/fileadmin/CDMT/Documents/Memoires/Fanny_GUILLO.pdf, 26).

uncertain origin were considered part of general tactics of 'resistance' on the part of the members of the dockers' subculture and included, in Le Havre for example, the *pipe* (pipe), *i.e.* the possibility of remaining absent during working hours, and the *volée* (flight), *i.e.* working alternately within the same gang⁹³⁰. The first Dupuydauby Report of 1986 mentions the practice of *se péter en 2*, a code for working by half teams or, put simply, being absent from work. As we have mentioned before⁹³¹, the Report also reported on various other "malthusian" practices to increase the workload⁹³². A 2001 agreement for Marseilles allowed workers a "right of withdrawal" (*droit de retrait*) if it starts raining, on condition that this will not be used as a pretext to terminate the work without justification (*ce ne soit pas un prétexte pour l'arrêt de travail injustifié*)⁹³³. In its special Report on Marseilles of 2011, the Court of Auditors mentioned the rule of *fini-parti*, which means that the workers return home as soon as work on a ship is finished⁹³⁴.

In 2011, however, an agreement was reportedly reached in Marseilles which ensured continuation of work in the event of rain and extended working hours and shift duration⁹³⁵.

907. Responding to the questionnaire, trade union CNTPA mentioned one restrictive working practice, namely limited working days and hours.

Ship owner DFDS mentioned limited working days and hours, overmanning and a ban on mobility of labour between shore jobs. It considers these restrictive rules and practices a major competitive disadvantage.

⁹³⁰ Pigenet, M., "Modalités d'embauche et pratiques professionnelles. Aux sources des sociabilités militantes dans le syndicalisme docker", *Politix* 2003, Vol. 16, No. 63, http://www.persee.fr/web/revues/home/prescript/article/polix_0295-2319_2003_num_16_63_1293, (79), 82; see also Baudelaire, J.-G., *Administration et exploitation potuaires*, Pars, Eyrolles, 1977, 352.

⁹³¹ See *supra*, para 838.

⁹³² Dupuydauby, J., *La filière portuaire française. Mission de réflexion et de propositions*, 1 December 1986, 46-47:

Les pratiques malthusiennes sont nombreuses. Elles visent à "développer" l'emploi à court terme et à "placer" le maximum de dockers : limitation du poids des palanquées, freinage volontaire des cadences pour décrocher le paiement de l'heure supplémentaire ou de la vacation ou shift qui suit, tours permanents du "syndicat" sur les quais, un paquet de cartes vierges en mains, pour contrôler le respect des compositions théoriques, ajouter un homme par ci, par là, pénaliser le manutentionnaire qui a essayé de s'arranger suivant la bonne technique du "pas vu, pas pris". Ces pratiques fleurissent particulièrement en période de chômage.

⁹³³ Cour des comptes, *Rapport public thématique sur Les ports français face aux mutations du transport maritime : l'urgence de l'action*, July 2006, <http://www.ladocumentationfrancaise.fr/rapports-publics/064000535/index.shtml>, 63.

⁹³⁴ Cour des comptes, *Le Grand port maritime de Marseille: blocage social et déclin. Rapport public annuel 2011*, February 2011, http://www.ccomptes.fr/content/download/1550/15366/version/1/file/R_grand_port_maritime_marseille.pdf, 343. It would appear that this rule still applies in many ports across the EU (see, on Antwerp, *supra*, para 121).

⁹³⁵ Villena, R., "Port de Marseille : la manutention se reconfigure sous le signe de la CMA CGM", *Journal Marine marchande* 13 July 2011, <http://www.wk-transport-logistique.fr/actualites/detail/41973/port-de-marseille-la-manutention-se-reconfigure-sous-le-signe-de-la-cma-cgm.html>.

Reportedly, shift times in Marseilles leave a one-hour gap between each ship, paralysing activities for three hours in a day, much to the dismay of ship owners.

908. An interviewee mentioned that the unions oppose the introduction of automated terminals. He reported a case of vandalism against new automated facilities for the handling of petroleum products at Marseilles. He commented that new generations prefer to operate joysticks and that within one generation the whole issue will probably be solved.

909. Before the implementation of the 2008 reform scheme, cargo handling companies used to pay gratuities to crane drivers employed by the port authorities. In 2006, the Court of Auditors stated that until recently this system had existed in no fewer than 15 ports⁹³⁶. In Bordeaux, this system of gratuities was replaced in 2006 by an additional invoice sent by the port authority to the cargo handler, and the gratuities were integrated into the wages of the crane drivers⁹³⁷. But as regards Marseilles, the Court of Auditors reported in 2011 that this system of *bakchichs* was still in full swing⁹³⁸.

910. Although this aspect is as such beyond the scope of the present study⁹³⁹, we cannot avoid mentioning the particularly high strike propensity among French port workers, especially in Marseilles⁹⁴⁰, which was highlighted in several official reports and in legal literature as a priority concern⁹⁴¹. This issue is not only illustrative of the strong bargaining position of the

⁹³⁶ Cour des comptes, *Rapport public thématique sur Les ports français face aux mutations du transport maritime : l'urgence de l'action*, July 2006, <http://www.ladocumentationfrancaise.fr/rapports-publics/064000535/index.shtml>, 62.

⁹³⁷ Accord du 6 juin 2006 relatif à la facturation complémentaire par le PAB (Bordeaux); Accord du 4 décembre 2006 relatif à l'intégration des primes aux salaires (Bordeaux).

⁹³⁸ Cour des comptes, *Le Grand port maritime de Marseille: blocage social et déclin. Rapport public annuel 2011*, February 2011, http://www.ccomptes.fr/content/download/1550/15366/version/1/file/R_grand_port_maritime_marseille.pdf, 344.

⁹³⁹ See *supra*, para 25.

⁹⁴⁰ Historically, the practice of collective bargaining in Marseilles has been rather difficult and unions were naturally inclined to revolutionary change and political orientation (Jensen, V.H., *Hiring of Dock Workers and Employment Practices in the Ports of New York, Liverpool, London, Rotterdam, and Marseilles*, Cambridge (Mass.), Harvard University Press, 1964, (251), 258).

⁹⁴¹ See, for example, Bolliet, A., Gressier, C., Laffitte, M. and Genevois, R., *Rapport sur la modernisation des ports autonomes*, Inspection générale des Finances / Conseil général des Ponts et Chaussées, July 2007, <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/084000035/0000.pdf>, 3; *Parliamentary Documents*, Sénat, Rapport fait au nom de la commission des Affaires économiques sur le projet de loi portant réforme portuaire (urgence déclarée), Par M. Charles Revet, Sénateur, Sénat, Session ordinaire de 2007-2008, no. 331, 22; *Parliamentary documents*, Sénat, *Rapport d'information fait au nom du groupe de travail sur la réforme portuaire, de la commission de l'économie, du développement durable et de l'aménagement du territoire*, Par M. Charles Revet, Sénateur, Session extraordinaire de 2010-2011, no. 728, <http://www.senat.fr/rap/r10-728/r10-7281.pdf>, 39; Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des jurisclasseurs: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 23, para 94.

union which explains many peculiarities of the port labour system, but also caused traffic losses and contributed to an international reputation for unreliability among French ports, which the Government and employers sought to address through legislative reform initiatives and engagements in collective agreements respectively. In 2011, the port authority of Marseilles informed the Court of Auditors that absenteeism rose in periods of strikes, because many workers take sick leave in order to avoid financial losses or, put under pressure by the dominant union, simply do not dare to keep working⁹⁴². The Court of Auditors mentions that in recent years, strikes were more frequent among the employees of the port authorities than among the dockers⁹⁴³. One ship owner complained to us that port workers in France are indeed in a position of force and have the power to block ports for no legitimate reasons. He suggested that the labour market be opened up to other workers to stop "this Mafia". Another interviewee stated that, with the exception of Marseilles, the frequency of strikes is not extreme. One responding shipping line identified unreliability of his French port of call as the main policy issue.

Some local collective agreements expressly oblige workers to guarantee the reliability of the port (see, for example, Annex I to the Special Conditions for Dunkirk).

- *Unattractiveness to short sea shipping and inland shipping*

911. Separate mention should be made of the continuing unattractiveness of French ports to short sea and inland shipping.

In 1986, the first Dupuydauby Report highlighted the severe handicaps for inland shipping in French ports, caused by the inefficiencies in port labour, including high costs per docker, plethoric manning scales, restrictive working practices and strikes. The Reporter recommended a reduction of gang numbers and the abolition of other structural rigidities⁹⁴⁴.

In an official report on the French shipping industry of 1993, Senator Henri de Richemont recommended that the organisation of port labour be made more attractive to short sea shipping (*cabotage*), because the high costs of port calls and especially of cargo handling operations made waterborne transportation totally unattractive vis-à-vis road haulage. Priority

⁹⁴² Cour des comptes, *Le Grand port maritime de Marseille: blocage social et déclin. Rapport public annuel* 2011, February 2011, http://www.ccomptes.fr/content/download/1550/15366/version/1/file/R_grand_port_maritime_marseille.pdf, 354.

⁹⁴³ Cour des comptes, "La réforme portuaire : une mise en oeuvre marquée par des compromis", in *Rapport public annuel*, February 2012, <http://www.ccomptes.fr/index.php/Publications/Publications/Rapport-public-annuel-2012>, 138.

⁹⁴⁴ Dupuydauby, J., *La filière portuaire française. Mission de réflexion et de propositions*, 1 December 1986, 24 and 64.

issues were the plethoric manning of gangs which resulted in an obligation to hire unnecessary workers, a lack of flexibility and also monopolies of cargo handlers⁹⁴⁵.

In 1999, the National Transport Council (Conseil National des Transports, CNT) similarly demanded urgent action to make cargo handling in ports more attractive to inland and short sea shipping. More in particular, it pointed to high costs of intra-port transportation (*brouettage*), a general lack of flexibility, inadequate training of workers and restrictions to competition and abuses of a dominant position due to rules on compulsory employment⁹⁴⁶.

Responding to these observations, employers' association UNIM stated, however, that it could see no reason why cargo handlers would impose the use of more workers than actually needed⁹⁴⁷.

In 2003, a Report on the improvement of access conditions and treatment of inland shipping in maritime ports by the General Council of Public Works (Conseil Général des Ponts et Chaussées) found that the regime of port labour made French ports very unattractive to inland shipping. Whilst the law exempts handlers at private quays and merchants handling their own goods or using deck gear from the priority of employment of port workers, these exceptions are not observed in practice. Contrary to popular belief, the 1992 reform scheme has not changed the *priorité d'embauche*. Even if the composition of gangs has become more reasonable, the obligation to use port workers to handle inland barges is a serious disincentive and amounts to a distortion of competition with other transport modes, particularly road and rail. The handicap is not only caused by the high wages of the port workers but also by the obligation to hire them for a full shift or a half shift even if their services are only required for one or two hours. The Report terms these restrictions "with difficulty supportable, if not insupportable" and concludes that there is no reason whatsoever why inland shipping, which is a land transport mode, should be subject to rules on maritime labour. The authors hoped that the EU Port Services Directive would contribute to a solution⁹⁴⁸.

In 2006, the Court of Auditors reiterated concerns over the inadequate organisation of port labour to serve the needs of inland shipping⁹⁴⁹.

⁹⁴⁵ De Richemont, H., *Un pavillon attractif, un cabotage crédible. Deux atouts pour la France*, October 2002 - March 2003, <http://www.ladocumentationfrancaise.fr/rapports-publics/034000144/index.shtml>, especially 92-93 and 122-123.

⁹⁴⁶ Chabrierie, J., Provost, A., Piétri, J.-M., Cornède, H. and Bourgeois, P., *Propositions pour une amélioration des dessertes portuaires*, Paris, Conseil National des Transports, 1999, <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics//024000516/0000.pdf>, especially 8-9 and 35-40.

⁹⁴⁷ See, for example, Galbrun, X., *La manutention portuaire en 2002. Rapport annuel d'activités*, Paris, UNIM, http://www.unim.org/cgi-bin/client/modele.pl?shop=unim&modele=agenda&cat=188&manuel_menu=gamme_188&manuel_par=33, 1/31.

⁹⁴⁸ Fischer, J., Monadier, P. and Allais, V., *Amélioration des conditions d'accès et de traitement des trafics fluviaux dans les zones et les ports maritimes*, Rapport no. 2003-0004-01, Conseil Général des Ponts et Chaussées, July 2003, <http://www.ladocumentationfrancaise.fr/rapports-publics/054000028/index.shtml>, 22-23 and 38.

⁹⁴⁹ Cour des comptes, *Rapport public thématique sur Les ports français face aux mutations du transport maritime : l'urgence de l'action*, July 2006, <http://www.ladocumentationfrancaise.fr/rapports-publics/064000535/index.shtml>, 121-122.

Interviewed by us, a Belgian entrepreneur who won a substantial contract to deliver sand to the construction site of the future gas terminal in the port of Dunkirk, related that he abandoned his plan to transport the sand from a Belgian sea port to Dunkirk by inland barge, because the latter port imposed the necessity of hiring a gang of 4 dockers at prohibitive cost which would have absorbed his entire profit margin. As a consequence, the sand is now delivered to Dunkirk by lorry.

In another recent case, considerable volumes of sand extracted at a construction wharf in Marseilles could not be transported by water to nearby Fos because of the requirement to use port workers. Here, the sand is now also being transported by lorry.

A local expert states that time and again manning levels to handle inland barges must be negotiated with the unions.

- Doubts over the compatibility of the French port labour regime with EU law

912. Responding to the questionnaire, UNIM stated that service providers from other EU countries are allowed to establish themselves in French ports provided that they comply with French laws and collective agreements. According to the trade union CNTPA, however, it is not possible for service providers from other EU countries to establish themselves in French ports or to provide port services in France.

We have no knowledge of specific legal provisions that would explicitly support either of these statements. Yet, it is clear from the discussion above that a large number of restrictions on employment continue to prevail⁹⁵⁰. Furthermore, a local expert informed us that local *réseaux*, i.e. networks of port authorities, terminal companies and unions, are often reluctant to accept entry into the market by foreign cargo handling groups⁹⁵¹. In this respect, the Maritime Ports

⁹⁵⁰ See *supra*, para 878 *et seq.*

⁹⁵¹ This was also noted before the 2008 reform. In 2005, Brian Slack and Antoine Frémont painted the following picture of conditions at French ports:

Why have French ports been unable to extricate themselves from the vicious circle in which they are trapped? The dockers are an easy scapegoat. They are affiliated with the large CGT trade union that is vehemently trying to preserve its monopoly in the entire port sector. For example, a shipping line calling on a private haulier to transport a container to a terminal requires the agreement from the dockers' union. The recruitment system is principally from father to son, from one generation to the next. The reform of 1992 has allowed the dockers to be paid on a monthly basis and to become ordinary salaried staff, but this has led to numerous strikes that have tarnished the long-term reputation of French ports. The reform has also put a financial strain on the already financially stretched port authorities and handling companies because they have had to take on a large part of the costs of the redundancy schemes that have drastically reduced manning levels.

However, this explanation is too simple. Other factors contribute to the problem. Before 1992, the terminal companies did not have to attend to personnel matters and, until recently, did not have to invest heavily in equipment. They restricted themselves to realizing income from the container handling essentially bound for the Paris market. They could count on the strong support of the port authority to ensure a competitive rate

Code and in, particular, the requirement to use port workers, are used as a means to close off French ports to foreign competition. AUTF confirmed that employers and unions have been joining forces to prevent competition but that today French ports are increasingly opened up to joint ventures with foreign groups who have the financial means to invest in new port equipment.

913. Whatever the case, the legal regime of port labour in France has attracted the attention of several notable French lawyers.

For Rézenthel, the priority of engagement of port workers in France may be questioned under EU law, more particularly under provisions on competition and freedom to provide services⁹⁵². Already in 1992, he expressed doubts on the compatibility of the regime of BCMOs with Community law⁹⁵³. In 2008, he wrote that the preferential right for existing users who could invoke significant investments in the past to take over port equipment from local port authorities amounted to a derogation of EU free movement principles, particularly free movement of capital⁹⁵⁴.

In 1997, Le Garrec stated that the *Merci* judgment imposed a narrow interpretation of the scope of the priority of employment of French port workers⁹⁵⁵. In 2000, he expected that corporatistic

compared with Antwerp or Rotterdam, which was made possible by the low rental costs for port equipment, a crosssubsidy from the revenues generated by the captive petroleum traffic. In case of financial difficulties, they were even allowed to default on payments to the port authorities so as not to tarnish the image of the ports. Why would the terminalhandling companies be interested in changing a system that permitted them to profit without making investments? As for the port authority, the weakness of the handling operating companies allowed them to control port activity and to develop new docks by using up space in order to offset low terminal productivity.

Thus, it was in nobody's interest locally to change such a system. It was absolutely essential for the terminal operators to avoid the arrival of a powerful outsider capable of disturbing such a lucrative established order. For the port authority, its control over port activity justifies its own importance. For the union, the size of its membership justifies its desire to maintain the status quo. The dockers are an excuse, which through fear of social disorder allows the union, the port authority and the terminal operators to resist any restructuring of the system. All take advantage of exploiting the French market while remaining safe from foreign competition. Even if the traffic of the ports of Le Havre and Marseilles declines relative to the ports' European competitors, it continues to increase in absolute numbers of containers.

However, the authors also noted that this system was in the process of disappearing (Slack, B. and Frémont, A., "Transformation of Port Terminal Operations: From the Local to the Global", *Transport Reviews* 2005, Vol. 25, No. 1, http://www.tandfonline.com/doi/full/10.1080/0144164042000206051#.U06ISvl_u3c, (117), 125-126).

⁹⁵² Rézenthel, R., "633. Manutention portuaire", in Beurrier, J.-P. (Ed.), *Droits maritimes*, Paris, Dalloz, 2008, (865), 867-868, para 633.17.

⁹⁵³ See Rézenthel, R., annot. of Court of Appeal of Rouen, 7 June 1990, *Droit maritime français* 1992, (373), 376.

⁹⁵⁴ See Rézenthel, R., "Une nouvelle stratégie pour le développement des "grands ports maritimes" français", *Droit maritime français* 2008, (1060), 1062.

⁹⁵⁵ Le Garrec, M.-Y., annot. of Court of Appeal of Bordeaux 6 January 1997, *Droit maritime français* 1997, (439), 444.

systems on privileges would not be able to withstand European legal developments much longer⁹⁵⁶.

In 1999, the Court of Auditors concluded that the definition of reserved tasks and the monopoly and practices of the BCMO, including mismanagement of the occasional workforce, infringe EU law relating to abuses of a dominant position as well as free movement of goods⁹⁵⁷. The Court referred to *Höfner and Elser*⁹⁵⁸ and *Merci*⁹⁵⁹.

Bordereaux, however, is of the opinion that the priority of engagement laid down in French law cannot be challenged on the basis of the prohibition on restrictions on free movement of goods but admits that problems may rise in the context of freedom to provide services. He believes that the existence of BCMOs is as such not contrary to EU law⁹⁶⁰.

In 2010, relying on the *Becu* judgment of the European Court of Justice⁹⁶¹, Bonassies and Scapel stated that the monopoly of French dockers appears beyond the reach of EU competition rules, but also that the behaviour of their employers is covered by the doctrine set out in *Merci*⁹⁶², that French law on port labour does not seem to be in line with EU law and that an infringement procedure against the French State might well be a possibility⁹⁶³.

- Qualification and training issues

914. According to an interviewed expert, trade unions in Marseilles stick to the practice of *compagnonnage* or personal coaching of apprentices, because this allows them to brainwash new entrants and to maintain their control over the entire port labour system. For the same reason, trade unions refused to use a crane simulator at a training centre for port workers. This facility is only used to train foreign dockers. Personal coaching is also said to hamper the introduction of new cargo handling technologies, because the coaches belong to an older generation. We were also informed that at Le Havre, a training centre was closed because a number of potential users recoiled from cooperating with the almighty unions, but we were unable to obtain confirmation of this statement.

⁹⁵⁶ Le Garrec, M.-Y., "La reconnaissance du statut d'ouvrier docker professionnel intermittent", *Droit maritime français* 2000, (849), 857.

⁹⁵⁷ Cour des comptes, *La politique portuaire française*, October 1999, <http://www.lexeek.com/document/598-politique-portuaire-francaise-rapport-cou/> (unpaged).

⁹⁵⁸ See *supra*, para 218, footnote.

⁹⁵⁹ See *infra*, para 1171.

⁹⁶⁰ Bordereaux, L., "Auxiliaires terrestres du transport maritime. Manutention portuaire. Commentaires", *Recueil périodique des juristes: transport*, Fasc. 1192, Paris, LexisNexis, 2005, 29-31, paras 126-131; see already Bordereaux, L., "Droit communautaire et manutention portuaire française. Une confrontation sans heurts", *Annuaire de droit maritime et océanique*, XVIII, 2000, Nantes / Paris, Centre de droit maritime et océanique / A. Pédone, 2000, (47), 78-92.

⁹⁶¹ See *supra*, para 466.

⁹⁶² See *supra*, para 1171.

⁹⁶³ Bonassies, P. and Scapel, C., *Droit maritime*, Paris, L.G.D.J., 2010, 462-463, para 676; Bonassies, P., "Le droit positif français en 1992", *DMF* 1993, (3), 13, para 9.

- Health and safety issues

915. Statistics on occupational accidents suggest that port labour is one of the most dangerous professions in the French economy⁹⁶⁴.

Unsurprisingly, fatal and other serious accidents in French ports frequently hit the headlines⁹⁶⁵.

The French Strenuousness Scheme⁹⁶⁶ is based on the considerably shorter life expectancy of port workers, which is believed to be 8 to 10 years below the national average. The Union des Ports de France strongly doubts such an assumption however.

916. However, in the interpretation of the available data some caution seems warranted. For example, in the first Dupuydauby Report of 1986 the massive accident rates (500 per 1,000 workers at the time) were partially explained as a result of hidden unemployment⁹⁶⁷. In 1999, the Court of Auditors reported on abuses of the system on occupational accidents, with disproportionately high accident rates which cannot be explained by the inherently dangerous nature of port labour⁹⁶⁸. Recently, it emerged that workers in Marseilles often take sick leave during strikes⁹⁶⁹.

917. In 1990, the European Committee of Social Rights inquired about the existence of medical examinations of French dockers⁹⁷⁰. We have no information on further steps in this respect.

⁹⁶⁴ See *supra*, para 874.

⁹⁶⁵ See, for example, X., "La compagne du docker mort va porter plainte", *Paris Normandie* 12 February 2011; CB, "Le Havre: un docker meurt écrasé par un container", *France 3.fr* 13 June 2012, <http://haute-normandie.france3.fr/info/le-havre-un-docker-meurt-ecrase-par-un-container-74425284.html>; A.C., "Blessures involontaires : la société NFTI condamnée à 10 000 E d'amende", *La Voix du Nord* 27 October 2010, http://www.lavoixdunord.fr/Locales/Dunkerque/actualite/Secteur_Dunkerque/2010/10/27/article_blessures-involontaires-la-societe-nfti.shtml.

⁹⁶⁶ See *supra*, para 872.

⁹⁶⁷ Dupuydauby, J., *La filière portuaire française. Mission de réflexion et de propositions*, 1 December 1986, 40.

⁹⁶⁸ Cour des comptes, *La politique portuaire française*, October 1999, <http://www.lexeeek.com/document/598-politique-portuaire-francaise-rapport-cou/> (unpaged); see also Galbrun, X., *La manutention portuaire en 2001. Rapport annuel d'activités*, Paris, UNIM, http://www.unim.org/cgi-bin/client/modele.pl?shop=unim&modele=agenda&cat=188&manuel_menu=gamme_188&manuel_par=33, 26-27.

⁹⁶⁹ See *supra*, para 910.

⁹⁷⁰ European Committee of Social Rights, *France, Conclusions XI-2*, http://hudoc.esc.coe.int/esc1doc/escsec/doc/200841/112_xi2_en/00000058.doc.

918. Replying to the questionnaire, UNIM stated that rules on health and safety are mainly enforced by the cargo handlers and the trade unions and that the enforcement level is satisfactory. Trade union CNTPA agreed on the latter statement.

919. In Nantes, an Association for The Protection of Occupational Health in Port Professions (Association Pour la Protection de la Santé du Travail des Métiers Portuaires, APPSTMP) was set up in 2010 to monitor the health of retired dockers. It found that 19 years after their retirement following the 1992 reform, 87 out of 140 had contracted heart and vascular diseases, skin diseases and, particularly, cancer. This is explained by the exposure of the workers to pesticides and fungicides added to bulk cargoes, fumigation gases in containers and asbestos.

On 24 March 2011, APPSTMP organised in Nantes a major conference on occupational health in port labour.

In 2012, APPSTMP obtained public funding for its research project ESCALES (*Enjeux de santé et cancers. Les expositions à supprimer* or 'Safety Issues and Cancers. Exposures to be Eliminated'). It will describe the history of individual careers and safety and health exposures of dockers in Nantes and attempt to establish a causal relation with the health and safety problems which they encountered later⁹⁷¹.

9.7.7. Appraisals and outlook

920. The effects of the 1992 and 2008 port labour reform schemes were assessed in several official reports⁹⁷² and also in other publications, in the media and in public fora.

921. First of all, the effects of the 1992 reform were judged largely unsatisfactory in a second Report on French ports policy by Jacques Dupuydauby, which was published in September 1995. The author stated that the reform was vitiated by a fatal flaw as it merely organised a

⁹⁷¹ See <http://www.appstmp.fr/index.php>; see also De Lacour, G., "Les agriculteurs ne sont pas les seuls professionnels victimes des pesticides", *Journal de l'environnement* 23 September 2011, <http://www.journaldelenvironnement.net/article/les-agriculteurs-ne-sont-pas-les-seuls-professionnels-victimes-des-pesticides.25123>.

⁹⁷² A highly critical official Report by Brossier of February 1995 was apparently never published and could not be consulted by us.

transitional regime which moreover allowed a return to the initial 1947 regime. The reform allowed all kinds of evasive practices by the social partners, such as an institutionalising of occasional workers. It maintained the inefficient and costly CAINAGOD and had not opened the market to temporary work agencies. The Reporter recommended that all remaining principles stemming from the 1947 regime be abolished once and for all and that special tax measures be taken to support individual employers in the transition to a system of permanent employment⁹⁷³.

922. In 1997, a media report noted the high cost of the 1992 reform scheme, with employers being obliged to ensure permanent employment for an aging and partially unfit workforce. One employer complained that all the gains in productivity were absorbed by the increasing costs. Reportedly, the French authorities were rather unwilling to cooperate with the European Commission who were investigating the compatibility of the reform scheme with EU law⁹⁷⁴.

923. In 1999, the French Court of Auditors (*Cour des comptes*) published a comprehensive and highly critical assessment of French port policy. As regards port labour, it noted that the 1992 reform had only instated a transitional regime which remained far away from normal employment conditions and that employers had undermined the objectives of the law through the creation of private labour pools managed by consortia and the subcontracting of labour among themselves. The freedom to employ occasional workers was restricted by the practice of maintaining mandatory lists of such workers. Also, disputes continued to arise over the scope of the *travaux réservés*. The unions imposed the employment of dockers for jobs which they could not legally claim; this constant pressure caused economic damage and undermined the authority of the State. Furthermore, the Court criticised the constant infringement of the law (*une transgression permanente de la loi*) consisting in the absence of decisions, as required by the 1992 Act, to strike workers from the register in case the unemployment rate exceeded 25 per cent. Next, the Court denounced overt closed shop practices⁹⁷⁵, abuses of the law relating to occupational accidents, infringements of EU law resulting from the definition of the *tâches réservées* and from the monopoly and the practices of the BCMOs, numerous interpretative problems and the high costs of the accompanying social plans. The Court recommended, *inter alia*, that the State ensure full compliance with all relevant laws that the transition to the regime of general labour law be accelerated⁹⁷⁶.

⁹⁷³ Dupuydauby, J., *Une volonté portuaire pour une ambition maritime. Rapport sur la filière portuaire*, <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/954151900/0000.pdf>, 30 September 1995, 3-11 and 43-44.

⁹⁷⁴ Toscer, O., "Ports : les dockers font toujours la loi", *Le Point* 22 March 1997, <http://www.lepoint.fr/actualites-economie/2007-01-26/ports-les-dockers-font-toujours-la-loi/916/0/96744>.

⁹⁷⁵ On the latter, see *supra*, para 884 *et seq.*

⁹⁷⁶ Cour des comptes, *La politique portuaire française*, October 1999, <http://www.lexeeek.com/document/598-politique-portuaire-francaise-rapport-cou/>.

924. In a White Paper of 2005, employer's association UNIM expressed its satisfaction with the progress made following the 1992 reform, but suggested further steps towards the abolition of the transitional regime and the creation of professional certificates which could, in the long term, be recognised at European level⁹⁷⁷.

925. In 2006, a new Report by the Court of Auditors first of all drew attention to a number of positive effects of the 1992 reform, mainly the (albeit costly) reduction of the workforce by two thirds between 1980 and 2004, the introduction of permanent employment for 90 per cent of the workers and the alignment of the regime of port labour with general labour law. However, it also pointed to unsolved issues such as the increased legal uncertainty over the scope of the legal provisions on port labour and the need to abide by a strict interpretation of the priority of employment for port workers and to transfer crane drivers employed by the port authorities to the cargo handling companies. The Report also noted that the transition towards permanent employment had been very slow and incomplete in Marseilles and that the Asbestos Scheme had been used by employers and port authorities as an instrument to solve overstaffing⁹⁷⁸.

926. In 2007, a new Report on the modernisation of the Ports Autonomes commissioned by the Government noted that after 15 years, the impact of the 1992 reform had never been seriously evaluated. It admitted that the transition towards permanent employment was successful but also confirmed the existence of a number of continuing competitive weaknesses such as a general unreliability of French ports caused by a high strike frequency, especially in Marseilles, which negatively impacted on all French ports, and by the absence of a unique chain of command due to the intervention of port authorities in 'vertical' cargo handling operations. It also doubted the added value of CAINAGOD and suggested that underpriced tariffs for the use of public cranes and the mandatory use of crane drivers belonging to the port authorities to man privately-owned cranes might be incompatible with EU competition law⁹⁷⁹.

927. Also in 2007, employers' association UNIM acknowledged that the 1992 reform had resulted in an effective reduction but also in a most welcome rejuvenation of the workforce. However, some companies had encountered serious difficulties or had failed due to overstaffing. The coexistence of the old and the new labour regime caused problems as well. UNIM deplored that the 1992 reform had created only a transitional, indeed hybrid regime

⁹⁷⁷ See UNIM, *Livre Blanc de la Manutention Portuaire*, s.l., 2005.

⁹⁷⁸ Cour des comptes, *Rapport public thématique sur Les ports français face aux mutations du transport maritime : l'urgence de l'action*, July 2006, <http://www.ladocumentationfrancaise.fr/rapports-publics/064000535/index.shtml>, especially 37-67 and 85.

⁹⁷⁹ Bolliet, A., Gressier, C., Laffitte, M. and Genevois, R., *Rapport sur la modernisation des ports autonomes*, Inspection générale des Finances / Conseil général des Ponts et Chaussées, July 2007, <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/084000035/0000.pdf>, 3-7, 25-31 and Annex IV, 3-4.

which is partly based on nostalgia for the 1947 Port Labour Act and which denies its members access to the regime of general labour law, particularly because they will have to give priority to G Card-holders until the last one has disappeared⁹⁸⁰.

928. The Institute for Economic and Social Research (Institut de Recherches Economiques et Sociales, IRES) commented on the 2008 reform as a consolidation of "corporatism" by port authorities and CGT "in a sector where disputes and power struggles seem almost inevitable"⁹⁸¹.

929. In 2011, the Court of Auditors focused on the implementation of the 1992 and 2008 reform schemes in the port of Marseilles. It noted that port management had been unable to stop the downward spiral, as Marseilles continued to lose traffic volumes to Rotterdam, Antwerp and Hamburg as well as Barcelona and Valencia. Due to a lack of productivity and reliability, Marseilles had proved unable to gain a significant market share in the container trade. Container movements per hour were considerably higher in almost all competing ports. Marseilles crane operators work only 3 or 3.5 hours a day or 12 or 14 hours a week, while their monthly wages, including premiums and illegal gratuities⁹⁸², amount to between 3,500 and 4,500 EUR. Marseilles still relied on two BCMOs while these bodies had ceased activities in virtually all other ports. Permanent employment, as introduced in 1992, was increasingly diverted to two consortia of employers managed face-to-face with the union, while the rate of permanent employment at individual companies is actually falling. Also, various restrictive working practices continue to apply, such as the *fini-parti* custom⁹⁸³. The Report concluded that in the port of Marseilles, the rule of law appears to be missing and recalled that responsible authorities are obliged to lodge formal complaints against all illegal practices and acts of violence. Annexed to the Report are replies by several Ministers who unanimously stated their support. The chairman of the Port Authority announced the lodging of complaints and disciplinary measures against any further unacceptable behaviour⁹⁸⁴.

930. In 2011, Senator Charles Revet presented a Parliamentary Report on the implementation of the 2008 port labour reform. First of all, it confirmed that all reform measures had been

⁹⁸⁰ Le Du, E. and Galbrun, X., *100 ans d'Union au service des ports français 1907-2007*, Paris, UNIM, 2007, 43-44 and 47; also Galbrun, X., *La manutention portuaire en 2001. Rapport annuel d'activités*, Paris, UNIM, http://www.unim.org/cgi-bin/client/modele.pl?shop=unim&modele=agenda&cat=188&manuel_menu=gamme_188&manuel_par=33, 22 and 25.

⁹⁸¹ Robin, B., "Unions protest at privatisation of port handling operations", <http://www.eurofound.europa.eu/eiro/2008/07/articles/fr0807039i.htm>.

⁹⁸² See *supra*, para 909.

⁹⁸³ See *supra*, para 906.

⁹⁸⁴ Cour des comptes, *Le Grand port maritime de Marseille: blocage social et déclin. Rapport public annuel 2011*, February 2011, <http://www.ccomptes.fr/fr/Publications/Publications/Rapport-public-annuel-2011>.

implemented within the deadlines imposed by the law and that all cargo handling equipment and, since May 2011, all staff (some 650 employees in total⁹⁸⁵) had effectively been transferred to private operators. Yet, the Revet Report stressed that the French ports still have to restore customer confidence, because reliability is even more important than the cost of port calls. In the medium term, the companies should also promote multi-skilling among port workers and crane drivers. The Reporter recommended that the BCMOs terminate their activities in all ports, because employers must have full control over all their workers, and that social dialogue patterns be updated⁹⁸⁶.

In a separate contribution annexed to the Report, the left-wing political group CRC-SPHG stated that in many cases terminal operators had maintained their positions in port areas and threatened to occupy a monopoly position⁹⁸⁷.

931. In yet another Report of February 2012, the Court of Auditors evaluated progress in all main ports. It denounced that costs of the 2008 reform had spiraled out of control and that, as compared with the initial ambitions, numerous compromises had to be accepted. Negotiating under time constraints imposed by the law, the Port Authorities sold their equipment at very low prices, often under net book value⁹⁸⁸. Furthermore, the Court found that only 92 out of 122 cranes and gantries were acquired by the cargo handling firms, which suggests that French ports had been seriously overequipped, a situation which the Court explained by trade union pressure. The rules governing the transfer procedure favoured existing cargo handlers and allowed them to strengthen their market position, which some consider conducive to abuses of a dominant position. The Court mentioned the cases of Bordeaux⁹⁸⁹ and La Rochelle. In the latter port, a minority cargo handler addressed the Administrative Court and EU authorities because it was forced out of the market; eventually, it established a joint venture with a company from the sector of agriculture which secured a right of use on two terminals. Next, the social partners chose not to agree on a "transfer" (*transfert*) of the port authorities' employees to the handlers, as initially envisaged by the legislator, but on a mere "leasing out" (*détachement*)⁹⁹⁰, with the workers continuing their existing employment contracts and

⁹⁸⁵ Detailed figures are: for Dunkirk, 23 out of 23 employees; for Rouen, 44 out of 55; for Le Havre, 231 out of 230; for la Rochelle, 35 out of 35; for Marseilles, 409 out of 419, of whom 219 out of 220 belonged to the oil terminals of Fos and Lavéra. In Bordeaux and Nantes, transfers were slightly delayed.

⁹⁸⁶ *Parliamentary documents, Sénat, Rapport d'information fait au nom du groupe de travail sur la réforme portuaire, de la commission de l'économie, du développement durable et de l'aménagement du territoire, Par M. Charles Revet, Sénateur, Session extraordinaire de 2010-2011, no. 728, <http://www.senat.fr/rap/r10-728/r10-7281.pdf>, 13-27 and 39-41.*

⁹⁸⁷ *Parliamentary documents, Sénat, Rapport d'information fait au nom du groupe de travail sur la réforme portuaire, de la commission de l'économie, du développement durable et de l'aménagement du territoire, Par M. Charles Revet, Sénateur, Session extraordinaire de 2010-2011, no. 728, <http://www.senat.fr/rap/r10-728/r10-7281.pdf>, (125), 126.*

⁹⁸⁸ In this respect, the Court was reproached to have been represented in the official Committee responsible for the supervision of the transfers (Demangeon, E. and Mintiens, G., "Franse havenhervorming loopt financieel uit de hand", *De Lloyd* 21 February 2012).

⁹⁸⁹ See *supra*, para 903.

⁹⁹⁰ On the background of this new terminology, see X., *La manutention portuaire en 2008. Rapport annuel d'activités*, Paris, UNIM, 2009, <http://www.unim.org/cgi->

conserving acquired rights, and the port authority guaranteeing further payment of their wages. Also, additional rights of early retirement were granted. In Marseilles, a combination of early retirement schemes entitles workers to terminate their career 7 years ahead of the normal regime. Furthermore, the workers obtained the right to voluntarily return to the port authority within a period of 3 years; a similar right arises in case of a redundancy for economic reasons occurring within a period of 14 years, which was in 5 ports brought to 20 years or even more. These agreements have considerably extended the default period of 7 years which was laid down in the law. Even then, the transfer of port authority workers was only implemented partially. Less than 410 workers out of 890 (*i.e.* 46 per cent) were transferred under conditions which correspond more or less with the initial objectives of the reform scheme. In several ports, transfers remained far below the numbers set out in the official strategic plans adopted by the Port Authority. In many cases, the workers were transferred to a subsidiary set up for this purpose by the Port Authority, a solution which is apparently incompatible with the original intentions of the lawmaker⁹⁹¹. The Court fears that the newly created employment structures will be unable to compete in the free market and that the Port Authorities are exposed to serious risks; it also notes that the coexistence of separate management structures for dockers and engine drivers is not true to the ambition of the lawmaker to regroup all port workers under a single employer. In their replies, the competent Ministers expressed their agreement with the findings of the Court; the chairmen of the Port Authorities declined to comment however, with the exception of the port of Le Havre which submitted additional details⁹⁹².

932. Particular to France is the harsh criticism of port labour arrangements and practices voiced in the general media and in public fora. The publication of official reports exposing restrictive practices in the sector, the 'privileges' of dockers, the dominant position of trade union CGT, the official acceptance of the claim that port labour is today a particularly strenuous job (the *pénibilité* of port labour), the general decline of the French ports industry and the diversion of French foreign trade to more efficient ports such as Antwerp, Rotterdam and Barcelona provoke public outcries which look like they are never going to stop⁹⁹³.

In countless internet fora, citizens continue to denounce the failure of the French port system in scathing terms. Even if these outpourings may not be based on expert knowledge of the sector, are in most cases aimed at situations in Marseilles, and appear, in some cases, politically or ideologically motivated, or perhaps inspired by jealousy⁹⁹⁴, and they are often objected to by individual union members, and also more or less deliberately disregard

[bin/client/modele.pl?shop=unim&modele=agenda&cat=80&manuel_menu=gamme_80&manuel_par=33](http://www.ccomptes.fr/index.php/Publications/Publications/Rapport-public-annuel-2012)
1/18-1/19.

⁹⁹¹ See details *supra*, para 903.

⁹⁹² Cour des comptes, "La réforme portuaire : une mise en oeuvre marquée par des compromis", in *Rapport public annuel*, February 2012, <http://www.ccomptes.fr/index.php/Publications/Publications/Rapport-public-annuel-2012>, 119-157.

⁹⁹³ See, for an example of a paper by a private think tank, X., "Marseille : quand la CGT coule le port", <http://www.ifrap.org/Marseille-quand-la-CGT-coule-le-port.791.html>.

⁹⁹⁴ On the latter, see also Barzman, J., "Conflits et négociations au Havre avant et après les grandes réformes portuaires", *L'Espace Politique*, 16 | 2012-1, <http://espacepolitique.revues.org/index2242.html>, para 14.

elementary netiquette (and, for that matter, spelling and grammar), they are worth mentioning here because they damage the image of ports and port labour, and threaten to make working in ports an unattractive alternative to prospective job candidates. Even if AUTF commented in an interview that the general public is not going to lose any sleep over port labour issues, the port sector should in our view exercise some vigilance in the light of the prominent coverage of problems in the general media and the intensity of the negativism. (At the special request of the Union des Ports de France who considered it a threat to social dialogue at EU level we have deleted a 9-page anthology of internet commentaries on the attitude of port workers in the present, updated, version of this report.)

Industrial relations in French ports seem to have inspired a certain tradition of self-mockery and satire among employers. The following synopsis for a stage play published by a Director at the Compagnie Maritime des Chargeurs Réunis in 1977 is perhaps characteristic of the current situation in more than one port of the EU:

The setting is a French port.

Act I: The dockers start a strike for a reason considered futile by outsiders, but if they obtain satisfaction, the costs of cargo handling will increase significantly.

Act II: The chorus of cargo handlers prefers an open conflict rather than surrender; the shipping agents approve.

Act III: The headquarters of the ship owners cannot accept that their ships are blocked along the quays and instruct their service providers to solve the problem.

Act IV: A few weeks later, the chorus of cargo handlers deplores the increase in costs.

Act V: The ship owners accuse the cargo handlers of being lax⁹⁹⁵.

In 2010, employers' organisations supported by employees established the action committee Do Not Touch My Port (*Touche pas à mon port*) to raise public awareness on the allegedly privileged working conditions of crane drivers in the port of Marseilles⁹⁹⁶. It succeeded in attracting considerable media attention⁹⁹⁷. Former President Nicolas Sarkozy added fuel to the fire by admitting his regret that, due to recent strikes over his port labour reform scheme, Antwerp had now become France's premier port⁹⁹⁸.

⁹⁹⁵ Baudelaire, J.-G., *Administration et exploitation portuaires*, Paris, Eyrolles, 1977, 327, referring to Raoust.

⁹⁹⁶ The website of the committee is on <http://www.upe13.com/actuPort.aspx?idbreve=18183> and www.collectifport.com.

⁹⁹⁷ See, for example, X., "Salaire des grutiers : les patrons ironisent, la CGT crie au mensonge", *Le Parisien* 11 October 2010, <http://www.leparisien.fr/marseille-13000/salaire-des-grutiers-les-patrons-ironisent-la-cgt-crie-au-mensonge-11-10-2010-1104961.php>.

⁹⁹⁸ See X., "Sarkozy "désolé qu'Anvers soit devenu le premier port français", *Le Parisien* 4 November 2010, <http://www.leparisien.fr/flash-actualite-politique/sarkozy-desole-qu-anvers-soit-devenu-le-premier-port-francais-04-11-2010-1135944.php>.

Figure 81. 'Become a Crane Driver in the Port of Marseilles', the winner of a contest for 'The (Very) Best Job in the World' in a taboo-breaking poster first published by an employer and employee-sponsored action committee during a port strike in 2010, which was immediately denounced by trade union CGT as based on untrue rumours but, following confirmation of the data by the French Court of Auditors, republished in an amended version in February 2011 which is shown here (source: www.collectifport.com).

LE BON PLAN

VERY

**THE BEST JOB
IN THE WORLD**

**DEVENEZ GRUTIER
AU PORT DE MARSEILLE**

CONGÉS : 8 SEMAINES / AN

HORAIRES : 18 H / SEMAINE NETS*

REMUNÉRATION : 4000 € ~~BRUTS~~ / MOIS

EMPLOI GARANTI À VIE *

Promotion après grève :
+ 450 € / Mois & Passage à 12 h / Semaine

Collectif "TOUCHE PAS À MON PORT"
Pour défendre l'emploi de 41000 salariés face aux privilèges de quelques grutiers
Rejoignez le Collectif : www.collectifport.com

*** cf. rapport de la Cour des Comptes - Février 2011.**

933. An assessment of the recent port labour reform at Le Havre in 2012 concluded that French ports are again on the track of competitiveness but that after the grave social unrest of recent years, serious efforts will be needed to restore the confidence of customers⁹⁹⁹.

934. At a press conference in October 2012, employers and unions of Marseilles insisted that industrial peace has returned to the port. Employers admitted that the integration of crane drivers had come at a high cost while a CGT representative reportedly said that peace will only be guaranteed as long as existing employment levels are maintained. Terminal operators confirmed that the 2008 reform has considerably increased productivity and reliability of container handling operations. The Port Authority was delighted to see a new dynamism and confidence in the port, which expresses itself in several new investment projects¹⁰⁰⁰.

935. Responding to our questionnaire, employers' organisation UNIM described the current port labour regime in France as satisfactory and referred in this regard to the two consecutive port reform processes. Additional improvements would be welcomed, but at this stage, most specificities and restrictive rules and practices have disappeared. UNIM believes that, since the implementation of the 2008 port reform, the regime of port labour has had a positive impact on the competitive position of French ports, and hopes that within a few years it will perhaps be considered an international model. Today, however, not all the effects of the 2008 reform are visible, while the scheme has increased the payroll by some 8 per cent¹⁰⁰¹. UNIM also announced the publication of an assessment of the 2008 reform in the near future. In the current economic crisis, any attempt at a serious analysis is considered futile however.

936. CNTPA, too, considers the current port labour regime satisfactory. Furthermore, CNTPA is of the opinion that the current port labour regime has a positive impact on the competitive position of French ports.

937. Ship owner DFDS, on the other hand, reports that the current port labour regime in France has a direct negative impact on the competitive position of French ports. Costs of port labour in France are so high that many companies who had an option to move their service have sought alternative ports outside France to run their business. As the labour cost forms a large percentage of the running costs of a ferry service, it has a negative impact on the company's competitive position towards e.g. the Eurotunnel (which enjoys a more relaxed labour

⁹⁹⁹ Migraine, M., "Où en sont nos ports . Où en est-Le Havre ?", www.auhavre.com (site currently unavailable).

¹⁰⁰⁰ See Van Dooren, P., "Marseille-Fos toont herwonnen eendracht", *De Lloyd* 23 October 2012, 6-7.

¹⁰⁰¹ E.B., "UNIM: gérer l'après-réforme", *Navigation Ports & Intermodalité* 2012, No. 07/08, 32.

structure). DFDS considers the port labour regime of the UK a best practice due to the freedom of choice of the service supplier (in-house or third party), the flexibility of the labour force and the much less stringent labour laws.

938. In an interview, AUTF said that following the 2008 reform, social and operational reliability of French ports now has to be restored. In addition, a number of old habits need to be removed. In this respect, our spokesman mentioned limited opening hours of ports, overmanning, the inherent contradiction between a shift system and permanent employment, the closed shop and the role of family relations, and the ban on self-handling which is supported by the cargo handlers but functions as a major obstacle to the development of motorways of the sea and inland shipping. Today, French ports are still offering poor quality at a very high cost. To further improve the system, time and diplomacy will be needed, because many traditional restrictive rules and practices are regarded as acquired rights (*acquis*).

939. UNIM sees a need to streamline vocational education and training in port work at European level. This is considered the best way to increase port efficiency and achieve a level playing field among European seaports. UNIM favours the idea of harmonising minimum qualification standards for dockworkers. Such harmonisation can be arrived at through an EU social dialogue. UNIM continues to oppose the introduction of self-handling radically, as unskilled labour should have no access to ports and social dumping should be avoided¹⁰⁰².

Already in 2009, UNIM advocated the adoption, through a social dialogue, of common training requirements at EU level. UNIM considers qualification requirements as an instrument to prevent self-handling by ship owners and the emergence of a cargo handling sector of convenience¹⁰⁰³.

940. Still in response to our questionnaire, shipping company DFDS explained that in France, port labour can only be undertaken by certain companies, by certain labour force and always under union control. This is reported to render any stevedoring operation very inflexible and costly. DFDS suggests that this be looked into at national level with guidelines from the EU. DFDS sees a clear need for EU action to align rules and regulations on port labour and to ensure freedom for terminal operators or owners to choose to handle the jobs in-house or outsource it to a third party company of their choice.

Another shipping line complaining about 'Mafia' practices in French ports cynically wished the EU 'good luck' with no further comment.

¹⁰⁰² See also Mintiens, G., "Franse goederenbehandelaars vragen aandacht voor knelpunten", *De Lloyd* 24 April 2012.

¹⁰⁰³ See UNIM, "The French approach of CQP", February 2009, 6 and *supra*, para 891.

9.7.8. Developments between January 2013 and September 2014

940A. First of all, it should be noted that in 2013 and again in 2014 the European Commission expressed the opinion that French ports perform unevenly and remain exploited below their potential, which limits their contribution to growth¹⁰⁰⁴.

940B. Mid-December 2013, several cruise ship calls at Marseilles were disrupted following a dispute with port workers' unions over the right to handle passengers' luggage. The director of the MPCT cruise terminal stated that he did not intend to throw into question the right of the dockers to perform quayside work but that they did not enjoy any monopoly and that he considered bringing the case before the courts, rescheduling calls elsewhere or to solicit an intervention by the police to ensure freedom of circulation at the port. Reportedly, in the past the port workers never bothered to become involved into this activity but changed their minds following a slump in conventional cargo handling and the boom of cruise tourism, wanting to get their piece of the cake¹⁰⁰⁵.

940C. On 14 March 2014, Senator Odette Herviaux submitted a State report on the effects and perspectives of the decentralisation of French ports, a process that started back in 1983. The report deals with, *inter alia*, public-private management patterns and detailed data on investment levels in ports. It invites the Government to act along the lines of a National Ports Strategy. As far as labour is concerned, the report notes that the national collective agreement (CCNU) concluded in 2011 resulted in a considerably higher wage bill in decentralised ports without a corresponding increase in productivity or customer-friendliness, and that the unique

¹⁰⁰⁴ European Commission, *Commission Staff Working Document 'Assessment of the 2013 national reform programme and stability programme for FRANCE Accompanying the document Recommendation for a Council Recommendation on France's 2013 national reform programme and delivering a Council Opinion on France's updated stability programme for 2012-2017'* (COM(2013) 360 final), SWD (2012) 360 final, 25 May 2013, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013SC0360&qid=1396457494845&from=EN>, 26; European Commission, *Commission Staff Working Document 'Assessment of the 2014 national reform programme and stability programme for FRANCE Accompanying the document Recommendation for a COUNCIL RECOMMENDATION on France's 2014 national reform programme and delivering a Council opinion on France's 2014 stability programme'* (COM(2014) 411 final), SWD(2014) 411 final, 2 June 2014, http://ec.europa.eu/europe2020/pdf/csr2014/swd2014_france_en.pdf.

¹⁰⁰⁵ X., "Marseille : la justice va trancher le conflit du portage des valises des croisiéristes", *Le Marin* 10 July 2013, <http://www.lemarin.fr/articles/detail/items/marseille-la-justice-va-trancher-le-conflit-du-portage-des-valises-des-croisieristes.html>; de Broqua, A., "Port de Marseille : vers un apaisement du conflit entre dockers et bagagistes", *Le Figaro* 18 July 2013, <http://www.lefigaro.fr/social/2013/07/18/09010-20130718ARTFIG00477-port-de-marseille-vers-un-apaisement-du-conflit-entre-dockers-et-bagagistes.php>.

chain of command remains a rarity in these ports (and is in fact only applied at specialised private facilities)¹⁰⁰⁶.

940D. Mid 2014, a working group chaired by Martine Bonny, a former CEO of the port authority of Dunkirk, looked into distortions resulting from divergences in employment conditions in French ports, particularly between port workers and other personnel employed at ports. The report, which is expected to contain recommendations on further regulatory adjustments, was unavailable to us at the time of writing¹⁰⁰⁷.

¹⁰⁰⁶ Herviaux, O., *Enjeux et perspectives de la décentralisation portuaire*, 14 March 2014, http://www.developpement-durable.gouv.fr/IMG/pdf/rapport_Odette_Herviaux_24juin2014_V2_cle0441eb.pdf, at 30.

¹⁰⁰⁷ See however X., "Ports : le rapport Bonny veut clarifier le métier de docker", *Le Marin* 3 July 2014, <http://www.lemarin.fr/articles/detail/items/ports-le-rapport-bonny-veut-clarifier-le-metier-de-docker.html>.

9.7.9. Synopsis

941.		
SYNOPSIS OF PORT LABOUR IN FRANCE¹⁰⁰⁸		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 50 commercial seaports, 7 main ports • Landlord model, some smaller tool ports • 303m tonnes • 7th in the EU for containers • 26th in the world for containers • Appr. 100 employers • 4,370 port workers • Trade union density: 95-100% 	<ul style="list-style-type: none"> • <i>Lex specialis</i> (Transport Code; Maritime Ports Code) • National CBA for all port staff • Additional local CBAs • Important role of local usages • Party to ILO C137 • Successful major reforms in 1992 and 2008 • 4 categories of workers: <ul style="list-style-type: none"> (1) Permanent workers employed under general labour law (2) Casual professional workers (registered pool workers) (phased out by 2020) (3) Registered occasional workers (4) Unregistered occasional workers 	<ul style="list-style-type: none"> • Transition from <i>lex specialis</i> to normal regime completed by 2020 • Incomplete implementation of 1992 and 2008 reforms • Priority of permanent employment for old pool workers • Priority of pool workers and occasional workers • Closed shop and nepotism • Local restrictions on use of temporary workers • Legal uncertainty over scope of remaining priority rights • Restrictive working practices • Unattractiveness to short sea shipping and inland shipping • Doubts over EU law compatibility • Poor public image of port labour
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Training provided by institutes and individual companies 	<ul style="list-style-type: none"> • National system of sectoral professional qualifications (CQP) • Specific national certificate for equipment operators (CACES) • Right to training for every worker 	<ul style="list-style-type: none"> • Union control of training arrangements (locally)
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Detailed accident statistics available • Extremely high incidence, frequency and severity rates 	<ul style="list-style-type: none"> • Rules on safety of equipment and cooperation between employers • Party to ILO C152 • Provisions in CBAs • National early retirement schemes ('strenuosity' and asbestos) 	<ul style="list-style-type: none"> • Accident rates highest of the national economy • Hidden unemployment and abuses • Diseases of retired workers

¹⁰⁰⁸ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.8. Germany

9.8.1. Port system¹⁰⁰⁹

942. Germany has five major seaports: Hamburg, Ports of Bremen (Bremerhaven and Bremen), Lübeck, Rostock and Wilhelmshaven.

Hamburg is Germany's principal port and handles over one-third of the overall tonnage. Hamburg and the Ports of Bremen are international ports and Germany's leading container ports. The Ports of Bremen are one of Europe's leading automobile hubs.

Wilhelmshaven is Germany's largest import port for crude oil and a significant hub for the turnover of mineral oil products and chemicals. In 2012, a new coastal deep water container terminal opened, called JadeWeserPort.

The Baltic Sea ports of Lübeck and Rostock specialise in handling ferry vessels. The port of Rostock also handles, for example, liquid bulk and chemicals.

In addition, a large number of smaller seaports are scattered along Germany's coastline and river estuaries.

In 2012, the gross weight of seaborne goods handled in German ports was about 298.8 million tonnes¹⁰¹⁰. As for container throughput, German ports ranked 1st in the EU and 8th in the world in 2011¹⁰¹¹.

943. 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; this is the case with Hamburg and Bremen), ports that belong to a municipality (for example Kiel, Flensburg, Wolgast), ports that belong to a Land and partially to a municipality (for example Wilhelmshaven), ports that belong to a limited company (for

¹⁰⁰⁹ See ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 143-152; see and compare statistics on http://www.zds-seehaefen.de/pdf/seegueterumschlag/2010_12_ausgewaehlte_Haefen.pdf; https://www.destatis.de/DE/Publikationen/Thematisch/TransportVerkehr/Schiffahrt/SeeschiffahrtJ2_080500117004.pdf?__blob=publicationFile; http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

¹⁰¹⁰ See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

¹⁰¹¹ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

example, Wismar, Rostock, Sassnitz/Mukran) and one port that belongs to a private commercial company (Nordenham).

Cargo handling in German ports is carried out by private companies. As a rule, public port authorities are not involved in these operations.

944. The German response to our questionnaire on port labour was extremely limited. One respondent stated that “after intensive internal discussions, it was decided not to complete the questionnaire”. Another stakeholder reported that “the German union ver.di refused to answer the entire questionnaire”. After ver.di's refusal, other stakeholders followed suit. Further attempts at convincing HHLA, Eurogate, the employers' association ZDS and the trade union ver.di to submit answers and personal requests for interviews with individual stakeholders failed. Yet, the pool agencies (Gesamthafenbetriebe) and a number of individual experts were willing to assist us on specific issues.

Although the trade union ver.di refused to fill out the port labour questionnaire, it posted a statement on this questionnaire on its website¹⁰¹², which was not communicated to the authors of the present study however.

9.8.2. Sources of law

945. 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')¹⁰¹³, the local agreements (*Vereinbarungen*) under which labour pools (*Gesamthafenbetriebe*) were established, and the statutes (*Satzungen* or *Verwaltungsordnungen*) of these pools.

The main local instruments are:

- the Agreement (*Vereinbarung*) on the Establishment of a Special Employer of Port Workers in Hamburg (Gesamthafenbetrieb) of 9 February 1951¹⁰¹⁴;
- the Statute (*Satzung*) of the Gesamthafenbetrieb Hamburg of 30 April 1969¹⁰¹⁵;
- the Agreement (*Vereinbarung*) on the Establishment of a Gesamthafenbetrieb for the Ports in the Region of Bremen (City of Bremen and Bremerhaven) of 1 March 1980¹⁰¹⁶;

¹⁰¹² X., *Stellungnahme der ver.di Fachgruppe Häfen zur aktuellen europäischen Hafenpolitik – Fragebogen Portius*, 25 November 2011, <http://verkehr.verdi.de/haefen>; see further *infra*, para 2021.

¹⁰¹³ Gesetz über die Schaffung eines besonderen Arbeitgebers für Hafentarbeiter, 3. August 1950.

¹⁰¹⁴ Vereinbarung über die Schaffung eines besonderen Arbeitgebers für Hafentarbeiter in Hamburg (Gesamthafenbetrieb), 9 Februar 1951.

¹⁰¹⁵ Satzung für den Gesamthafenbetrieb Hamburg vom 30. April 1969 i.d.F. vom 26. Juni 1994.

- the Statute (*Verwaltungsordnung*) of the Gesamthafenbetrieb in the Region of Bremen of 5 September 1989¹⁰¹⁷;
- the Agreement (*Vereinbarung*) on the Establishment of a Special Employer of Port Workers in Rostock (Gesamthafenbetrieb) of 16 January 1992¹⁰¹⁸;
- the Statute (*Verwaltungsordnung*) of the Gesamthafenbetrieb Rostock of 14 March 1994¹⁰¹⁹.

General labour law is only applicable to the extent that no special laws and regulations on port labour apply¹⁰²⁰.

946. 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 Work¹⁰²¹, the Labour Law Code¹⁰²² and the safety regulations made thereunder, and the Civil Code¹⁰²³.

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 2002¹⁰²⁴.

947. It is a well-established opinion that the German Temporary Agency Work Act¹⁰²⁵ is of no relevance to the Gesamthafenbetriebe, because the Port Labour Act, as a *lex specialis*, takes priority over it¹⁰²⁶. In 2011, however, the scope of the Temporary Agency Work Act was extended to non-profit temporary work agencies¹⁰²⁷. As a result, the Gesamthafenbetriebe are now governed by that Act and need official permission to supply temporary workers. In the

¹⁰¹⁶ Vereinbarung über die Schaffung eines Gesamthafenbetriebes für die Häfen im Lande Bremen (Bremen-Stadt und Bremerhaven), 01. März 1982.

¹⁰¹⁷ Verwaltungsordnung für den Gesamthafenbetrieb im Lande Bremen, 5. September 1989.

¹⁰¹⁸ Vereinbarung über die Schaffung eines besonderen Arbeitgebers für Hafentarbeiter in Rostock (Gesamthafenbetrieb), 16 Januar 1992.

¹⁰¹⁹ Verwaltungsordnung für den Gesamthafenbetrieb Rostock, 14 März 1994.

¹⁰²⁰ See further *infra*, paras 947 and 988.

¹⁰²¹ Gesetz über die Durchführung von Maßnahmen des Arbeitsschutzes zur Verbesserung der Sicherheit und des Gesundheitsschutzes der Beschäftigten bei der Arbeit (Arbeitsschutzgesetz - ArbSchG), 7. August 1996.

¹⁰²² Sozialgesetzbuch, SGB.

¹⁰²³ Bürgerliches Gesetzbuch, BGB.

¹⁰²⁴ Vierte Schiffssicherheitsanpassungsverordnung vom 25. September 2002.

¹⁰²⁵ Gesetz zur Regelung der Arbeitnehmerüberlassung (Arbeitnehmerüberlassungsgesetz - AÜG).

¹⁰²⁶ See Kokemoor, A., "Arbeitnehmerüberlassung im Arbeitnehmerinteresse. Zur Zulässigkeit der Arbeitnehmerüberlassung durch Personalvorhaltengesellschaften nach dem AÜG", *Neue Zeitschrift für Arbeitsrecht* 2000, (1077), 1080; Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 48; see also X., *Arbeitnehmer in Fremdbetrieben*, VBG, Hamburg, 2002, http://www.t-z-z.de/zeitarbeit/downloads/SP_38_1.pdf, 13; http://web.archive.org/web/20080606033810/http://www.aus-innovativ.de/themen/leiharbeit_3896.htm.

¹⁰²⁷ Erste Gesetz zur Änderung des Arbeitnehmerüberlassungsgesetzes - Verhinderung von Missbrauch der Arbeitnehmerüberlassung (1. AÜGÄndG) vom 28. April 2011. On the background, see Blanke, Th., *Welche Änderungen des deutschen Gesetzes erfordert die Umsetzung der EU-Richtlinie Leiharbeit – mit dem Schwerpunkt Gleichbehandlungsgrundsatz und Abweichungen gem. Art. 5 der EU-RI?*, Oldenburg, 2010, 117-118.

absence of express legislative provisions, the inter-relation between the Temporary Agency Work Act and the Port Labour Act remains an obscure area however¹⁰²⁸.

948. Germany has ratified ILO Convention No. 152¹⁰²⁹ but not ILO Convention No. 137. In 2002, the ILO noted that Germany was not considering ratification of the latter convention¹⁰³⁰. The Gesamthafenbetrieb of Hamburg explained to us that ratification of Convention No. 137 was never considered because the German Port Labour Act of 1950 ensures even better protection of workers.

949. As we will explain further below¹⁰³¹, health and safety in ports is further governed by specific regulations on safety of dock work issued by local authorities and occupational accident insurers. The central instrument is the Labour Protection Act of 7 August 1996¹⁰³².

950. National collective agreements for all German ports are negotiated between the Central Association of German Seaport Companies (Zentralverband der deutschen Seehafenbetriebe, ZDS)¹⁰³³ and the trade union ver.di. These national agreements lay down rates of pay, working times and various social benefits¹⁰³⁴. The central framework agreement is the Framework Agreement for the Port Workers of the German Seaport Companies (*Rahmentarifvertrag für die Hafentarbeiter der deutschen Seehafenbetriebe*)¹⁰³⁵. Wages are further regulated in a separate national agreement (*Lohntarifvertrag für die Hafentarbeiter der deutschen Seehafenbetriebe*). Specific national agreements apply to, for example, car terminals.

National collective agreements are supplemented by special provisions negotiated at local level which apply to firms and employees in individual ports. In the port of Hamburg, for example, regional collective agreements are negotiated between the employers' association

¹⁰²⁸ See *infra*, para 988.

¹⁰²⁹ Gesetz zu dem Übereinkommen Nr. 152 der Internationalen Arbeitsorganisation vom 25. Juni 1979 über den Arbeitsschutz bei der Hafentarbeit vom 21. Juli 1982. Germany was never a Party to ILO Convention No. 32.

¹⁰³⁰ International Labour Conference (90th Session 2002), *General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/rep-iii-1b.pdf>, 89, para 222.

¹⁰³¹ See *infra*, para 977 *et seq.*

¹⁰³² Gesetz über die Durchführung von Maßnahmen des Arbeitsschutzes zur Verbesserung der Sicherheit und des Gesundheitsschutzes der Beschäftigten bei der Arbeit (Arbeitsschutzgesetz, ArbSchG).

¹⁰³³ On the internal treatment of these matters within ZDS and especially on the exchange of information between members, see ZDS, *Leitfaden zum kartellrechtskonformen Handeln in der Verbandsarbeit*, http://www.zds-seehafen.de/pdf/zds_leitfaden_kartellrecht.pdf, item 2.c). Identical rules apply within UVHH.

¹⁰³⁴ For a collection of national agreements, see <http://www.zds-seehafen.de/information/tarifvertraege.html>.

¹⁰³⁵ See text on http://www.zds-seehafen.de/pdf/tarifvertraege/1992_04_01.pdf. The agreements expressly allows for the adoption of specific rules on flexible working times at company level (§ 6).

Unternehmensverband Hafen Hamburg (UVHH) and the local department of the trade union ver.di.

At a large number of firms, including HHLA and Eurogate, company agreements are concluded¹⁰³⁶, but these are not publicly available and could not be consulted by us. As a matter of fact, both major terminal operator groups refused to cooperate in any way with our study.

Be that as it may, the multi-layered approach towards collective bargaining in German ports allows for an adaptation of the rules to specific situations¹⁰³⁷.

The port of Lübeck offers a specific case. It relies on a workers' pool which does not function along the lines of the Port Labour Act, but is solely governed by collective agreements¹⁰³⁸ and the Rules of Procedure of the Port Operator's Association of Lübeck¹⁰³⁹.

9.8.3. Labour market

- Historical background

951. The historical process towards decasualisation of port labour in Germany is similar to that in most other ports in the EU¹⁰⁴⁰.

¹⁰³⁶ Dombois, R. and Wohlleben, H., "The negotiated change of work and industrial relations in German seaports - the case of Bremen", in Dombois, R. and Heseler, H. (Eds.), *Seaports in the context of globalization and privatization*, Bremen, Kooperation Universität-Arbeiterkammer, 2000, (45), 52. See also Zentralverband der deutschen Seehafenbetriebe e.V. (ZDS), *Jahresbericht 2010/2011*, 37-39, the website of the *Unternehmensverband Hafen Hamburg*, <http://www.uvhh.de/index.php/aufgaben> and, for Hamburg, the overview of collective agreements concluded at the three levels in Hermel, C., *Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft*, Bachelorarbeit, Norderstedt, Grin/Books on Demand, 2010, 27.

¹⁰³⁷ Comp. Abendroth, M., Dombois, R. and Heseler, H., *Vom Stauhaken zum Container. Eine vergleichende Untersuchung der tariflichen und betrieblichen Regelungen der Hafendarbeit in den norddeutschen Häfen*, Stuttgart / Bremen, ÖTV / Kooperation Universität-Arbeiterkammer, 1981, 69.

¹⁰³⁸ Today, the main collective agreements on port labour in Lübeck are:

- the Collective Agreement on the Acquis for Port Workers employed before 30 April 1998, concluded on 28 May 1998 (Besitzstandstarifvertrag mit Anlagen für die Hafendarbeiter der Lübecker Seehafenbetriebe, 28. Mai 1998), with accession agreements (Tarifbeitritt), which refers, *inter alia*, to earlier Framework and Classification Agreements of 1992;

- the Framework Agreement for the Transshipment Workers of the Lübeck Port Operators of 30 April 1998 (Rahmentarifvertrag für die Umschlagarbeiter der Lübecker Seehafenbetriebe, 30. April 1998), with accession agreements (Tarifbeitritt).

Until 1998, a Gesamthafenbetrieb functioned on the basis of the Agreement on the Establishment of a Special Employer of Port Workers in Lübeck (Gesamthafenbetrieb) of 31 March 1985 (Vereinbarung über die Schaffung eines besonderen Arbeitgebers für Hafendarbeiter in Lübeck (Gesamthafenbetrieb), 31. März 1985) and the Statute of the Gesamthafenbetrieb Lübeck of 6 February 1986 (Verwaltungsordnung für den Gesamthafenbetrieb Lübeck, 6. Februar 1986).

¹⁰³⁹ Geschäftsordnung Hafenbetriebsverein Lübeck e.V., 28. Mai 1998.

¹⁰⁴⁰ On the history of port labour in Germany, see Achten, U. and Kamin-Seggewies, B., *Kraftproben. Die Kämpfe der Beschäftigten gegen die Liberalisierung der Hafendarbeit*, Hamburg, VSA-Verlag,

During the Ancien Régime, cargo handling in German ports was controlled by specialised guilds several of whom appear to have enjoyed a monopoly (for example, the *Maskopträger* or porters in Bremen). Corporations of specialised port workers also existed at inland ports such as Cologne¹⁰⁴¹.

In Bremen, the guilds were only abolished in 1861 and the coopers (*Küper*) continued to supply various packaging and storage services well into the 20th century¹⁰⁴². In 1914, a Port Companies' Association (*Hafenbetriebsverein*) was founded, which started to employ a core of casual workers and was the predecessor of the current labour pool (*Gesamthafenbetrieb*).

As for developments in Hamburg from the end of the 19th century onwards, Klaus Weinbauer discerns five phases¹⁰⁴³.

First, from the 1870s until the end of the 1890s, the middleman (*Baas*) stood at the heart of the hiring procedure. The middleman received his orders to load or unload a ship from the great shipping lines and hired workers for one shift at fixed street corners (*Ecken*) or in bars. This system ensured freedom of employment and free competition on the labour market¹⁰⁴⁴, but also encouraged alcoholism, corruption and bribery.

2008, 190 p.; Altstaedt, K.H., *Schauerlud, Schutenschupser and Kaitorten. Arbeiter im Hamburger Hafen*, Erfurt, Sutton Verlag, 2011, 175 p.; Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 5-11; Rumpel, E. (Hg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., 376 p.; Lee, W.R., "From guild membership to casualisation: dockworkers in Bremen, c. 1860-1939", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, 342-364; Weinbauer, K., "Dock labour in Hamburg: the labour market, the labour movement and industrial relations, 1880s-1960s", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, II, Aldershot, Ashgate, 2000, 494-519; Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 9 et seq.

¹⁰⁴¹ See van der Velden, M., *Hafenarbeit und Trägergilden*, Rotterdam, M. van der Velden, 1998, 17-19.

¹⁰⁴² Lee, W.R., "From guild membership to casualisation: dockworkers in Bremen, c. 1860-1939", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (342), 345-346.

¹⁰⁴³ See Weinbauer, K., "Dock labour in Hamburg: the labour market, the labour movement and industrial relations, 1880s-1960s", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (494), 497-501.

¹⁰⁴⁴ See especially Helle, H.J., *Die unständig beschäftigten Hafentarbeiter in den Nordwesteuropäischen Häfen*, Stuttgart, Gustav Fischer Verlag, 1960, 14:

Die Annahme der unständigen Hafentarbeiter vollzog sich in der Form der "Ecke", die im folgenden modellhaft beschrieben wird. An einem Platz im Hafengebiet, der durch Konvention und Gewohnheit festliegt, etwa an der Ecke zweier Uferstraßen, kommen zu einer ebenso zur Tradition gewordenen Uhrzeit die arbeitssuchenden Hafentarbeiter zusammen und erwarten die Arbeitgeber oder deren Vertreter. Die Stauer, die Arbeitskräfte benötigen, beauftragten ihre Vorleute, die Vizen, eine bestimmte Zahl von Tagelöhnern "anzunehmen". So treten sich Hafentarbeiter und Vormann Auge im Auge gegenüber. Es herrscht freie Partnerwahl: Die Vorleute konkurrieren miteinander um die besten Arbeiter, und die Arbeiter konkurrieren miteinander um den besten Vormann. In Zeiten des Mangels an Arbeitskräften bleiben die unbeliebten und in der Menschenführung unfähigen Vorleute ohne Arbeiter, und umgekehrt bleiben bei einem Überangebot an Arbeitskräften die älteren und schwächeren oder auch die bei keinem Vormann beliebten oder bekannten Arbeiter ohne Arbeit.

The next phase began around the turn of the century and marked the real start of decasualisation. In 1892, first steps were taken by the Patriotic Society (*Patriotische Gesellschaft*). In 1906, the Association of Port Companies (*Hafenbetriebs-Verein* or HBV) was founded on the initiative of Albert Ballin, the legendary director of the Hamburg-Amerika-Linie (Hapag). The HBV ran a portwide net of employer-controlled hiring halls. Companies could join the scheme on a voluntary basis. The dock labour force was divided into three categories: permanent men working for only one firm; semi-casuals called irregular card-holding workers (*unständige Kartenarbeiter*) who moved between different employers depending on how many jobs were available and who had to report to the hiring halls; and casual-casual labourers (*Gelegenheitsarbeiter*).

After a third phase of various reform projects in the years after WW I, a fourth phase saw the creation of *Gesamthafenbetriebe* (Joint Port Enterprises) under the national-socialist regime. The *Gesamthafenbetriebe* were established in order to balance out fluctuations in the labour needs of individual companies¹⁰⁴⁵ and to grant casual port workers some of the advantages of having a steady job, such as paid leave, paid holidays and, in some occasions, protection against dismissal¹⁰⁴⁶. Under these arrangements, the port labour market and its control mechanisms were regulated at national level¹⁰⁴⁷. Contrary to the previous voluntary membership of the HBV, all port companies were now obliged to join the *Gesamthafenbetrieb*¹⁰⁴⁸, all trade unions were abolished, and pool workers were not merely registered as dockers, but concluded a genuine contract of employment with the *Gesamthafenbetrieb*, which acted as a virtual employer representing the port as a whole¹⁰⁴⁹. The *Gesamthafenbetrieb* could make employment as a port worker conditional upon the possession of a docker's card and employers infringing the monopoly were criminally sanctioned. The *Gesamthafenbetrieb* Hamburg was founded in 1935 and was run by the former HBV, renamed Joint Port Enterprise Company (*Gesamthafenbetriebsgesellschaft*, GHBG). The semi-casuals were now called Joint Port Enterprise or Pool Workers (*Gesamthafenarbeiter*) and the permanent men became Workers Of Individual Port Firms (*Hafeneinzelbetriebsarbeiter*). In addition to these two groups, a small number of so-called Auxiliary Workers (*Aushilfsarbeiter*, occasional workers who were later called *Hafenarbeiter B*) were registered at the public employment exchange. In Bremen, a

¹⁰⁴⁵ Deiss, M., *Arbeitsrechtliche Spielräume für den zwischenbetrieblichen Personalaustausch im Unternehmensverbund einer Wertschöpfungskette. Eine Expertise*, Munich, Institut für Sozialwissenschaftliche Forschung e.V., 2001, <http://www.isf-muenchen.de/pdf/perflexexpertise.pdf>, 11; Dombois, R. and Wohlleben, H., "The negotiated change of work and industrial relations in German seaports - the case of Bremen", in Dombois, R. and Heseler, H. (Eds.), *Seaports in the context of globalization and privatization*, Bremen, Kooperation Universität-Arbeiterkammer, 2000, (45), 48.

¹⁰⁴⁶ Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 8.

¹⁰⁴⁷ Gesetz zur Ordnung der nationalen Arbeit vom 20. Januar 1934; 12. Verordnung zur Durchführung des Gesetzes zur Ordnung der nationalen Arbeit (Bildung und Aufgaben von Gesamthafenbetrieben) vom 8. April 1935.

¹⁰⁴⁸ Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 19.

¹⁰⁴⁹ Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 7; Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 20.

Gesamthafenbetrieb was established in 1935 as well, with similar categories of port workers. By 1941, Gesamthafenbetriebe had been founded in 19 maritime ports and in 8 inland ports¹⁰⁵⁰.

After WW2, in a fifth and final phase, the organisational framework of the Gesamthafenbetrieb and even its specific terminology were retained. Even if the national-socialist laws on port labour were repealed as of 1 January 1947, the Gesamthafenbetriebe continued their activities. In 1948, a guaranteed weekly income was established. In 1950, the Port Labour Act laid down a new legal basis for the Gesamthafenbetriebe, which left more room for auto-regulation by the social partners. On 9 February 1951, the latter signed a model agreement on the establishment of Gesamthafenbetriebe¹⁰⁵¹. Until 1973, separate Gesamthafenbetriebe existed in Bremen and Bremerhaven. The current Gesamthafenbetrieb for Bremen and Bremerhaven was only established in 1982. The youngest Gesamthafenbetrieb to date was founded at Rostock in 1992. In Lübeck, a Gesamthafenbetrieb was established in 1985, but it was dissolved in 1998. Since then, the Port Operators' Association of Lübeck operates a small workers' pool on the basis of collective agreements.

- Regulatory set-up

952. Today, most German port workers are permanently employed, either by a single company or by a Gesamthafenbetrieb, and have a stable income. However, the Gesamthafenbetriebe also supply *Aushilfsarbeiter* or occasional auxiliary workers, who are hired for one shift and obtain a red card (*Rote Karte*); 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" (*ein besonderer Arbeitsgeber*)¹⁰⁵² 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

¹⁰⁵⁰ See full lists in Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 8.

¹⁰⁵¹ On the latter, see Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 76; Wiebel, E., "Die Gestaltung der Gesamthafenbetriebe", *Das Recht der Arbeit* 1953, (291), 292 *et seq.*

¹⁰⁵² The Gesamthafenbetrieb is termed a "special" employer because it ensures stable employment for casually employed workers (Landesarbeitsgericht Bremen, 23 March 2011, 2 Sa 121/10 (9 Ca 9382/09), http://www.kanzleibeier.de/Urteil_beierbeier_LAG-Bremer_2_Sa_121_10_9_ca_9382_09.php).

¹⁰⁵² See, for example, Bundesarbeitsgericht 16 December 2009, 5 AZR 125/09.

trade unions or by individual employers and unions. These Gesamthafenbetriebe are not allowed to carry out any commercial activity (§ 1(1) of 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) (§ 1(2)).

Next, the Port Labour Act provides that the Gesamthafenbetrieb decides, in accordance with the applicable laws, on its legal form, its tasks, its organs and its management, in particular on the principles for the collection, management and use of contributions and levies. Also, it must issue a binding definition of the concept of port labour (§ 2(1)). These regulations are however subject to approval by the Employment Agency (§ 2(2)). Insofar as the Gesamthafenbetrieb carries out non-profit job placement activities, it is supervised by the Federal Employment Agency (Bundesagentur für Arbeit) and is bound by its instructions (§ 2(3)).

The Act further regulates claims by Gesamthafenbetriebe as against companies, and *vice versa* (see § 3).

953. The scope of the Port Labour Act is determined by two criteria: it only applies to (1) port labour (*Hafenarbeit*) (2) performed within port companies (*Hafenbetriebe*)¹⁰⁵³.

Neither the Port Labour Act, nor any other regulation or practice provides a national definition of port labour¹⁰⁵⁴. 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 ports¹⁰⁵⁵. These definitions gave rise to legal disputes, following which the local definitions had to be adapted¹⁰⁵⁶. Importantly, local definitions adopted by the 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

¹⁰⁵³ Martens, K.-P., "Hafenbetrieb und Hafenarbeit nach dem Gesamthafenbetriebsgesetz", *Neue Zeitschrift für Arbeitsrecht* 2000, (449), item V.

¹⁰⁵⁴ See already International Labour Conference (90th Session 2002), *General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, <http://www.ilo.org/public/english/standards/reim/ilc/ilc90/pdf/rep-iii-1b.pdf>, 49, para 110, but also the comments by the German representative in International Labour Conference (Ninetieth Session, 2002), No. 28, Part One, *Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations. Report of the Committee on the Application of Standards*, Provisional Record, <http://www.ilo.org/public/english/standards/reim/ilc/ilc90/pdf/pr-28p1.pdf>, 28, para 142.

¹⁰⁵⁵ Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 35.

¹⁰⁵⁶ See *infra*, para 996.

must be observed by the social partners¹⁰⁵⁷. In other words, the Gesamthafenbetriebe may only further specify the pre-existing legal concept of port labour and decide on its precise meaning in individual cases¹⁰⁵⁸.

The notion of a port company (*Hafenbetrieb*) 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 (*einen Schwerpunkt*) 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 activity¹⁰⁵⁹.

The Port Labour Act applies to maritime ports as well as inland ports¹⁰⁶⁰.

954. Gesamthafenbetriebe are not established on the basis of a decision by a government or indeed of any other public authority. The initiative to establish a Gesamthafenbetrieb can only be taken by the social partners.

As a result, the establishment of a Gesamthafenbetrieb under the Port Labour Act is not mandatory. Shortly after the adoption of the Act, Gesamthafenbetriebe were established in Hamburg, Lübeck, Kiel, Bremen, Brake/Unterweser, Bremerhaven and Emden. In 1955, a Gesamthafenbetrieb was established in the inland port of Duisburg. Several Gesamthafenbetriebe were only granted a short life¹⁰⁶¹. In 1992, Gesamthafenbetriebe existed only in Hamburg and Bremen¹⁰⁶². Currently, Gesamthafenbetriebe exist in Hamburg, Bremen/Bremerhaven and Rostock¹⁰⁶³. In Lübeck, a workers' pool is run by the local association of port operators (Hafenbetriebsverein Lübeck), but it is no Gesamthafenbetrieb in the sense of the Port Labour Act.

¹⁰⁵⁷ Bundesarbeitsgericht 14 December 1988, 5 AZR 809/87, *Neue Zeitschrift für Arbeitsrecht* 1989, 565; Bundesarbeitsgericht 26 February 1992, 5 AZR 99/91; Bundesarbeitsgericht 6 December 1995, 5 AZR 307/94.

¹⁰⁵⁸ Martens, K.-P., "Hafenbetrieb und Hafenarbeit nach dem Gesamthafenbetriebsgesetz", *Neue Zeitschrift für Arbeitsrecht* 2000, (449), item V.1.

¹⁰⁵⁹ Martens, K.-P., "Hafenbetrieb und Hafenarbeit nach dem Gesamthafenbetriebsgesetz", *Neue Zeitschrift für Arbeitsrecht* 2000, (449), item V.2.

¹⁰⁶⁰ Martens, K.-P., "Hafenbetrieb und Hafenarbeit nach dem Gesamthafenbetriebsgesetz", *Neue Zeitschrift für Arbeitsrecht* 2000, (449), item V.1.

¹⁰⁶¹ See Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 24.

¹⁰⁶² Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 24 and fn. 39.

¹⁰⁶³ On the Gesamthafenbetriebsgesellschaft Rostock mbH (GHBG), see <http://www.portofrostock.de/deutsch/sites/arbeitskraefte.html>.

955. The Gesamthafenbetriebe are jointly managed by the port employers and the trade union ver.di. The Gesamthafenbetriebe do not have members or associates¹⁰⁶⁴. Whether they are incorporated as a legal person has been heavily debated; the prevailing view is that they do not, but still they are capable of exercising rights and duties of their own¹⁰⁶⁵ including the conclusion of collective agreements¹⁰⁶⁶. As all the Gesamthafenbetriebe have meanwhile established a separate legal person in the form of a commercial company (Hamburg) or a registered association (Bremen)¹⁰⁶⁷, this debate seems only of theoretical importance.

Although the 1950 Act does not expressly grant such powers, predominant case law and legal doctrine accept that a Gesamthafenbetrieb may issue binding regulations¹⁰⁶⁸. Some doubts were expressed about the conformity of these regulatory powers with the German Constitution. However, by analogy with collective agreements declared generally binding, this exercise of regulatory powers is considered legitimate, because the rules issued must be approved by the competent Employment Authority¹⁰⁶⁹. But even if the binding Statute and other regulations issued by the Gesamthafenbetrieb may be binding upon individual port companies, including 'outsiders', these rules may never encroach upon the core of entrepreneurial freedoms¹⁰⁷⁰. Also, the Statute may never go against the Vereinbarung under which the Gesamthafenbetrieb was established¹⁰⁷¹. Furthermore, the Port Labour Act has not granted the Gesamthafenbetriebe any special enforcement powers. They can only enforce the regulations on the basis of civil law,

¹⁰⁶⁴ Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 38-39.

¹⁰⁶⁵ See, for example, Bundesarbeitsgericht 26 February 1992, 5 AZR 99/91. For an in-depth discussion, see Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 37-75; see also Martens, K.-P., "Kompetenzrechtliche Probleme des Gesamthafenbetriebs", in Selmer, P. (Ed.), *Gedächtnisschrift für Wolfgang Martens*, Berlin, Walter de Gruyter, 1987, (637), 639, fn. 4; Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 64-66; Wiebel, E., "Die Gestaltung der Gesamthafenbetriebe", *Das Recht der Arbeit* 1953, (291), 293.

¹⁰⁶⁶ See Landesarbeitsgericht Bremen, 23 March 2011, 2 Sa 121/10 (9 Ca 9382/09), http://www.kanzleibeier.de/Urteil_beierbeier_LAG-Bremer_2_Sa_121_10_9_ca_9382_09.php. The Court ruled that, as the Port Labour Act only prohibits Gesamthafenbetriebe to pursue profit-making activities, they may undertake all other transactions.

¹⁰⁶⁶ See, for example, Bundesarbeitsgericht 16 December 2009, 5 AZR 125/09.

¹⁰⁶⁷ See Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 38 and 76 *et seq.* The Gesamthafenbetrieb Hamburg itself states that it has not taken any particular legal form, and that its legal transactions are conducted by its separate management company (*Verwaltungsgesellschaft*) (see, for example, *Jahresbericht der Gesamthafenbetriebs-Gesellschaft m.b.H. Hamburg*, 2006, 9).

¹⁰⁶⁸ Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 22-28; Martens, K.-P., "Kompetenzrechtliche Probleme des Gesamthafenbetriebs", in Selmer, P. (Ed.), *Gedächtnisschrift für Wolfgang Martens*, Berlin, Walter de Gruyter, 1987, (637), 639-641.

¹⁰⁶⁹ See Bundesarbeitsgericht 14 December 1988, 5 AZR 809/87, *Neue Zeitschrift für Arbeitsrecht* 1989, 565; Bundesarbeitsgericht 25 November 1992, 7 ABR 7/92, *Neue Zeitschrift für Arbeitsrecht* 1993, 955; for an in-depth discussion, see Martens, K.-P., "Kompetenzrechtliche Probleme des Gesamthafenbetriebs", in Selmer, P. (Ed.), *Gedächtnisschrift für Wolfgang Martens*, Berlin, Walter de Gruyter, 1987, (637), 641-647; Martens, K.-P., "Hafenbetrieb und Hafenarbeit nach dem Gesamthafenbetriebsgesetz", *Neue Zeitschrift für Arbeitsrecht* 2000, (449), item II; see also Wiebel, E., "Die Gestaltung der Gesamthafenbetriebe", *Das Recht der Arbeit* 1953, (291), 292-294, who points out that the Port Labour Act attaches a generally binding effect to the Agreements *ipso jure*, while collective agreements may be declared binding.

¹⁰⁷⁰ Martens, K.-P., "Kompetenzrechtliche Probleme des Gesamthafenbetriebs", in Selmer, P. (Ed.), *Gedächtnisschrift für Wolfgang Martens*, Berlin, Walter de Gruyter, 1987, (637), 647.

¹⁰⁷¹ Martens, K.-P., "Hafenbetrieb und Hafenarbeit nach dem Gesamthafenbetriebsgesetz", *Neue Zeitschrift für Arbeitsrecht* 2000, (449), item II.

and penalties imposed on member companies rest on a purely contractual basis¹⁰⁷². After all, a Gesamthafenbetrieb is not a public authority¹⁰⁷³. The Satzung of the Gesamthafenbetrieb in Hamburg provides that individual port companies infringing its provisions may be excluded from the supply of port workers and are obliged to pay compensation to the GHBG or the pool workers, as the case may be (§ 20.1 and 20.3). In Bremen and Bremerhaven as well as in Rostock, financial penalties apply (§ 23 and § 19 of the respective Verwaltungsordnung).

The Gesamthafenbetriebe are financed by the employers through (1) a surcharge on the shift wages of pool workers effectively hired which covers the costs of, *inter alia*, insurance, sick leave and administration, and (2) a surcharge on the invoices sent by port companies to their customers (especially ship owners) for services provided, regardless of whether the individual company actually hires pool workers; the latter surcharge finances idle time payments. In Hamburg, the first surcharge amounts to 78 per cent on the wages, and the second to 1.5 per cent on the bill for the handling of containers and general cargo and 1 per cent for the handling of dry and liquid bulk.

956. 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 established¹⁰⁷⁴.

Permanent port workers (*Hafeneinzelbetriebsarbeiter*) 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 (*Gesamthafenarbeiter*), 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 (*Überbetrieb*)¹⁰⁷⁵, as it were, but this employment relationship fades into the background while the worker is performing a task for an individual cargo handling company¹⁰⁷⁶. The role of the Gesamthafenbetrieb as an employer has also been termed "subordinate" (*subsidiär*)¹⁰⁷⁷.

¹⁰⁷² See Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 30-35.

¹⁰⁷³ Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 33 and further 55-57.

¹⁰⁷⁴ See the statement by the German representative in International Labour Conference (Ninetyeth Session, 2002), No. 28, Part One, *Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations. Report of the Committee on the Application of Standards*, Provisional Record, <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/pr-28p1.pdf>, 28, para 142.

¹⁰⁷⁵ See Helle, H.J., *Die unständig beschäftigten Hafentarbeiter in den Nordwesteuropäischen Häfen*, Stuttgart, Gustav Fischer Verlag, 1960, 10.

¹⁰⁷⁶ See Bundesarbeitsgericht 2 November 1993, 1 ABR 36/93; comp. Arbeitsgericht Hamburg 6 July 2010, 25 Ca 66/10. For detailed discussions of these matters, see Assmann, J., *Rechtsfragen zum*

In relation to the auxiliary workers (*Aushilfsarbeiter*), the Gesamthafenbetrieb is not considered their legal employer, but merely acts as an intermediary employment officer¹⁰⁷⁸. 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 concluded that a long-term employment relationship had come into being, and reclassified the worker as a pool worker (*Gesamthafenarbeiter*)¹⁰⁷⁹.

957. In the port of Hamburg, the Gesamthafenbetrieb was established under the agreement between the then Arbeitsgemeinschaft Hamburger Hafen-Fachvereine e.V. (an association of port undertakings, now called Unternehmensverband Hafen Hamburg, UVHH e.V.) and the local branch of the trade union Public Services, Transport and Traffic (Öffentliche Dienste, Transport und Verkehr, ÖTV, now a part of ver.di).

The main objectives of the Gesamthafenbetrieb are the creation of stable employment for casual port workers and to ensure an effective and just distribution of pool workers over the workplaces. To this end, the Gesamthafenbetrieb is entitled to issue regulations which are binding on individual companies, including companies who operate in the port only occasionally. Also, the Gesamthafenbetrieb may set limits on the admission of workers and make the performance of port work conditional upon the possession of a port card. Further, the Gesamthafenbetrieb shall issue specific provisions on the identification of individual port companies (*Hafeneinzelbetriebe*) and port workers (*Hafenarbeiter*) (§ 2(1) of the Vereinbarung; comp. § 2(1) of the Satzung). The Gesamthafenbetrieb shall ensure social protection of the pool workers within the framework of the collective bargaining agreements (§ 2(2)).

The Gesamthafenbetrieb is jointly managed (§ 3 of the Vereinbarung; § 2(2) of the Satzung), which implies that the unions have taken on a role as employer. Its Board is made up of an

Gesamthafenbetrieb, doctoral thesis, University of Cologne, 1965, 16-17 and 83-97; Müllner, W., *Aufgespaltene Arbeitgeberstellung und Betriebsverfassungsrecht*, Berlin, Duncker & Humblot, 1978, 33-37 and 113-123; Wedemeyer, Ph., *Die Betriebszugehörigkeit im BetrVG*, doctoral thesis, University of Cologne, 2007, 143-153. See also Bonanni, A., *Der gemeinsame Betrieb mehrerer Unternehmen*, Cologne, Otto Schmidt, 2003, 87-88; Schliemann, H. et al., *Das Arbeitsrecht im BGB: Kommentar*, Berlin, Walter de Gruyter, 2002, 103, para 313; Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 65.

¹⁰⁷⁷ Bundesarbeitsgericht 25 November 1992, 7 ABR 7/92, *Neue Zeitschrift für Arbeitsrecht* 1993, 955; Landesarbeitsgericht Bremen, 23 March 2011, 2 Sa 121/10 (9 Ca 9382/09), http://www.kanzleibeier.de/Urteil_beierbeier_LAG-Bremer_2_Sa_121_10_9_ca_9382_09.php.

¹⁰⁷⁸ See, for example, Bundesarbeitsgericht 16 December 2009, 5 AZR 125/09.

¹⁰⁷⁹ Arbeitsgericht Hamburg 6 July 2010, 25 Ca 66/10. Reportedly, following this judgment a number of *Aushilfsarbeiter* were engaged as *Gesamthafenarbeiter* (Groß, S., "Hire and Fire: Tagelöhner auf dem Hamburger Hafengelände", *Betriebsrat Blog* 13 September 2011, <http://blog.betriebsrat.de/gerichtsmassig/hire-and-fire-tagelohner-auf-dem-hamburger-hafengelände>).

impartial chairman and representatives of the employers and of the employees. It only meets a few times each year.

As such, the Gesamthafenbetrieb is no distinct legal persona. The management of the pool is assigned to the Gesamthafenbetriebs-Gesellschaft (GHBG), a separate limited liability company (§ 4 of the Vereinbarung; § 2 of the Satzung). In the fulfilment of its tasks, the GHBG may issue instructions to the individual port companies and the port workers (§ 2(4) of the Satzung). The GHBG is financed through compulsory contributions by the individual port companies, including companies operating only occasionally in the port (§ 5 of the Vereinbarung). Both the Gesamthafenbetrieb and the GHBG are non-profit entities (§ 4 of the Vereinbarung; § 4(1) of the Satzung).

The scope of the Satzung of the Gesamthafenbetrieb of Hamburg – which is the main source of labour regulations – is defined (1) territorially, as the port area actually in operation (*Hafennutzungsgebiet*) within the meaning of Hamburg's Port Development Act (*Hafenentwicklungsgesetz*¹⁰⁸⁰), including the Upper and Lower Elbe; (2) functionally and personally, as the companies operating in the port and the workers performing port labour (*Hafenarbeit*) (§ 1 of the Satzung).

¹⁰⁸⁰ On this delimitation, see Schulz-Schaeffer, H., *Das hamburgische Hafenentwicklungsgesetz. Kommentar*, Kehl am Rhein / Strasbourg / Arlington, N.P.M. Engel Verlag, 1991, 25 *et seq.*

Figure 82. The Hamburg port area as defined for port management and port labour purposes (source: Hamburg Port Authority)



Port labour, then, is defined as the loading and unloading of ships as well as the connected upstream, downstream and accompanying activities (§ 3(1) of the Satzung).

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 (*Quartiersmannarbeiten*); the controlling of cargo and commodities; the controlling of the entry, departure and condition of cargo receptacles;
- (5) storage of goods;

- (6) work in distribution facilities (reception, sorting, commissioning, assembling, storage and delivery);
- (7) navigation in port and assistance to seagoing vessels (*die Hafenschiffahrt und die Seeschiffsassistentz*), with the exception of commercial carriage of passengers;
- (8) mooring and unmooring of ships;
- (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) (§ 3(2) of the Satzung).

Practically speaking, workers performing nautical services include *Ewerführer* (bargees of *Schuten*, a characteristic port barge) and a small number of tourist boat crew. Mooring and unmooring (item (8)) is not dock work in the proper sense, but a technical-nautical service.

Furthermore, the Board may identify additional activities as port work; such decisions must be approved by the Labour Authorities of the City of Hamburg and officially published (§ 3(3)). Reportedly, these powers were used in practice, in particular in order to clarify the position of container packing stations.

Plant-based transshipment within production, trade and processing companies which corresponds with the general definition of port labour above and with the activities described above under items (1) and (2), is also regarded as port labour within the meaning of the Satzung (§ 3(4)).

The GHBG maintains a list of the individual port companies that are covered by the Statute. Companies where port labour is performed only occasionally or not principally must be included as well (§ 3(5)).

Individual port companies must immediately report to the GHBG any changes in the exercise of port labour, of their name or address, as well as their winding up (§ 3(6)).

The Statute expressly reserves all port work to the port workers and the technical supervisors mentioned above (§ 4(1) of the Satzung¹⁰⁸¹).

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 (§ 4(2))

¹⁰⁸¹ The German original of this key provision reads:
Die Hafenarbeit ist den Hafenarbeitern und den technischen Angestellten im Sinne von §3 Abs. 2 j) vorbehalten.

and § 5(3) of the Satzung) issued by the GHBG upon nomination by an individual port company (§ 5(1)).

In specific circumstances, in the case of underemployment in particular, the Gesamthafenbetrieb may limit the number of cards issued (§ 4(3) of the Satzung). The Gesamthafenbetrieb informed us that these powers are never used in practice, because limitations imposed on employers might give rise to competition law issues.

The port workers are divided into 4 categories (§ 6 and 7 of the Satzung):

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

The individual port companies may only employ permanent workers holding a valid card and workers allocated to them by the GHBG (§ 8(1) and 17(1) of the Satzung).

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 (§ 8(4)).

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 (§ 6(1) and § 7 of the Satzung). In order to support the employment of pool workers, the GHBG may set limits on the use of overtime work by the individual companies (§ 11 of the Satzung). 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 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 (§ 7 of the Satzung and the accompanying Guidelines)¹⁰⁸². 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

¹⁰⁸² Richtlinien zu § 7 Abs. 2 der Satzung, adopted on 3 May 1984; see also Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 29 and 47-48.

the Temporary Work Agencies Act¹⁰⁸³. 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 (Bundesagentur für Arbeit / Regionaldirektion Nord in Kiel).

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 work¹⁰⁸⁴. Today, most of the port work is planned beforehand and usually the port workers receive their instructions by telephone¹⁰⁸⁵. Currently, there is no computerised hiring.

Pursuant to individual agreements with the GHBG, which must be renewed annually, some companies rely on fixed Quota (*Quoten*) 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 (*Betriebsgruppe*) (§ 17(3)-(7) of the Satzung)¹⁰⁸⁶. The latter workers are sent out to the same company as often as possible¹⁰⁸⁷. 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 (*bei einem vorübergehenden Mangel an Gesamthafenarbeitern*), the GHBG may admit auxiliary workers (*Aushilfsarbeiter*) (4(4) of the Satzung). 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 (§ 9(1) of the Satzung). During their assignment, the auxiliary workers are members of the workforce of the user company, not of the workforce of the Gesamthafenbetrieb (§ 9(2)). Auxiliary workers are hired for one shift only; continued or repeated employment must be agreed to by the GHBG (§ 9(3)).

Each individual company contributes to the Port Fund (*Hafenfonds*) from which the unemployment benefits for pool workers and *inter alia* training activities are financed (§16b of the Satzung).

¹⁰⁸³ See Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 48.

¹⁰⁸⁴ Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 27.

¹⁰⁸⁵ See already Oberkampf, J., „Die Veränderung der Stellung der Gesamthafenarbeiter im Hamburger Hafen in den letzten 25 Jahren“, in Rumpel, E. (Herausg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, 1999, (86), 88.

¹⁰⁸⁶ See also Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 27 and 39-41.

¹⁰⁸⁷ Hermel, C., *Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft*, Bachelorarbeit, Norderstedt, Grin/Books on Demand, 2010, 37; Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 41.

The GHBG bears no liability for damage caused by pool or auxiliary workers (§ 10 of the Satzung). Neither is the GHBG liable where, on special grounds, it is unable to meet the demand for workers (§ 17(8)).

If port workers (in the companies or in the Gesamthafenbetrieb) are temporarily unemployed, they receive a guaranteed wage (the so-called *Garantieschicht*, which amounts to 75 per cent of a uniform basic wage rate). The guaranteed wage of permanent workers is paid by their company. The guaranteed wage of the pool workers is paid out of a Fund, which is financed by a levy on the turnover of the port undertakings, irrespective of their actual use of pool workers¹⁰⁸⁸. Not all port undertakings use the pool however¹⁰⁸⁹. Additionally, the Gesamthafenbetrieb is financed through a contribution paid by the port companies as a supplement to the wages of the pool workers and the casual workers whom they actually use¹⁰⁹⁰. Companies using Quota enjoy a discount¹⁰⁹¹.

The Gesamthafenbetrieb may suspend the provision of pool and auxiliary workers to companies which infringe its Regulations (§ 20 of the Satzung).

958. Very similar arrangements apply in the ports of Bremen and Bremerhaven.

The Gesamthafenbetrieb of Bremen and Bremerhaven is run by a Gesamthafenbetriebsverein (§ 3 of the Verwaltungsordnung).

Here, too, all port labour is reserved for port workers (§ 4(1) of the Verwaltungsordnung).

Port labour is defined as all work directly related to port transshipment which is normally carried out by port workers at individual port enterprises and all usual ancillary services. The concept of direct port transshipment refers to the entire process of loading and discharging of seagoing vessels and inland barges, regardless of their type, including passenger ships. Also covered are lashing and securing operations, transportation to and from warehouses and the loading and unloading of means of land transportation (in Bremen, however, delivery and reception may be performed by lorry drivers). Ancillary services comprise, *inter alia*, tallying and weighing.

However, the port labour arrangements of Bremen and Bremerhaven do not apply to the transshipment of goods processed on the premises of a company; neither do they concern the fisheries sector at Bremerhaven (§ 1 and § 11(1) of the Verwaltungsordnung).

¹⁰⁸⁸ See already *supra*, para 955.

¹⁰⁸⁹ Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 30 and 54.

¹⁰⁹⁰ Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 36-37.

¹⁰⁹¹ Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 39-40.

The Verwaltungsordnung applies to the ports of Bremen-City and Bremerhaven, to the extent that in the latter no specific collective agreements for the fisheries sector apply (§ 1(2)). It does not expressly refer to any specific delimitation of the port area. However, the Gesamthafenbetriebsverein referred to the port maps annexed to the Port Area Regulations of Bremen (Bremische Hafengebietsverordnung).

Bremen and Bremerhaven employ permanent workers employed by individual port companies (*Hafeneinzelbetriebsarbeiter*), pool workers (*Gesamthafenarbeiter*) and auxiliary workers (*Aushilfsarbeiter*) (§ 4(2) of the Verwaltungsordnung). Port workers are further divided into 9 professional categories (professional port workers, stevedores including foremen, warehouse workers, drivers, signalmen and winchmen, lashers, cargo controllers, tallymen and weighers); in addition, physical distribution workers are employed (§ 4(3) of the Verwaltungsordnung).

A maximum may be set to the number of pool workers (§ 5 of the Verwaltungsordnung).

All port workers must carry a port worker's card which may be limited to certain tasks or for a fixed period and which is, in the case of an *Hafeneinzelbetriebsarbeiter*, limited to an individual company (§ 6 of the Verwaltungsordnung). Workers not possessing a card may only be employed with the express consent of the Gesamthafenbetriebsverein (§ 8(1)). All workers who are not *Hafeneinzelbetriebsarbeiter* must be assigned to the companies by the Gesamthafenbetriebsverein. This applies also to companies whose proper purpose is not port labour but who perform such labour for third parties (§ 11(1)). Practically, every day the worker calls the distribution centre of the Gesamthafenbetriebsverein which uses an ICT system containing data on, *inter alia*, the qualifications of individual workers, and allocates the worker to an individual company.

The Gesamthafenbetrieb acts as the employer of pool workers, to the extent that this role is not taken over by the individual user company (§ I.II of the Vereinbarung). For the duration of their assignment, pool and auxiliary workers are members of the workforce of the user company (§ 11(2)). In extraordinary circumstances, employers may dismiss workers; in such a case, the Gesamthafenbetriebsverein must be informed immediately and may instigate disciplinary proceedings (§ 12(5)). In no case shall pool workers be deemed to belong to the staff of the Gesamthafenbetriebsverein (§ 14 (3)).

Companies may order fixed Quota (*Quoten*) under which they are entitled to rehire pool workers (practically, often fixed gangs) (§ 12(2)). Rehiring is also possible for pool workers working as tallymen and cargo controllers or employed for special tasks (*Spezialarbeiten*) (§ 12(3)).

Hafeneinzelbetriebsarbeiter may only be employed by their own company. Companies are not allowed to exchange their permanent workers; such exchanges are only possible through the Gesamthafenbetriebsverein and in exceptional cases (§ 13). However, a special decision allows exchanges between companies belonging to the same group and if special cargo handling equipment is exchanged (Entschliessung zu § 13 der Verwaltungsordnung für den Gesamthafenbetrieb im Lande Bremen, 5 September 1989).

As a rule, auxiliary workers must also be hired through the Gesamthafenbetriebsverein (§ 14(2)). They are hired for one shift (§ 14(4)).

Certain tasks of the Gesamthafenbetrieb such as the definition of the notion of port labour were entrusted to a jointly composed Committee for Staff and Labour (§ 3 and 4 of the Vereinbarung).

Individual companies owe a duty of care towards the pool workers (§ 18(1)). The Gesamthafenbetriebsverein is exempted from liability for any damage caused by the port workers (§ 19).

The Gesamthafenbetriebsverein may organise random inspections to monitor compliance with the rules on port labour (§ 20).

959. The Agreement and Statute of the Gesamthafenbetrieb of Rostock does not differ fundamentally from the Hamburg example either.

The port area is defined in the local Port Regulations (Hafennutzungsordnung)¹⁰⁹² (§ 1 of the Verwaltungsordnung).

The definition of port labour is similar to the one in Hamburg; mooring and unmooring of vessels is included as well (see § 3 of the Verwaltungsordnung).

In Rostock, as in Hamburg, a distinction is made between permanent workers (*Hafeneinzelbetriebsarbeiter*), pool workers (*Gesamthafenarbeiter*), auxiliary workers (*Aushilfsarbeiter*) (§ 4 *et seq.* of the Verwaltungsordnung). The pool workers enjoy guaranteed wages (*Garantielohn*) and must be allocated to the companies in a way that distributes income as equally as possible (§ 10). A shift system applies and pool workers are informed of their next job by telephone (§ 14).

The Gesamthafenbetrieb of Rostock is managed by the Gesamthafenbetriebsgesellschaft Rostock mbH (§ 2 of the Verwaltungsordnung).

The Statute lays down financial penalties for companies, which may be imposed by an arbitration tribunal (§ 19 of the Verwaltungsordnung).

960. In Lübeck, where in 1998 the Gesamthafenbetrieb was dissolved and replaced by a workers' pool run by the employers' association, a transitional labour regime applies which distinguishes between (1) port workers (*Hafenarbeiter*), including port pool workers

¹⁰⁹² See full text with detailed port boundaries on <http://www.rostock-port.de/fileadmin/media/pdf/hafennutzungsordnung.pdf>.

(*Gesamthafenarbeiter*) who were engaged prior to the reform, and (2) transshipment workers (*Umschlagarbeiter*), including transshipment pool workers (*Gesamtumschlagarbeiter*) who were recruited after it. The latter category is employed under a new collective agreement, while the former workers enjoy a number of acquired rights. Practically, the transshipment workers, who perform exactly the same tasks, are approximately 30 per cent cheaper than the port workers.

The Framework Collective Agreement for the Transshipment Workers regulates matters such as working time, bonuses and holidays. It contains no provisions on the organisation of the labour market. It is supplemented by a collective agreement on wages and the classification of workers in categories.

The Collective Agreement on the Acquis for Port Workers first of all refers to the definition of port labour contained in the Statute of the (dissolved) *Gesamthafenbetrieb* for the port of Lübeck, which mentioned, *inter alia*, all work relating to the loading, unloading and bunkering of maritime and inland vessels and to the transshipment of goods of all sorts at the quays and in the quay warehouses as well as the cleaning of ships (§ 3 of the Agreement, referring to § 3 of the Statute). The implementation of the Agreement is ensured by a Joint Advisory Council (*Beirat*) which sees to it, *inter alia*, that work and overtime is fairly distributed over transshipment and port pool workers (§ 4 of the Agreement).

Transshipment and port pool workers are allocated to individual port operators under the Rules of Procedure of the Port Operator's Association of Lübeck which defines port labour as all transshipment of goods performed at member companies (§ 2) and confirms that both categories of pool workers must hold a worker's card issued by the Association (§ 3). The Association has an exclusive right to allocate pool workers to the operators (§ 11) and to supply auxiliary workers in the event of a shortage of pool workers (§ 4). Workers employed permanently by an individual company must also hold a card issued by the Association which entitles the worker to perform port labour (§ 5 and 6). The Rules of Procedure also regulate company bans against individual workers (§ 7). Port pool workers enjoy a guaranteed wage in the case of unemployment (§ 9). The Rules contain an exemption of liability clause (§ 16).

961. For the purpose of the calculation of wages, port workers are assigned to a job category. This is regulated in separate national, local and company-specific collective bargaining agreements on the classification of workers (*Eingruppierungsverträge*). This does not alter the fact that most port workers possess several skills and can be deployed in a flexible way¹⁰⁹³.

962. In Germany, shift systems may vary considerably between ports and between individual port companies; in some ports and terminals, no shift system applies at all¹⁰⁹⁴. The

¹⁰⁹³ See *infra*, para 969.

¹⁰⁹⁴ See *infra*, para 993. Comp. detailed information for 1981 in Abendroth, M., Dombois, R. and Heseler, H., *Vom Stauhaken zum Container. Eine vergleichende Untersuchung der tariflichen and*

Gesamthafenbetrieb Hamburg explained to us that the container terminals of Altenwerder (CTA) and Eurogate operate on a 24/7 basis, with overlapping 8-hour shifts, so that machinery can be operated without interruption. In other terminals, shifts are 7.667 hours (5.75 hours in the weekends). Operators at Bremen and Bremerhaven also apply individual shift arrangements.

The National Framework Agreement for the Port Workers of the German Seaport Companies contains regulations on working time. The possibility of deviating from the normal schedule at regional or company level is mentioned expressly (see § 2 and 6).

Since the 1990s, several collective agreements on the flexibilisation of working time in cargo handling areas and container facilities were concluded in the ports of Bremen¹⁰⁹⁵. Today, such agreements regulate, for example, working time, overtime and flexibility. Reportedly, a similar evolution took place in Hamburg, also through company-specific bargaining.

963. In ports where no Gesamthafenbetrieb was founded, port workers are employed on the basis of general labour law. For example, the Port Authority of Kiel informed us that port workers are not registered. Neither is there a ban on temporary agency work.

- Facts and figures

964. We could collect no precise data on the number of employers of port workers in German ports.

Today, the list of employers registered with the Gesamthafenbetrieb of Hamburg numbers 171 port companies (Hafeneinzelbetriebe), 41 of which are regular customers. The others are small firms who do not need additional staff. Logistics companies are not included, because they remain outside the scope of the Satzung. The latter firms are not obliged to cooperate with the Gesamthafenbetrieb, but some rely on its workers on a voluntary basis, in some cases in a mix with other employees.

In Bremen and Bremerhaven, the Gesamthafenbetrieb currently supplies workers to approximately 50 individual port companies.

betrieblichen Regelungen der Hafearbeit in den norddeutschen Häfen, Stuttgart / Bremen, ÖTV / Kooperation Universität-Arbeiterkammer, 1981, 27-28.

¹⁰⁹⁵ Dombois, R. and Wohlleben, H., "The negotiated change of work and industrial relations in German seaports - the case of Bremen", in Dombois, R. and Heseler, H. (Eds.), *Seaports in the context of globalization and privatization*, Bremen, Kooperation Universität-Arbeiterkammer, 2000, (45), 56.

In Rostock, port labour is used by 41 registered companies (38 in 2013); 11 companies (14 in 2013) use pool workers regularly and a further 6 (3 in 2013) only occasionally.

In Lübeck, the Port Operator's Association which runs the local pool has 12 members (11 in 2013), only 4 (3 in 2013) of which regularly perform port transshipment activities.

As a result, the number of employers of port workers in these ports can be estimated at 274, 130 of which regularly rely on the Gesamthafenbetrieb (figures for 2013 were 270 and 132 respectively). Nationwide, a fair estimate would perhaps be 300 companies, with 150 regular employers.

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

As elsewhere in Europe, the number of port workers in German ports decreased in recent decades, due to, *inter alia*, increasing containerisation and automation.

In the port of Hamburg for example, around 14,155 registered dockers were employed in 1932 (among whom 5,528 at individual port companies and 8.627 pool workers), and by 1960 this number had remained almost unchanged at about 14,000 workers. More than 11,000 port workers were still employed in 1980, but by 2011 this number had fallen to some 5,700¹⁰⁹⁶. Until the early 1960s, around 30 per cent of the port workers worked for the Gesamthafenbetrieb¹⁰⁹⁷; in 2004, only 17 per cent continued to do so¹⁰⁹⁸, and the latter percentage seems to have remained relatively stable since then.

Mid-2012, we were informed by the Gesamthafenbetrieb of Hamburg that it employs (1) some 5,700 registered dockers of whom some 20 per cent are pool workers, (2) between 200 and 250 auxiliary workers (around 10 per cent of the number of pool workers: some of these auxiliary workers are only employed on rare occasions)¹⁰⁹⁹ and (3) 427 older workers of formerly 100 per

¹⁰⁹⁶ See further detailed yet incomplete statistics in Abendroth, M., Dombois, R. and Heseler, H., *Vom Stauhaken zum Container. Eine vergleichende Untersuchung der tariflichen und betrieblichen Regelungen der Hafendarbeit in den norddeutschen Häfen*, Stuttgart / Bremen, ÖTV / Kooperation Universität-Arbeiterkammer, 1981, 14, 23, 80 and 81; Rumpel, E. (Hg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., 20 and 74-75; Hermel, C., *Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft*, Bachelorarbeit, Norderstedt, Grin/Books on Demand, 2010, 33; Läßle, D., "The Port of Hamburg. Containerfloodgate or logistic service centre ?", in Dombois, R. and Heseler, H. (Eds.), *Seaports in the context of globalization and privatization*, Bremen, Kooperation Universität-Arbeiterkammer, 2000, 87-104. See also European Commission (DG Fisheries and Maritime Affairs), *Employment trends in all sectors related to the sea or using sea resources. Country Report. Germany*, 2006, 16.

¹⁰⁹⁷ See Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 52.

¹⁰⁹⁸ Musso, E., *Organisation of port labour*, <http://www.enricomusso.it/2005/MPE/E110505%20II%20r.ppt#373> (link found broken upon updating), slide 22.

¹⁰⁹⁹ Hermel reports that in 2010 the Gesamthafenbetrieb employed about 300 temporary workers (Hermel, C., *Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft*, Bachelorarbeit, Norderstedt, Grin/Books on Demand, 2010, 36).

cent state-owned HHLA who are still not registered as port workers. This results in a total of around 6,350 port workers in Hamburg today, including distribution workers.

Table 46. Number of pool workers in the port of Hamburg, 2007-2012 (source: Gesamthafenbetrieb Hamburg)

	2007	2008	2009	2010	2011	2012
Container workers	762	874	768	800	847 ¹¹⁰⁰	852 ¹¹⁰¹
Non-containerised general cargo	107	115	98	110	143	162
Bulk	44	45	43	44	52	52
Warehouse logistics	61	96	80	89	119	116
Total	974	1,130	989	1,043	1,161	1,182

Similar trends could be observed in the ports of Bremen, where employment reached its peak in 1966, with 9,476 people being employed in the docks (7,364 in Bremen and 2,112 in Bremerhaven); by 1996, the number had dropped by more than two thirds to 2,606 (982 in Bremen and 1,624 in Bremerhaven)¹¹⁰². In the mid-2000s, however, the number of port workers was on the rise again. The Gesamthafenbetrieb im Lande Bremen employs workers at both Bremen and Bremerhaven. In the former port, a large majority of workers is employed in distribution companies, while the latter mainly uses port workers *sensu stricto*. In 2012, the ports employed 4,466 port workers, including 1,407 pool workers. In addition, 2,413 distribution workers were employed, including 1,582 pool workers. In total, the ports of Bremen and Bremerhaven employed 6,879 port workers in 2011.

¹¹⁰⁰ This includes 54 container lashers. For previous years, these workers are included in the total as well.

¹¹⁰¹ Including 55 lashers.

¹¹⁰² Dombois, R. and Wohlleben, H., "The negotiated change of work and industrial relations in German seaports - the case of Bremen", in Dombois, R. and Heseler, H. (Eds.), *Seaports in the context of globalization and privatization*, Bremen, Kooperation Universität-Arbeiterkammer, 2000, (45), 48, 63 and 66; further details in Abendroth, M., Dombois, R. and Heseler, H., *Vom Stauhaken zum Container. Eine vergleichende Untersuchung der tariflichen und betrieblichen Regelungen der Hafendarbeit in den norddeutschen Häfen*, Stuttgart / Bremen, ÖTV / Kooperation Universität-Arbeiterkammer, 1981, 14 and 81; Heseler, H., "Development Trends in the Ports of Bremen", in Dombois, R. and Heseler, H. (Eds.), *Seaports in the context of globalization and privatization*, Bremen, Kooperation Universität-Arbeiterkammer, 2000, 105-110.

Table 47. Port workers in Bremen and Bremerhaven with the exclusion of distribution workers, 1950-2012 (source: Annual Report for 2012 of the Unternehmensverband Bremische Häfen e.V. and Gesamthafenbetriebsverein im Lande Bremen e.V.)

1950	1960	1970	1980	1990	1998	2000	2008	2009	2010	2011	2012
3,224	7,889	6,348	6,759	4,965	2,410	2,543	4,337	3,782	3,713	4,187	4,584

Figure 83. Number of port workers in Bremen, 1990-2012¹¹⁰³ (source Gesamthafenbetrieb im Lande Bremen e.V.)

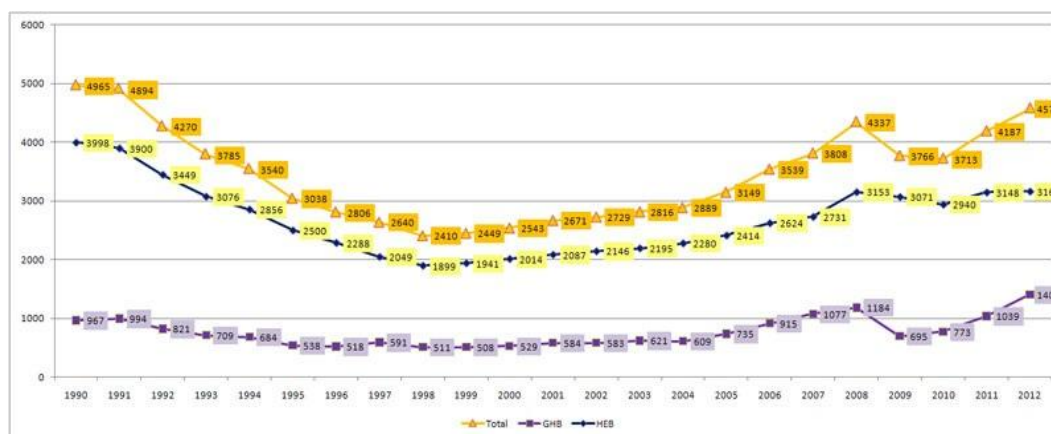


Table 48. Port workers in Bremen and Bremerhaven by employer, 2011-2012¹¹⁰⁴ (source: Annual Reports for 2011 and 2012 of the Unternehmensverband Bremische Häfen e.V.)

	Bremen			Bremerhaven			Total		
	2010	2011	2012	2010	2011	2012	2010	2011	2012
Individual port companies (Hafeneinzelbetriebe), general cargo	395	433	423	253	291	320	648	724	743
BLG	224	224	224	509	567	739	733	791	963
Container terminals	0	0	0	1,559	1,498	1,495	1,559	1,498	1,495
Gesamthafenbetrieb	120	135	129	653	1,039	1,254	773	1,174	1,383
Total	739	792	776	2,974	3,395	3,808	3,713	4,187	4,584

¹¹⁰³ GHB = pool workers; HEB = workers employed by individual companies.

¹¹⁰⁴ Figures are for on 31 December 2010, 31 December 2011 and 31 December 2012.

Table 49. Pool workers in the ports of Bremen and Bremerhaven, 2010-2012 (source: Gesamthafenbetrieb im Lande Bremen e.V.)

	2010			2011			2012		
	Port	Distribution	Total	Port	Distribution	Total	Port	Distribution	Total
Bremen	120	1,224	1,344	135	1,284	1,419	129	1,425	1,554
Bremerhaven	653	119	772	1,039	171	1,210	1,278	155	1,433
Total	773	1,343	2,116	1,174	1,455	2,629	1,407	1,582	2,987

Table 50. Distribution workers in the ports of Bremen and Bremerhaven, 1996-2012 (source: Annual Reports for 2011 and 2012 of the Unternehmensverband Bremische Häfen e.V.)

1996	2000	2006	2008	2009	2010	2011	2012
400	1,087	2,047	2,563	2,083	2,385	2,287	2,286

Table 51. Distribution workers in the ports of Bremen and Bremerhaven by employer, 2008-2012 (source: Annual Reports for 2010, 2011 and 2012 of the Unternehmensverband Bremische Häfen e.V.)

	2008	2009	2010	2011	2012
Bremen	1,903	1,568	1,809	1,759	1,752
of whom at Gesamthafenbetrieb	1,375	1,069	1,328	1,284	1,283
Bremerhaven	660	515	576	528	534
of whom at Gesamthafenbetrieb	175	118	121	170	176
Total	2,563	2,083	2,385	2,287	2,286
of whom at Gesamthafenbetrieb	1,550	1,160	1,449	1,454	1,459

In the port of Rostock, 677 port workers are employed, including 601 permanent workers and 76 pool workers. Employment evolved as follows:

Table 52. Number of port workers in Rostock, 1995-2014 (source: Gesamthafenbetriebsgesellschaft Rostock)

	Workers of individual companies	Pool workers	Total
1995	529	131	660
2000	422	76	498
2005	405	64	469
2010	447	87	534
2012 ¹¹⁰⁵	531	93	624
2013	525	77	602
2014	601	76	677

Since the start of the economic crisis, the port worker's pool of Lübeck, which used to comprise about 250 casually employed workers, has been reduced to a bare 20 workers, but following signs of recovery the number has risen again to some 40 workers today. The Port Operators' Association also informed us in October 2014 that the total number of port workers in Lübeck then stood at 182, a third of which were transshipment workers¹¹⁰⁶.

The data above suggest that in 2012, the four German ports which rely on a workers' pool employed 14,058 port workers in total, including distribution workers. Estimating the total number of port workers at national level is complicated by the fact that the workers are only registered in those four ports. In other ports, port labour is not identified as an employment sector in its own right; as a result, no specific statistics on the number of port workers are available in these ports.

The Port Authority of Kiel confirmed to us that it has no statistics on the number of port workers. The port is assumed to employ around 1,500 people, a couple of hundred of whom may be considered dockers, depending on the definition used. The Port Authority of Brunsbüttel was unable to provide an estimate either. Several enquiries to obtain an estimate of the total number of port workers in Schleswig-Holstein (Brunsbüttel, Flensburg, Kiel, Lübeck, Puttgarden,...) remained fruitless. Mid-2012, some 15 port workers were employed in Flensburg, and this number remained relatively stable over the past decade.

In 1997, 676 port workers were reportedly employed in the 12 ports of Mecklenburg-Vorpommern (*i.e.*, the former DDR ports along the Baltic coast, including Rostock which we

¹¹⁰⁵ Figures are for 2 November 2012.

¹¹⁰⁶ The port of Lübeck employed 656 port workers in 1969 and 419 in 1978 (Abendroth, M., Dombois, R. and Heseler, H., *Vom Stauhaken zum Container. Eine vergleichende Untersuchung der tariflichen und betrieblichen Regelungen der Hafendarbeit in den norddeutschen Häfen*, Stuttgart / Bremen, ÖTV / Kooperation Universität-Arbeiterkammer, 1981, 14).

already mentioned above)¹¹⁰⁷. To our knowledge, these data were never updated, an assumption which was confirmed to us by the authors of the 1997 study.

In 2008, all German ports were estimated to employ 10,000 port workers¹¹⁰⁸. On the basis of the data above, we estimate the total number of port workers in Germany today at some 15,000, including distribution workers.

966. In Germany, the average share of temporary employment (including work organised through the port labour pools) is considerably higher in the logistics sector (6.3 per cent in Hamburg in 2011) and especially in the warehousing and transshipment sector (11.4 per cent in Hamburg) than in the economy as a whole (2.6 per cent nation-wide in 2010). This is explained by the irregularities of demand. In the Hamburg region, 9 out of 10 temporary logistics workers (in the broad sense) are employed in the sector of warehousing and transshipment, where a total of 60,670 persons find employment. In 2010, 9.4 per cent of Hamburg's logistics workers were foreigners¹¹⁰⁹.

967. German port labour is highly unionised. In the early 2000s, the employers' organisation ZDS estimated union membership at about 90 per cent¹¹¹⁰. In 2008, the trade union ver.di stated that it represents over 80 per cent of port workers in Germany¹¹¹¹. Another source confirms an

¹¹⁰⁷ Warich, B.G. and Genschow, B., *Qualifikationsanforderungen in den Ostseehäfen im Bundesland Mecklenburg-Vorpommern - Endbericht*, Rostock, BÜSTRO, 1998, <http://www.piw.de/doc/port.pdf>, 18-19, with historical data on p. 8. The following ports were covered: Hafen Anklam, Seehafen Rostock (Gesamthafenbetrieb), Hafen Greifswald, Seehafen Stralsund, Seehafen Wismar, Betriebshafen Metallaufbereitung Rostock, Hafenkomplex Mukran, Rostocker Fischereihafen, Hafen Ueckermünde, Hafen Vierow, Hafen Wolgast, Seehafen Rostock (Umschlaggesellschaft).

¹¹⁰⁸ Achten, U. and Kamin-Seggewies, B., *Kraftproben. Die Kämpfe der Beschäftigten gegen die Liberalisierung der Hafearbeit*, Hamburg, VSA-Verlag, 2008, 162. In 2006, a figure of almost 11,000 was mentioned (see Bundesministerium für Verkehr, Bau und Stadtentwicklung, *Nationales Hafenkonzept für die See- und Binnenhäfen*, 17 June 2009, <http://www.bmvbs.de/cae/servlet/contentblob/31316/publicationFile/3887/nationales-hafenkonzept-fuer-die-see-und-binnenhaefen.pdf>, 21-22, with reference to PWC). The crisis of 2009 was overcome through redundancies and the *Kurzarbeit* system of reduced working hours.

¹¹⁰⁹ Logistik-Initiative Hamburg, *Logistik-Arbeitsmarktmonitoring 2010*, http://www.hamburg-logistik.net/fileadmin/user_upload/projekte/Arbeitsmarktmonitoring_Bericht_2010.pdf, 2011, 26-27, 28, 34 and 51; Logistik-Initiative Hamburg, *Logistik-Arbeitsmarktmonitoring 2011*, http://www.hamburg-logistik.net/fileadmin/user_upload/projekte/Arbeitsmarktmonitoring_Bericht_2011.pdf, 2012, 24-25 and 31; see also Bundesagentur für Arbeit, *Zeitarbeit in Deutschland - Aktuelle Entwicklungen*, <http://statistik.arbeitsagentur.de/cae/servlet/contentblob/244170/publicationFile/119019/Arbeitsmarkt-Deutschland-Zeitarbeit-Aktuelle-Entwicklung-1HJ2010.pdf>, January 2012, at 13.

¹¹¹⁰ Dombois, R. and Wohlleben, H., "The negotiated change of work and industrial relations in German seaports - the case of Bremen", in Dombois, R. and Heseler, H. (Eds.), *Seaports in the context of globalization and privatization*, Bremen, Kooperation Universität-Arbeiterkammer, 2000, (45), 51-52; see also X., *La négociation collective en 2003*, Ministère de l'emploi, du travail et de la cohésion sociale, Paris, 2004, 241. Wolfgang Kurz of Conterterm confirmed the 90 per cent figure as a good reflection of the current situation in German ports.

¹¹¹¹ <http://jugend.verdi.de/news/vorteilsregelung-fuer-ver-di-mitglieder>.

overall unionisation level of 80 per cent in the port of Hamburg¹¹¹². The latter estimate was confirmed by the Gesamthafenbetrieb of Hamburg, who pointed out that unionisation is higher at container terminals (which use 70 per cent of the pool and have a unionisation level of between 90 and 100 per cent) and among younger workers.

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 through the merger of five existing trade unions. Ver.di is organised at three territorial levels. Functionally, port labour is dealt with by the Ports Section in the Transport Department of the union¹¹¹³.

Until recently, German case law allowed only one collective labour agreement for each company (so-called *Tarifeinheit* or 'unity of collective agreements'), which, in practice, led to a monopoly of the largest trade union. In 2010, the Bundesarbeitsgericht put an end to this situation¹¹¹⁴, but this has not brought about any change in the sector of port labour.

In recent years, two new port workers' associations were founded: the trade union Connterm¹¹¹⁵, which was established in 2009 out of discontent with ver.di and directs its attention to the situation of workers at container terminals in Hamburg and Bremerhaven¹¹¹⁶, and the committee *Wir sind der GHB* ('We are the Port Labour Pool')¹¹¹⁷. Reportedly, the latter has now joined the former, although it continues to function separately as well. Connterm was unable to state details on their membership.

9.8.4. Qualifications and training

968. Ports such as Hamburg and Bremen are no exception to the general trend 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 workers¹¹¹⁸. The Container

¹¹¹² Hermel, C., *Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft*, Bachelorarbeit, Norderstedt, Grin/Books on Demand, 2010, 24.

¹¹¹³ Hermel, C., *Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft*, Bachelorarbeit, Norderstedt, Grin/Books on Demand, 2010, 23-24.

¹¹¹⁴ Bundesarbeitsgericht 23 June 2010, 10 AS 2/10 and 10 AS 3/10. See also Bundesarbeitsgericht, *Pressemitteilung Nr. 46/10*, <http://juris.bundesarbeitsgericht.de/cgi-bin/rechtsprechung/document.py?Gericht=bag&Art=pm&Datum=2010&nr=14424&pos=1&anz=47>; X, "Gewerkschaften verlieren Monopol. Bundesarbeitsgericht kippt Tarifeinheit", *Frankfurter Allgemeine* 23 June 2010, <http://www.faz.net/aktuell/wirtschaft/recht-steuern/gewerkschaften-verlieren-monopol-bundesarbeitsgericht-kippt-tarifeinheit-1595594.html>.

¹¹¹⁵ See <http://www.connterm.de>.

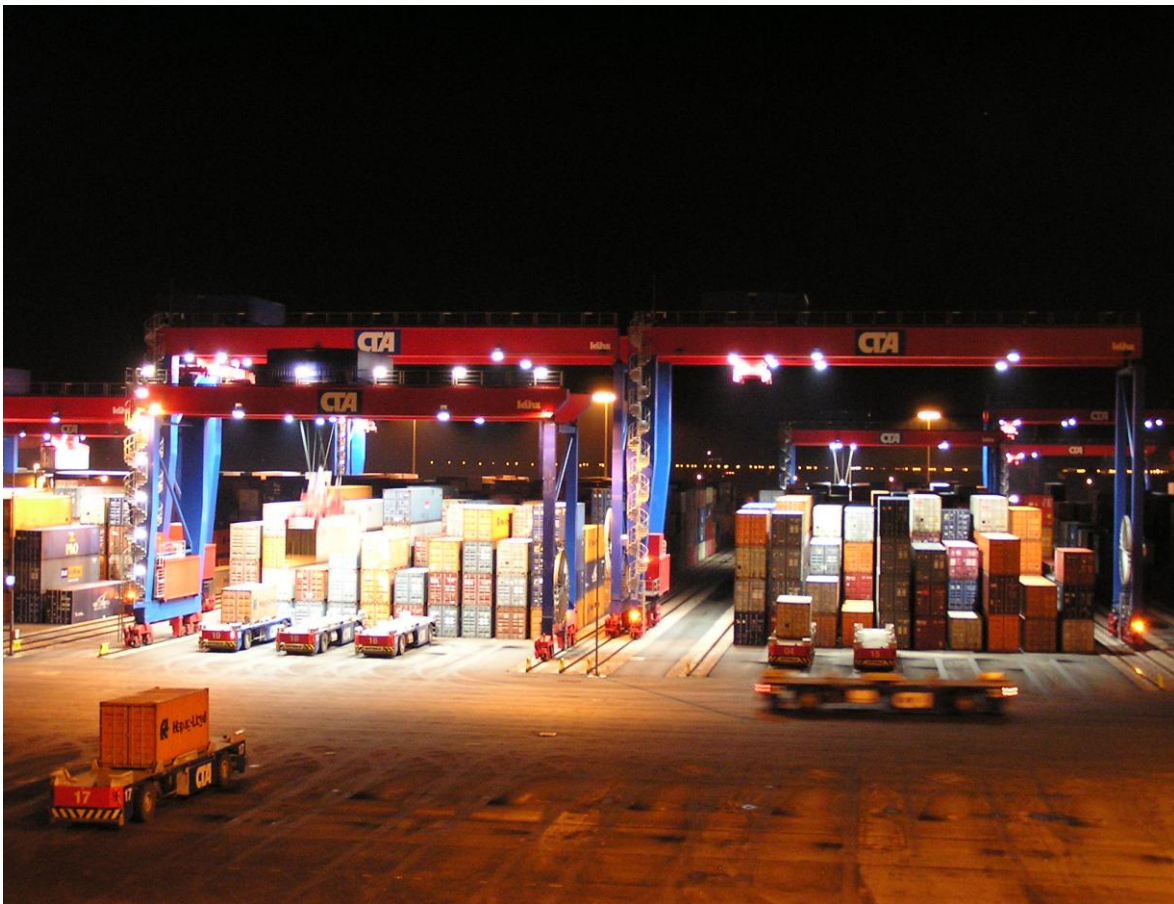
¹¹¹⁶ Hermel, C., *Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft*, Bachelorarbeit, Norderstedt, Grin/Books on Demand, 2010, 24-25.

¹¹¹⁷ See <http://www.wirsinderghb.de/> or <http://eklin.beepworld.de>.

¹¹¹⁸ Dombois, R. and Wohlleben, H., "The negotiated change of work and industrial relations in German seaports - the case of Bremen", in Dombois, R. and Heseler, H. (Eds.), *Seaports in the*

Terminal Altenwerder in Hamburg was one of the first in the EU to use AGVs. But in the logistics sector, many unskilled workers continue to find employment¹¹¹⁹. Apart from training, employers attach an increasing importance to attitude, team spirit and social skills¹¹²⁰. Recently, the Federal Ministry for Economy and Technology supported a major research project on innovative technologies in maritime ports¹¹²¹.

Figure 84. At the high-tech Container Terminal Altenwerder in the port of Hamburg, containers are transported with unmanned Automated Guided Vehicles (AGVs) (source: Hafen Hamburg Marketing).



context of globalization and privatization, Bremen, Kooperation Universität-Arbeiterkammer, 2000, (45), 57-58; Hermel, C., *Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft*, Bachelorarbeit, Norderstedt, Grin/Books on Demand, 2010, 4.

¹¹¹⁹ Hermel, C., *Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft*, Bachelorarbeit, Norderstedt, Grin/Books on Demand, 2010, 33.

¹¹²⁰ Hermel, C., *Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft*, Bachelorarbeit, Norderstedt, Grin/Books on Demand, 2010, 34.

¹¹²¹ See <http://www.isetec-2.de/>.

969. The Maritimes Kompetenzzentrum (ma-co), which resulted from a merger of the Port Vocational School at Bremen (Hafenfachschule Bremen)¹¹²², the Hamburg Port Training Centre (Fortbildungszentrum Hafen Hamburg)¹¹²³, which was founded in 1975 and the HHLA Vocational School (HHLA-Fachschule)¹¹²⁴, which has its origins in the Kaifachschule, founded in 1927¹¹²⁵, 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)¹¹²⁶. 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.di¹¹²⁷.

Importantly, since 1975 all port workers in Hamburg, Bremen and Niedersachsen have the right to be trained as professional port workers (*Hafenfacharbeiter*)¹¹²⁸. 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.

¹¹²² On the origins of port training at Bremen and Bremerhaven, see Scholl, L.U., "The Container Terminals in Bremerhaven and Bremen", in Holm, P. and Edwards, J. (Eds.), *North Sea Ports and Harbours – Adaptations to Change*, Esbjerg, Fiskeri- og Søfartsmuseets Forlag, 1992, (159), 178-179.

¹¹²³ On the former *Fortbildungszentrum Hafen Hamburg*, see "Berufs- und Fortbildung im Hafen Hamburg", in Rumpel, E. (Hg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., 253-255; Balzer, B., "Bericht aus der Vorstandsarbeit des Fortbildungszentrums Hafen Hamburg", in Rumpel, E. (Herausg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., 282-284.

¹¹²⁴ See www.ma-co.de; see also Hermel, C., *Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft*, Bachelorarbeit, Norderstedt, Grin/Books on Demand, 2010, 37. For an earlier account of training schemes in German ports, see Abendroth, M., Dombois, R. and Heseler, H., *Vom Stauhaken zum Container. Eine vergleichende Untersuchung der tariflichen and betrieblichen Regelungen der Hafendarbeit in den norddeutschen Häfen*, Stuttgart / Bremen, ÖTV / Kooperation Universität-Arbeiterkammer, 1981, 48 et seq.

¹¹²⁵ Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 49.

¹¹²⁶ Turnbull, P., *Training and Qualification Systems in the EU Port Sector: Setting the State of Play and Delineating an ETF Vision*, July 2009, <http://www.itfglobal.org/files/extranet/-75/17739/Final%20report%20EN.pdf>, 22-23. On the European Qualifications Framework, see *supra*, para 281.

¹¹²⁷ See www.ma-co.de; Hermel, C., *Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft*, Bachelorarbeit, Norderstedt, Grin/Books on Demand, 2010, 38; Senatorin für Arbeit, Frauen, Gesundheit, Jugend und Soziales and Senator für Wirtschaft und Häfen, *Qualifizierungsoffensive Seehafenlogistik 2007 bis 2012. Sachstandsbericht 2009*, 28 October 2009, http://www.wirtschaft.bremen.de/sixcms/media.php/13/17_261_Vorlage%20MaCO-B.pdf, 2-3. See also Scharringhausen, H., *Job proficiency: Competency based output VET in german maritime logistics (ports)*, www.itfglobal.org/etf/pd-training-docs.cfm.

¹¹²⁸ On the background, see Abendroth, M., Dombois, R. and Heseler, H., *Vom Stauhaken zum Container. Eine vergleichende Untersuchung der tariflichen and betrieblichen Regelungen der Hafendarbeit in den norddeutschen Häfen*, Stuttgart / Bremen, ÖTV / Kooperation Universität-Arbeiterkammer, 1981, 54 et seq.; Kamin, B., "Position of the German Union ver.di to modularised training's", <http://www.ipc-online.net/pdfs/Bernt%20Kamin%2002062003.pdf>.

Table 53. Number of port training certificates issued by the Gesamthafenbetrieb Hamburg to its pool workers, 31 December 2012 (source: Annual report of the Gesamthafenbetrieb, 2012)

Container gantry crane driver	255
Straddle carrier driver	495
Container checker	550
Container signalman	570
Container crane supervisor	630
Tractor driver	580
Container lasher	325
Rail crane / transtainer driver	80
Reach stacker driver	118
Heavy lift forklift driver	710
Professional port worker (<i>Hafenfacharbeiter</i>)	644

Similar efforts are undertaken by the Gesamthafenbetriebsverein of Bremen and Bremerhaven. Each year, considerable numbers of workers receive specialised training, which is partly aimed at multi-skilling¹¹²⁹.

In Hamburg and Bremen, specific educational programmes in port logistics are offered as well. Trainees can obtain a certificate as a professional logistics worker (*Fachkraft für Hafenlogistik / Fachkraft für Lagerlogistik*)¹¹³⁰.

For a number of jobs, a driver's licence is needed. In Bremerhaven, for example, where auxiliary workers are employed to load and unload cars they need a driver's licence B¹¹³¹.

970. In 1998, the EU-funded project PORT-ADAPT pointed out that port workers in German ports in Mecklenburg-Vorpommern (*i.e.*, the former DDR ports along the Baltic coast) were highly skilled and that, consequently, no specific training needs arose in these ports. Yet, some port workers felt a need to be better trained in port-related English, use of computers, EU

¹¹²⁹ For example, see figures for 2011 in Gesamthafenbetriebsverein im Lande Bremen e.V., *Jahresbericht 2011*, 22.

¹¹³⁰ Website GHB Hamburg, <http://www.gesamthafen.de/ausfortbildung.php>; website Gesamthafenbetriebsverein im Lande Bremen, <http://www.ghbv.de/de/fuer-auszubildende.html>.

¹¹³¹ See the job announcement for auxiliary workers on <http://www.ghbv.de/de/fuer-aushilfen/aushilfsjobs-in-bremerhaven.html>.

developments and the handling of dangerous goods. The report also highlighted the need for new organisational structures including flexible working times¹¹³².

The Gesamthafenbetrieb of Rostock informed us that today, about 80 per cent of all port workers have followed a three-year professional training course. Most workers possess additional qualifications, for example to handle machinery such as cranes or grain elevators. Untrained workers play no role at all in the port.

971. Between 2005 and 2011, the Port Work 05/15 project developed specific training courses for low-skilled unemployed who could obtain a Port / Distribution Competence Card (*Kompetenzpass Hafen / Distribution*) for the ports of Bremen and Bremerhaven. The project, which was financed by the European Social Fund, resulted in around 80 per cent of approximately 600 trainees finding a job in the port or the logistics sector, and produced a number of interesting background papers¹¹³³. Despite its success, it was not pursued after the 2009 financial crisis, but in the future it may be revived in Bremen and/or Hamburg in cooperation with the Federal Employment Office.

972. Currently, Hamburg and Bremen offer a similar training scheme for so-called *Hanselogistiker*¹¹³⁴.

973. From 2008 to 2013, the University of Bremen is cooperating with Eurogate on *Hafenlogistik – Bleib dran* (Port Logistics – Stay Tuned), a project for the retraining of long-term unemployed as logistics workers¹¹³⁵.

974. From 2011 to 2013, QualiLog, a new Bremen-based and ESF-funded project hosted by ma-co, will be preparing advanced training measures for the port sector¹¹³⁶.

¹¹³² Warich, B.G. and Genschow, B., *Qualifikationsanforderungen in den Ostseehäfen im Bundesland Mecklenburg-Vorpommern - Endbericht*, Rostock, BÜSTRO, 1998, 45 p., <http://www.piw.de/doc/port.pdf>.

¹¹³³ See http://www.soziale-innovation.de/news/detail/portwork_05_15_demografischer_wandel_in_der_bremischen_hafen_und_distributionslogistik-284/.

¹¹³⁴ On the latter, see http://www.ma-co.de/ma-co/projekte_hanselogistiker.php.

¹¹³⁵ See <http://www.aap.uni-bremen.de/ccm/content/beratung-supervision/hafenlogistik-bleib-dran/>.

¹¹³⁶ http://www.soziale-innovation.de/news/detail/qualifizierungsinitiative_in_der_bremischen_logistikwirtschaft_qualilog-227/.

975. In Hamburg, the private Hafenakademie is offering port training courses as well, *inter alia* for forklift and reach stacker drivers, cargo securers and container stuffers¹¹³⁷. The Hafenakademie informed us that currently they have around 780 students, among whom active port workers. In 2011, 210 students are said to have graduated.

976. The Port Operators' Association of Lübeck informed us that approximately 96 per cent of local port workers had some form of training (either for general or logistics work or to operate equipment).

9.8.5. Health and safety

- Regulatory set-up

977. Regulations on safety of work in German ports rest on a long tradition. In Hamburg, an official port safety inspector was appointed as early as 1897¹¹³⁸.

Today, port labour is subject to the general legislation on occupational health and safety. These general rules are laid down in the Labour Protection Act¹¹³⁹. It sets out duties for the employer *inter alia* 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.

978. A general duty of care for employers is based on the principle of good faith laid down in the Civil Code (§ 242), which results in a number of specific obligations including the protection of the life and health of employees.

979. Some safety aspects are governed by local regulations.

¹¹³⁷ See <http://hamburg.hafenakademie.de/>.

¹¹³⁸ Gesetz betreffend der Anstellung eines Hafenspektors. For background on trade union action, see <http://library.fes.de/fulltext/bibliothek/tit00205/00205c08.htm>.

¹¹³⁹ See *supra*, para 949.

In Hamburg, for example, Regulations on the Handling of Dangerous Goods in the Port of Hamburg apply¹¹⁴⁰.

The Occupational Health and Security Agency (Amt für Arbeitsschutz, AfA) of the City State of Hamburg¹¹⁴¹ is responsible for safety and health inspections in the port area.

First of all, it provides several guidance instruments on safe practices, some of which expressly refer to ILO instruments¹¹⁴².

In accordance with applicable law, surveillance (*Aufsicht*), consultancy (*Beratung*) and system audits (*Systemkontrolle*) (SCS) have been the key elements in the Hamburg inspection concept of the Occupational Safety and Health Department since 1998. The foundation of the Hamburg inspection concept is the Hamburg Labour Protection Model (*Hamburger Arbeitsschutzmodell*) which assigns companies to the categories A, B, and C, according to hazards and exposure. All companies registered in the Occupational Safety and Health Office's registry of commercial and public premises are assigned a sector number according to the classification system of the Federal Office of Statistics. The system of sector numbers distinguishes according to commercial class, and is applied uniformly throughout Germany by all Occupational Health and Safety authorities. Based upon the combination of the sector number and the size class, each company in the database is assigned to one of the hazard categories, A, B, or C, according to an algorithm used within the department.

Category A consists of approximately 360 companies, which are mostly larger companies or companies with a high accident-rate. All companies in category A (high risk) are visited according to a special timetable. The frequency of the inspections depends on the quality of their Safety Management System (SMS) (every 1, 2 or 3 years). The SMS is checked by AfA in the context of surveillance. In the Port of Hamburg these are, for example, container terminals, stevedores, lash gangs and big shipping companies. Surveillance and consultancy activities focus on the following elements:

- system audits, *i.e.* reviews and assessment of the integration of occupational safety and health into the corporate organisational and procedural structure;
- inspections launched by the office based upon the results of the system audit;
- occasional inspections and consultancy.

Category B consists of approximately 20,000 medium-sized companies or companies with a medium risk of accident. Companies in category B (medium risk) are visited within the scope of projects. There is no established frequency for the controls. For example, in the port of Hamburg there are port service companies, ship chandlers and shipping companies. Surveillance and consultancy activities focus on the following:

¹¹⁴⁰ Landesgefahrgutverordnung Hafen Hamburg (LGGVHH)
Vom 4. Juni 1996,
<http://www.landesrecht.hamburg.de/jportal/portal/page/bshaprod.psml?nid=0&showdoccase=1&doc.id=jlr-HfSiVHArahmen&st=lr>.

¹¹⁴¹ See <http://www.hamburg.de/arbeitschutz/>.

¹¹⁴² See again <http://www.hamburg.de/arbeitschutz/>.

- sector-specific projects addressing key sectoral issues and conducted primarily in conjunction with concerned institutions;
- projects for the reinforcement of systematic occupational safety and health in SMEs;
- inspections in Category B plants launched by the office, during which the organisation of occupational safety and health is reviewed against a checklist for SMEs, which is drawn up specifically for the purpose;
- occasional inspections.

Category C consists of approximately 50,000 companies, which are mostly small companies or companies with low risk. All companies in category C (low risk) are normally only occasionally visited. There is no given frequency of the controls. Here, the focus is on:

- occasional inspections and consultancy;
- in some cases, involvement in projects for category B companies.

The port of Hamburg has always been seen as a priority sector. Inspections are organised according to the 'Hamburger Arbeitsschutzmodell' every one, two or three years. Besides this, some terminals are inspected annually together with another Ministry (Pollution Act, emission control). Accidents are reported to AfA; even during the night or weekends the police may contact inspectors at home. Inspections take place three times a week. In most instances inspectors use the water taxi to reach their location. The main inspection points are:

- inspections according to the 'Hamburger Arbeitsschutzmodell': Risk Assessment, Accidents, Injuries, Safety Management System;
- inspections using the water taxi: access to the ship, ship design, stevedores, safety arrangements, personal protective equipment (PPE)¹¹⁴³.

In recent years, the Labour Inspection of Hamburg worked on several projects aiming at improving safety and health in the port, in particular health issues in container handling, including fumigation¹¹⁴⁴.

It is also a founding partner in an EU cooperation project on safety inspections in ports¹¹⁴⁵.

The Labour Inspection awards Occupational Safety Certificates to individual companies which apply an outstanding safety management system. The award criteria are particularly strict. The certificate has been granted to a number of port companies¹¹⁴⁶.

980. Pursuant to Paragraph 15 of the Seventh Book of the Labour Law Code, the statutory occupational accident insurers (the *Berufsgenossenschaften*) must adopt professional safety

¹¹⁴³ The above description of the activities of the Labour Inspection Agency is taken from Labour Inspectorate (Netherlands), *Meeting European Port Inspectors Rotterdam 2009. Evaluation Report*, <http://www.hamburg.de/contentblob/2547432/data/d501-portinsp-2009-rotterdam.pdf>, 8-9.

¹¹⁴⁴ See the overview on

¹¹⁴⁵ See *supra*, para 260.

¹¹⁴⁶ See details on <http://www.hamburg.de/aufsichtskonzept/57752/gruppe1-2007-09-21-sca.html> (link found broken upon updating).

regulations, which are approved by the Federal Ministry of Labour and Social Affairs and which are binding on the members of the occupational accident insurers.

Specifically with regard to port labour, detailed measures for the prevention of accidents at work are contained in the Accident Prevention Rule BGV C 21 on Port Labour (*Unfallverhütungsvorschrift BGV C 21 Hafenarbeit*)¹¹⁴⁷.

Under Accident Prevention Rule BGV C 21 on Port Labour, port work is defined as the loading and unloading of ships, including the preparation and completion of the work, and the ancillary handling, transportation, preparation and storage operations on land (§ 2(1)).

Accident Prevention Rule BGV C 21 on Port Labour contains *inter alia* general prevention rules, for example on the protection of head and feet, special rules on the handling of dangerous goods and special rules on the use of cranes as well as separate rules for shoreside work and work on board.

The *Berufsgenossenschaft Handel und Warendistribution (BGHW)*, which is the relevant occupational accident insurer for the port sector, provides further guidance instruments on specific aspects of port labour such as the driving of cranes¹¹⁴⁸.

According to the Gesamthafenbetrieb of Hamburg, because of insufficient staffing at the State's labour inspectorate, compliance with safety regulations is in practice mainly controlled and monitored by the Berufsgenossenschaft.

981. The National Collective Framework Agreement on Port Labour in German Ports contains general rules with regard to occupational safety and health (§ 13). It obliges employers to arrange working conditions in such a way that the workers are protected from hazards to life and health.

982. The Satzung for the Gesamthafenbetrieb of Hamburg expressly obliges the latter to promote safety of work in the port. To that end, it may *inter alia* organise accident prevention courses (§ 18.1).

983. A last instrument worth mentioning is the Federal Guidelines on Container Packing, which were published in 1999¹¹⁴⁹.

¹¹⁴⁷ See full text on <http://medien-e.bghw.de/uvv/75/titel.htm>.

¹¹⁴⁸ See <http://medien-e.bghw.de/bghw/inh/bgi.htm>.

¹¹⁴⁹ CTU Packrichtlinien (Richtlinien für das Packen von Lading außer Schüttgut in oder auf Beförderungseinheiten (CTUs) bei Beförderung mit allen Verkehrsträgern zu Wasser und zu Lande), <http://www.tis-gdv.de/tis/ls/ctu/inhalt.htm>.

- Facts and figures

984. The Berufsgenossenschaft for Trade and Physical Distribution (Berufsgenossenschaft Handel und Warendistribution, BGHW) provided us with statistics on occupational accidents in ports, which also allow an elementary comparison with other sectors¹¹⁵⁰. This comparison indicates that port labour is a particularly dangerous industry branch, with an incidence rate only slightly lower than in the construction industry.

Table 54. Number of workplace accidents in stevedoring, shipment, transshipment and storage in German ports, 2007-2011 (source: Berufsgenossenschaft Handel und Warendistribution)

		2007	2008	2009	2010	2011
Stevedoring	Non-fatal accidents	1,454	1,627	1,201	1,616	1,760
	Fatal accidents	3	1	0	2	0
Shipment, transshipment and storage ¹¹⁵¹	Non-fatal accidents	215	329	338	367	295
	Fatal accidents	0	0	1	0	0

¹¹⁵⁰ The port labour-related sectors were identified by the BGHW as *Gewerbszweignummer 0400* (cargo handling or stevedoring companies) and *Gewerbszweignummer 0390* (shipment, transshipment and storage companies). The other sectors used in the comparison were defined by the competence of the various Berufsgenossenschaften.

¹¹⁵¹ These numbers represent accidents in companies which are active in ports, but which may also have activities outside ports.

Table 55. Number and incidence rate¹¹⁵² of reportable workplace accidents at stevedoring companies in Germany, compared with incidence rates for other branches of industry, 1995-2011 (source: Berufsgenossenschaft Handel und Warendistribution and Deutsche Gesetzliche Unfallversicherung e.V.)

	Stevedoring companies		Raw materials and chemicals industry	Wood-working and metal-working industries	Building trade	Transport industry (until 2008 including rail transport)
	Number of accidents	Incidence rate	Incidence rate	Incidence rate	Incidence rate	Incidence rate
1995	n.a.	n.a.	42.80	70.20	109.71	57.95
2000	n.a.	n.a.	30.81	58.31	90.42	50.63
2001	2,171	82.31	n.a.	n.a.	82.2	46.4
2002	2,029	78.84	n.a.	n.a.	78.9	46.7
2003	1,935	72.50	n.a.	n.a.	73.1	43.5
2004	1,832	51.42	n.a.	n.a.	70.3	41.45
2005	1,885	52.15	20.42	43.61	66.96	41.38
2006	2,029	54.02	n.a.	n.a.	70.33	41.37
2007	2,413	48.07	n.a.	n.a.	66.60	39.88
2008	2,724	54.68	n.a.	n.a.	67.32	39.96
2009	2,310	48.79	17.34	40.16	65.13	36.99
2010	2,726	59.51	19.24	42.62	66.54	42.92
2011	2,686	55.31	18.75	43.09	63.68	43.34

985. According to the Port Operators' Association of Lübeck, on average 1.5 minor occupational accident occurs every month in the port, but since 1987 there has been only one fatal accident (in 2004).

986. In recent years, federal agencies and occupational accident insurers commissioned a number of studies on specific aspects of safety and health in port labour¹¹⁵³.

¹¹⁵² Number of accidents per 1000 full-time equivalent employees.

¹¹⁵³ See *infra*, para 1001 *et seq.*

9.8.6. Policy and legal issues

- 'Micro-corporatism'

987. First and foremost, port labour arrangements in German ports were termed "micro-corporatist" in that they rest on a high degree of co-determination by the social partners which is backed by both the legislator and competent authorities¹¹⁵⁴. In conjunction with the efficient organisation of work in Hamburg and Bremen, this explains why the overall acceptance of the port labour regime seems high among both employers and employees¹¹⁵⁵.

Below, we shall go into (1) the exclusive rights of the Gesamthafenbetriebe and the mandatory membership of these entities (2) membership of trade unions.

988. As we have explained¹¹⁵⁶, Gesamthafenbetriebe enjoy an exclusive right to supply temporary port labour.

In this respect, it should be recalled that back in the 1970s a number of individual port companies in Hamburg, Bremen, Nordenham and Brake started to hire temporary workers autonomously; to rely, to this end, on dubious if not illegal work agencies; and to exchange their own workers through subcontracting arrangements. The Temporary Work Agencies Act, which was first introduced in 1973, did not bring legal certainty in this respect. The media reported on human trafficking situations and activities of 'slave trade firms'

¹¹⁵⁴ See Dombois, R. and Wohlleben, H., "The negotiated change of work and industrial relations in German seaports - The Case of Bremen", in Dombois, R. and Heseler, H. (Eds.), *Seaports in the context of globalization and privatization*, Bremen, Kooperation Universität-Arbeiterkammer, 2000, (45), 52-53:

Particularly in those large companies in which municipalities have a large stake, such as the BLG in Bremen and the Hamburger Hafen- und Lagerhaus-Gesellschaft (HHLA) in Hamburg, codetermination has created a dense network of links between shareholders, company managements and employee representative bodies, based on communication, cooperation and a pressure to reach compromises that political scientists would describe as "microcorporatist" (Keller 1993). Employees are represented on the supervisory boards of the large firms by trade union and works council delegates; it is not unusual for employee representatives also to have close contacts with representatives of the municipality sitting on the supervisory boards. Many Directors of Labour have carried out trade union functions at some time in the past and have strong links with the works councillors in their firms; the works councils have a strong bargaining position. It is worth noting that the disputes that characterised industrial relations in the ports in the 1950s have given way to various forms of day-to-day cooperation and pragmatic bargaining that hardly ever need to be backed up by industrial action. As in other industries, day-to-day cooperation has led to works councils increasingly taking on a joint managerial role, working in collaboration with the trade union representatives on supervisory boards and with the Directors of Labour. Works councillors today are increasingly likely to think like managers, and are even developing their own rationalisation strategies.

The reference is to Keller, B., *Einführung in die Arbeitspolitik*, München / Vienna, 1993.

¹¹⁵⁵ This attachment was also confirmed in Ministère de l'emploi, du travail et de la cohésion sociale, *La négociation collective en 2003*, Paris, Editions législatives, 2004, 247.

¹¹⁵⁶ See *supra*, paras 957-958.

(*Sklavenhändlerfirmen*) in the port¹¹⁵⁷. Several years later, the Gesamthafenbetrieb adopted guidance on the exchange of workers and on the use of occasional workers. In the early 1980s, a number of critical port companies commissioned a legal opinion on the status of the Gesamthafenbetrieb. Professor Martens confirmed that the Gesamthafenbetriebe possess regulatory powers and that, in order to fulfil their task, they should also enjoy an exclusive right. On the other hand, the legal expert concluded that the Gesamthafenbetriebe may not set limits to overtime work, decide on a halt in recruitment or impose prior approval of permanent employment contracts¹¹⁵⁸. In 1984, German authorities expressly acknowledged that (1) the Port Labour Act, as a *lex specialis*, takes priority over the Temporary Work Agencies Act; (2) where companies exchange permanent workers through the Gesamthafenbetrieb, the latter is not acting as a temporary work agency, and (3) any use of temporary workforce in the port must be organised through the Gesamthafenbetrieb¹¹⁵⁹.

In a published research paper, Klaus-Peter Martens argued that, even if the monopoly of the Gesamthafenbetriebe in respect of the provision of temporary port workers restricts constitutional freedoms of companies and workers, it is acceptable in view of the social benefits it brings for these workers. The Gesamthafenbetriebe would never be able to fulfil their legal duties to ensure stable employment conditions for casually employed pool workers and to maintain their own existence if no limits were set to the freedoms of individual port companies in employment matters and, more in particular, if these companies were not compelled to rely on the services of the pool. Were individual employers at liberty to hire temporary workers from third parties or to exchange their permanent workers among themselves, the Gesamthafenbetriebe would be unable to calculate their own employment needs and to assess the economic risks of engaging new pool workers. For these reasons, the (sub)market for the supply of temporary port labour must be reserved for the Gesamthafenbetriebe. What is more, the exclusive right of the Gesamthafenbetrieb ensures a steady supply of trained and experienced workers¹¹⁶⁰.

Claudia Weinkopf confirmed that direct hiring of temporary workers by individual port companies would not only be illegal in the short run, but, in the medium run, also endanger the very existence of the Gesamthafenbetriebe¹¹⁶¹.

¹¹⁵⁷ On the latter issue, see also Abendroth, M., Dombois, R. and Heseler, H., *Vom Stauhaken zum Container. Eine vergleichende Untersuchung der tariflichen and betrieblichen Regelungen der Hafendarbeit in den norddeutschen Häfen*, Stuttgart / Bremen, ÖTV / Kooperation Universität-Arbeiterkammer, 1981, 69.

¹¹⁵⁸ On the latter issue, see Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 82-83. The requirement to seek prior approval from the Gesamthafenbetrieb has since been abolished.

¹¹⁵⁹ Bartsch, P., "Die Entstehung und der Auftrag des Gesamthafenbetriebes (GHB) und der Gesamthafenbetriebs-Gesellschaft M.B.H. (GHBG) und Ihre Entwicklung seit 1645", in Rumpel, E. (Hg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., (46), 55-56.

¹¹⁶⁰ See Martens, K.-P., "Kompetenzrechtliche Probleme des Gesamthafenbetriebs", in Selmer, P. (Ed.), *Gedächtnisschrift für Wolfgang Martens*, Berlin, Walter de Gruyter, 1987, (637), 647-657; see also Martens, K.-P., "Hafenbetrieb und Hafendarbeit nach dem Gesamthafenbetriebsgesetz", *Neue Zeitschrift für Arbeitsrecht* 2000, (449), item IV.2.

¹¹⁶¹ Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 71; see also Weinkopf, C., *Arbeitskräftepools*, Munich / Mering, Rainer Hampp Verlag, 1996, 147.

In a similar vein, Peter Bartsch, the CEO of the Hamburg Gesamthafenbetrieb, argued that, were Gesamthafenbetriebe not be entitled to supply additional auxiliary workers (*Aushilfsarbeiter*), they would all too often be unable to meet peak demands. Permanent employment of these additional workers would prove unsustainable to the pools and their Subsistence Funds (*Garantielohnkasse*)¹¹⁶².

Despite these widely accepted justifications of the Gesamthafenbetrieb's exclusive right, a number of issues remain to be solved.

First of all, the authors who insist that the Gesamthafenbetriebe need an exclusive right in order to remain cost-effective do not underpin this with concrete economic and financial data (but neither are we aware of studies where the economic *raison d'être* of the Gesamthafenbetriebe is refuted).

Secondly, Martens stresses that the scope of the Gesamthafenbetrieb's exclusive right is limited to the (sub)market of the supply of temporary labour. Consequently, individual port companies should not be prevented from directly hiring their own core personnel. Neither would the *ratio* of the Port Labour Act – namely, the protection of casually employed pool workers – justify a ban on self-handling by ship's crews¹¹⁶³.

Thirdly, the observation that a Gesamthafenbetrieb cannot force ship owners and other carriers of goods to rely on the services of cargo handlers who have joined it – which has been considered a fundamental difference with the facts in *Merci*¹¹⁶⁴ – should be put into perspective, because it remains true that the Port Labour Act virtually obliges all cargo handlers to cooperate with the Gesamthafenbetrieb¹¹⁶⁵.

Fourthly, Martens sees no legal obstacles to subcontracting between individual port companies, as long as these arrangements do not aim at circumventing the ban on the direct hiring and supplying of temporary labour¹¹⁶⁶. The Gesamthafenbetrieb of Hamburg confirmed to us that there is no ban on subcontracting, as long as the normal rules on employment are complied with.

Fifthly, the Gesamthafenbetrieb Hamburg is aware of the risk that that pool workers who are always or regularly employed at the same terminal might lose sight of the fact that the Gesamthafenbetrieb continues to be their legal employer. The Gesamthafenbetrieb tries to remind workers of their 'origin' and is confident that in the future it will not be forced to confine itself to the mere filling up of shortages of labour at peak times¹¹⁶⁷.

¹¹⁶² Bartsch, P., "Die Entstehung und der Auftrag des Gesamthafenbetriebes (GHB) und der Gesamthafenbetriebs-Gesellschaft M.B.H. (GHBG) und Ihre Entwicklung seit 1645", in Rumpel, E. (Hg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., (46), 61-62.

¹¹⁶³ Martens, K.-P., "Hafenbetrieb und Hafendarbeit nach dem Gesamthafenbetriebsgesetz", *Neue Zeitschrift für Arbeitsrecht* 2000, (449), item IV.2.

¹¹⁶⁴ See <http://de.goldenmap.com/Gesamthafenbetrieb> (link found broken upon updating).

¹¹⁶⁵ See further *infra*, para 989.

¹¹⁶⁶ Martens, K.-P., "Kompetenzrechtliche Probleme des Gesamthafenbetriebs", in Selmer, P. (Ed.), *Gedächtnisschrift für Wolfgang Martens*, Berlin, Walter de Gruyter, 1987, (637), 652 and 656-657.

¹¹⁶⁷ *Jahresbericht der Gesamthafenbetriebs-Gesellschaft m.b.H. Hamburg*, 2006, 19.

Sixthly, it may sound paradoxical that, whereas the Gesamthafenbetriebe were established in order to ensure stable employment for casual port workers, these pools enjoy an exclusive right to supply, in case of peak demand, auxiliary workers (*Aushilfsarbeiter*) who enjoy no stability of employment or unemployment benefits at all. In addition, Gesamthafenbetriebe were accused of relying systematically on large numbers of auxiliary workers who continue to be casually employed for several consecutive years; this practice is even said to run counter to the Statutes of the Gesamthafenbetriebe¹¹⁶⁸. This situation is explained by the fact that the latter workers are mainly students; workers who are regularly employed elsewhere and only wish to raise their normal income; and workers who voluntarily opted for an unstable form of employment. In other words, these auxiliary workers are not interested in permanent employment in the port¹¹⁶⁹. The downside is that the conditions for casual workers may attract people who are sympathetic towards a certain degree of unemployment, which may impact negatively on the quality of work¹¹⁷⁰. To avoid confusion, the Gesamthafenbetrieb of Hamburg informed us that it never hires auxiliary workers from regular temporary work agencies.

Seventhly, the Gesamthafenbetrieb system has in practice not prevented employers from hiring temporary workers themselves. Reportedly, when at the end of 2010, the Bremer Lagerhausgesellschaft (BLG) was in dire need of car-drivers for its car terminal, it hired large numbers of temporary agency workers. Allegedly, it did so despite the fact that auxiliary workers (*Aushilfsarbeiter*) of the Gesamthafenbetrieb were still available. The hiring of interim workers was denounced by the trade unions, because it inevitably leads to lower wages, job insecurity and social dumping¹¹⁷¹. The Gesamthafenbetriebsverein points out that in this case temporary workers were hired in a situation of necessity and in full accordance with the regulations¹¹⁷².

Eighthly, with a view to the opening of the new container terminal at JadeWeserPort in 2012, trade union ver.di opposed the hiring of temporary port labour needed during peak moments through general temporary labour agencies. It asserted that this would lead to social dumping and give the port of Wilhelmshaven a competitive advantage over other German ports, which might lead to fewer and less well-paid jobs for port workers and ultimately jeopardise industrial peace¹¹⁷³. Reportedly, the terminal operator is now considering the establishment of a Gesamthafenbetrieb for JadeWeserPort.

¹¹⁶⁸ See Dietz, A., "Hire and Fire im Hafen", *TAZ* 12 September 2011.

¹¹⁶⁹ Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 43.

¹¹⁷⁰ Comp. already Klugmann, W., *Der Hamburger Hafentarbeiter. Soziale Probleme beim Güterumschlag*, Hamburg, Schiffahrts-Verlag "Hansa" C. Schroedter & Co., 1954, 59.

¹¹⁷¹ mue, "Der Dolchstoß für den Gesamthafenbetriebsverein", *Nordsee-Zeitung* 11 March 2010; mue, "Zeitarbeitsfirma erledigt die Jobs im Hafen", *Nordsee-Zeitung* 1 March 2011; Mündelein, K., "Zeitarbeit in der Grauzone", *Nordsee-Zeitung* 9 March 2011; Mündelein, K., "Personal Aktiv" im Hafen", *Nordsee-Zeitung* 16 March 2011; Mündelein, K., "Kuschelt BLG mit Zeitarbeit?", *Nordsee-Zeitung* 18 May 2011; vda, "Immer mehr Leiharbeiter im Hafen: Der Ton wird schärfer", *Nordsee-Zeitung* 5 March 2011.

¹¹⁷² Gesamthafenbetrieb im Lande Bremen e.V., *Jahresbericht 2010*, 11-12.

¹¹⁷³ Brinkhoff, A., "Demonstrationen gegen Lohndumping. Protest der Hafentarbeiter. Arbeiter norddeutscher Häfen und Ver.di fordern auch für Wilhelmshaven einen vertrauenswürdigen Personaldienstleister sowie die Sicherung der Tarif-Löhne", website Taz.de, 12 December 2011, <http://www.taz.de/!83607> (link found broken upon updating); X., "Ein Gesamthafenbetrieb für den

Ninthly, in mid-2012 the Labour Senator for Hamburg, the chairman of the Gesamthafenbetrieb and the trade union ver.di demanded that the Gesamthafenbetrieb remain outside the scope of the German Temporary Work Agency Act as amended on the basis of EU Directive 2008/104/EC¹¹⁷⁴. Compliance with this Act might jeopardise the social achievements of the pool system and undermine wage rates agreed upon through collective bargaining. Whilst nothing can be said against competition as such, opening up the market to temporary work agencies would only result in social dumping practices, particularly in respect of pay rates, and in industrial unrest. Given the wage and labour conditions that prevail in the port, EU standards are already largely complied with today. Finally, temporary work agencies would never be able to offer equally high qualified workers. No ship owner would accept that gantry cranes would be operated at a lesser speed, for example¹¹⁷⁵. We have no knowledge of the outcome of these discussions, which were still ongoing by November 2012. Particularly the trade union ver.di is said to oppose the assimilation of the Gesamthafenbetriebe with temporary work agencies.

Tenthly and finally, the hiring hall at the port of Hamburg is apparently only used for the hiring of very limited numbers of workers (perhaps only 10 workers). The Gesamthafenbetrieb stated that the premises continue to fulfil a number of other useful purposes of a social nature such as the provision of drinks, meals and a port shuttle service. We have no knowledge of the existence of any similar facility in other German ports.

989. Pursuant to the Port Labour Act, the Gesamthafenbetrieb encompasses (*umfaßt*) all local port undertakings, including non-members of the employers' association and non-contracting firms, as soon as the association of employers or a group of individual employers who employed 50 per cent of the port workers in the previous quarter have decided to establish such a Gesamthafenbetrieb (§ 2(1)). Employers who do not wish to cooperate with the Gesamthafenbetrieb or who do not need pool workers at all, or only on rare occasions, are nevertheless forced to comply with the Gesamthafenbetrieb's rules and to contribute financially to the system, even where collectively they would employ 49 per cent of the port's workforce.

Initially, the 1950 Port Labour Act and the Agreement on the establishment of the Hamburg Gesamthafenbetrieb were perceived to result in a reservation of the right to offer cargo handling services in the port for companies who had joined the pool. The new arrangements served the aim of preventing outsider companies from employing outsider workers (*daß kein*

Jade-Weser-Port", website radio Bremen, 14 December 2011, <http://www.radiobremen.de/politik/nachrichten/politikwirtschafteinigungeurogateverdi100.html>; X., "Eurogate für Gespräche über Gesamthafenbetrieb", website Weser Kurier, 13 December 2011, <http://www.weser-kurier.de/Artikel/Bremen/Wirtschaft/500308/Eurogate-fuer-Gespraech-ueber-Gesamthafenbetrieb.html>; website of ver.di: <http://verkehr.verdi.de/haefen>.

¹¹⁷⁴ On the latter Directive, see *supra*, para 225 *et seq.*

¹¹⁷⁵ Balasko, S., "Arbeitssenator Scheele will Tariflöhne im Hafen retten", *Hamburger Abendblatt*, 30 June 2012, <http://www.abendblatt.de/wirtschaft/article2323857/Arbeitssenator-Scheele-will-Tarifloehne-im-Hafen-retten.html>.

wilder Betrieb wilde Arbeitskräfte anheuern kann), from undercutting their competitors and from paying lower wages than agreed upon by the social partners¹¹⁷⁶.

Today, legal experts justify the compulsory registration by the Gesamthafenbetrieb of outsider companies by an analogy with generally binding collective labour agreements¹¹⁷⁷. In addition to this analogy, Martens legitimises the regulatory powers of the Gesamthafenbetriebe, including as against outsiders, by referring to the freedom to establish trade unions which is enshrined in the German Constitution and to the ensuing right of collective bargaining¹¹⁷⁸. Here, quite paradoxically, restrictions on the freedom to join the Gesamthafenbetrieb and to apply its regulations are justified on the basis of the very freedom of association.

Another remarkable analogy to Gesamthafenbetriebe was drawn with cartels¹¹⁷⁹.

Whatever the case, Assmann argues that outsider companies may challenge an unjustified inclusion in a Gesamthafenbetrieb before the ordinary courts¹¹⁸⁰. As a matter of fact, not all port companies cooperate with the Gesamthafenbetrieb (in 1992, only 110 out of 150 companies in the port of Hamburg did so¹¹⁸¹; we have no knowledge of the current share).

Next, the Port Labour Act is silent on the consequences of a later situation where it emerges that the level of employment ensured by the founding employers drops below the 50 per cent threshold. Neither does the Act regulate the conditions under which employers may then leave the pool. The Gesamthafenbetrieb of Hamburg clarified that a majority of employers may always decide to abolish the pool.

The financing of the Gesamthafenbetriebe is not regulated in the Port Labour Act either. Legal issues may arise where cargo handling companies and ship owners who do not see a need to rely on the Gesamthafenbetrieb are nevertheless forced to financially contribute to the system. More particularly, mention should again be made of the surcharge which is payable by all customers of cargo handling services in German ports where a Gesamthafenbetrieb exists. These surcharges are even due where the port service provider is not relying on pool workers at all. On the other hand, it should be pointed out that the Gesamthafenbetriebe do not receive public money.

¹¹⁷⁶ *Hafen Schifffahrt Wasserbau*, 21 May 1951, para 11, reproduced in Rumpel, E. (Hg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., (64), 64.

¹¹⁷⁷ See Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 20.

¹¹⁷⁸ Martens, K.-P., "Kompetenzrechtliche Probleme des Gesamthafenbetriebs", in Selmer, P. (Ed.), *Gedächtnisschrift für Wolfgang Martens*, Berlin, Walter de Gruyter, 1987, (637), 647.

¹¹⁷⁹ See Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 59-60 and 77, and the further references; Wiebel, E., "Die Gestaltung der Gesamthafenbetriebe", *Das Recht der Arbeit* 1953, (291), 293.

¹¹⁸⁰ Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 21-22.

¹¹⁸¹ Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 54.

990. The high union density at German ports¹¹⁸² may give rise to closed shop-issues. In addition, workers are said to be often recruited on the basis of kinship¹¹⁸³. Generally, trade union density in Germany is not particularly high (perhaps around 20 per cent)¹¹⁸⁴.

As we have explained above¹¹⁸⁵, recently a number of new port worker movements emerged. In particular the relations between ver.di and newcomer Conterterm appear rather sour. Conterterm accused ver.di of exerting pressure on job candidates to join the union and of playing an ambiguous role on the Board of the Gesamthafenbetriebe. Without ver.di membership, workers will find no employment, will not be supported by the Works Council and not receive the annual holiday benefit (*Erholungsbeihilfe*) paid to ver.di members by the employer (which currently amounts to 260 EUR). Ver.di dismissed these accusations as nonsensical however¹¹⁸⁶, and the Hamburg Labour Court found that the exclusive holiday benefit for ver.di members does not infringe freedom of association as guaranteed by the German Constitution¹¹⁸⁷. The Gesamthafenbetrieb of Hamburg stated that today Conterterm plays no role of any significance in the port, that it cannot be considered a trade union in the proper sense of the word, that it is not involved in the management of the pool at all and that no container terminal company wishes to negotiate on a separate collective agreement with Conterterm. One interviewed container terminal operator concurred that these new groupings are not trade unions in the proper sense and came into being as protest movements when the Gesamthafenbetriebe were seriously hit by the economic crisis of 2009.

991. Since the crisis of 2009, employers at Bremen and Bremerhaven feel a need to modernise and consolidate the Gesamthafenbetrieb through a reduction of its cost structure as well as of bureaucratic procedures, in order to enable the pool to respond quickly to market developments. So far, the unions have opposed such reform measures¹¹⁸⁸.

992. An interviewed ro-ro carrier operating at several German ports stated that neither the monopoly of the Gesamthafenbetrieb nor the closed shop should be regarded as main problems. Far more attention should be given to the factual monopolies of cargo handling companies in ports such as Bremerhaven and Emden, which result in inflated prices.

¹¹⁸² See *supra*, para 967.

¹¹⁸³ Ministère de l'emploi, du travail et de la cohésion sociale, *La négociation collective en 2003*, Paris, Editions législatives, 2004, 241.

¹¹⁸⁴ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

¹¹⁸⁵ See *supra*, para 967.

¹¹⁸⁶ See *inter alia* Mündelein, K., "Job nur mit Verdi-Ausweis?", *Nordsee-Zeitung* 16 December 2011.

¹¹⁸⁷ Arbeitsgericht Hamburg 26 February 2009, 15 Ca 188/08, http://www.landesrecht.hamburg.de/jportal/portal/page/bshaprod.psml?doc_id=JURE090032108&st=ent&showdoccase=1¶mfromHL=true#focuspoint.

¹¹⁸⁸ Gesamthafenbetriebsverein im Lande Bremen e.V., *Jahresbericht 2011*, 12-13.

- *Restrictions on employment and restrictive working practices*

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

First of all, as we have explained at length, 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 ordering workers to hire the necessary winchmen and signalmen as well (§ 8(6)). 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. A container terminal operator specified that straddle carrier drivers, for example, can be deployed between tasks in a very flexible way, according to the actual needs.

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 (§ 9(5) of the *Verwaltungsordnung*).

Fourthly, as we shall explain below¹¹⁸⁹, self-handling by ship's crews is not permitted.

Fifthly, as we have explained above¹¹⁹⁰, employers may as a rule not rely on temporary agency workers or subcontracting. A ro-ro shipping line explained to us that it needs experienced terminal drivers who do not cause damage. Such workers are available at Bremerhaven and Cuxhaven and cannot be supplied by temporary work agencies. A container terminal operator confirmed that temporary work agencies would be 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 themselves¹¹⁹¹. We have not looked in to general German law on the hiring out of workers.

¹¹⁸⁹ See *infra*, para 996.

¹¹⁹⁰ See *supra*, para 988.

¹¹⁹¹ See *supra*, paras 957 and 958.

Seventhly, one interviewee complained about fixed shift times in Bremerhaven and Emden which render operations rather inflexible, while in Cuxhaven, no shift system applies and workers start and end work as the ships arrive and sail. For this ship owner, the lack of flexibility resulting from the shift system is perhaps the most pressing issue in German ports today.

Eighthly, one interviewee asserted that further automation of the Container Terminal Altenwerder, using the full potential of OCR technology, was opposed by the trade union.

- Competitive impact of decision to establish a Gesamthafenbetrieb

994. As we have explained¹¹⁹², Gesamthafenbetriebe are established on a voluntary basis by the social partners.

At the time of writing, the trade union ver.di was advocating the establishment of a Gesamthafenbetrieb for the JadeWeserPort in Wilhelmshaven, because the use of temporary work agencies at this new facility would result in a downward pressure on wages and unfair competition with Hamburg and Bremerhaven. If no Gesamthafenbetrieb were established for the new port, its customers would be exempt from the 1.5 per cent surcharge on invoices sent by the terminal operator. To our knowledge, no final decision on this issue has been taken yet¹¹⁹³.

Whatever the outcome in this specific case, the voluntary and local nature of the decision to establish a Gesamthafenbetriebe and the ensuing possibility that labour conditions may substantially differ between German ports may result in competitive issues.

- Delimitation issues, logistics and self-handling

995. In Germany, too, issues arise in relation to the definition of port labour and the delimitation of the scope of the specific laws and regulations on port labour. As we have explained¹¹⁹⁴, this definition determines the scope of the exclusive right of the Gesamthafenbetriebe¹¹⁹⁵. Klaus-Peter Martens observes that delimitation issues are quite

¹¹⁹² See *supra*, para 954.

¹¹⁹³ See *supra*, para 988.

¹¹⁹⁴ See *supra*, para 953.

¹¹⁹⁵ See also Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 25.

inevitable and that, in specific cases, employers may be tempted to circumvent the legal regime of port labour and the exclusive right of the Gesamthafenbetrieb by fleeing the port (*durch eine "Hafenflucht"*)¹¹⁹⁶.

In the past, the Gesamthafenbetriebe had to adjust the definition of port labour, in most cases to extend the scope of their exclusive right, in order to respond to new situations. In the mid-1980s, for example, the Statute of the Gesamthafenbetrieb of Hamburg was amended in order to bring container lashing under the Port Labour Act, because it was found unacceptable that the concept of port labour would not cover the only inboard work that was left for port workers in the container trade. The Board clarified that the notion of port labour should be interpreted on the basis of the nature of the work involved and that it is irrelevant whether the work at issue is performed in predefined categories of companies such as stevedoring or warehousing companies. As a result, cleaning, painting or bricklaying work carried out within a stevedoring firm was no longer considered port labour; on the other hand, port work performed only occasionally in a company was now to be classified as port labour within the meaning of the Port Labour Act¹¹⁹⁷.

Logistics and physical distribution activities that take place within the port are not necessarily considered port work. In the port of Hamburg, for example, container packing and distribution activities are expressly included within the definition of port labour¹¹⁹⁸. In 1989, trade union ÖTV and UVHH signed a separate collective labour agreement on distribution and container packing activities. The Gesamthafenbetrieb justified the lower pay rate by the fact that port companies and their workers had won new activities that would otherwise have moved to locations outside the port area, and that it would have been pointless to decree that all containers must be stuffed and stripped by regular port workers. Transportation companies, however, challenged their inclusion within the scope of the Port Labour Act. Subsequently, the Statute of Hamburg's Gesamthafenbetrieb was amended so as to include the activities at issue¹¹⁹⁹. However, this inclusion by the Gesamthafenbetrieb gave rise to court proceedings. Eventually, the Gesamthafenbetrieb decided that it would relinquish its demands to have this kind of work performed by port workers at all times. However, it did not abandon its ambition to be the sole competent workforce provider for port-related services, and in 1998 it established, in conjunction with a number of port companies, its own temporary work agency, called PHH Personaldienstleistung GmbH, which hires out non-port workers, *inter alia* for container packing and distribution activities. It also negotiated specific collective agreements with the trade

¹¹⁹⁶ Martens, K.-P., "Hafenbetrieb und Hafenarbeit nach dem Gesamthafenbetriebsgesetz", *Neue Zeitschrift für Arbeitsrecht* 2000, (449), items I and V.2.

¹¹⁹⁷ Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 58-59; see also "Aus der Arbeit des GHB-Vorstandes", in Rumpel, E. (Hg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., (70), 70-71.

¹¹⁹⁸ See *supra*, para 957.

¹¹⁹⁹ See Bartsch, P., "Die Entstehung und der Auftrag des Gesamthafenbetriebes (GHB) und der Gesamthafenbetriebs-Gesellschaft M.B.H. (GHBG) und Ihre Entwicklung seit 1645", in Rumpel, E. (Hg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., (46), 57-58; Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 59-61.

union¹²⁰⁰. For logistics activities, the Gesamthafenbetrieb has to deal with competition by other temporary work agencies. Practically speaking, most logistics workers employed through the Gesamthafenbetrieb come from the temporary agency sector¹²⁰¹. The current Framework Agreement on Logistics in the port of Hamburg¹²⁰² applies to companies where goods are received, stored, sorted, commissioned, assembled, handled and delivered. The packing and unpacking of containers and activities related to the cargo which do form part of transshipment, are within the scope. Shoreside reception, supply, control and storage of goods are included as well (§ 1(2)). Not covered are companies and business units whose services mainly consist of the reception, delivery or storage of containers, for example direct port transshipment as well as upstream or downstream movements of containers in the course of transportation or transport-related storage (§ 1(3)). The exact scope must be defined in agreements signed at company level which must be approved at local level (§ 1(4)). Reportedly, the scope of the current collective agreement for logistics regularly engenders debate between social partners.

In the ports of Bremen, the major employer Bremer Lagerhaus-Gesellschaft (BLG) negotiated specific collective agreements for its logistics centre and its container packing depot in the port. Rates of pay and some social benefits are less generous than for port work proper, and working times are longer¹²⁰³. An interviewed terminal operator at Bremerhaven said that within the port area containers are partly stuffed and stripped by port workers, partly by distribution workers, depending on the type of firm.

996. Despite solutions found through collective bargaining, the determination of the scope of the exclusive right of the Gesamthafenbetriebe gave rise to several court proceedings.

In an older case (which is perhaps no longer relevant to determine the scope of the current Satzung however), the Federal Labour Court ruled that the specific legal regime of port labour did not apply to a fodder mixing plant in the port of Hamburg where bulk cargo was unloaded from ships into silos using suction machines. These ship unloading activities only represented 4.6 per cent of the working time at the company. As a consequence, the company was not considered a port company within the meaning of the relevant Satzung¹²⁰⁴.

¹²⁰⁰ See Bartsch, P., "Die Entstehung und der Auftrag des Gesamthafenbetriebes (GHB) und der Gesamthafenbetriebs-Gesellschaft M.B.H. (GHBG) und Ihre Entwicklung seit 1645", in Rumpel, E. (Hg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., (46), 62-63; <http://www.phh24.de/ueber-phh>. For the text of the collective agreement, see <http://www.ghb.de/pdf/Rahmentarifvertrag-logistik.pdf>.

¹²⁰¹ Hermel, C., *Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft*, Bachelorarbeit, Norderstedt, Grin/Books on Demand, 2010, 36; *Jahresbericht der Gesamthafenbetriebs-Gesellschaft m.b.H. Hamburg*, 2006, 12.

¹²⁰² Rahmentarifvertrag für gewerbliche Arbeitnehmer und Arbeitnehmerinnen in Logistik-Unternehmen des Hamburger Hafens gültig ab 01.07.2007.

¹²⁰³ Dombois, R. and Wohlleben, H., "The negotiated change of work and industrial relations in German seaports - the case of Bremen", in Dombois, R. and Heseler, H. (Eds.), *Seaports in the context of globalization and privatization*, Bremen, Kooperation Universität-Arbeiterkammer, 2000, (45), 55.

¹²⁰⁴ Bundesarbeitsgericht 14 December 1988, 5 AZR 809/87, *Neue Zeitschrift für Arbeitsrecht* 1989, 565.

Two other cases brought before the Federal Labour Court (*Bundesarbeitsgericht*) suggest that the exclusive right of employment of port workers possessing a port worker's card is today no longer absolute.

In 1992, the Gesamthafenbetrieb of Lübeck prohibited a ship owner from using non-port workers for lashing operations on board its ship while in port. The Federal Labour Court upheld the Gesamthafenbetrieb's right to decide which operations are considered port labour and to oblige the ship owner to observe the exclusive rights established by the Gesamthafenbetrieb. It ruled that the Gesamthafenbetrieb has a legal duty to ensure steady employment for port workers and may, for that purpose, require all port labour to be carried out by its men¹²⁰⁵.

In 1995, however, the Federal Labour Court changed its position radically. The facts of the case were very similar. In order to challenge the Gesamthafenbetrieb's claim, the ship owner now referred to EU law (including free movement of goods and the prohibition against the abuse of a dominant position) and the ECJ's judgment in *Merci*¹²⁰⁶. Concretely, the ship owner complained that, while the lashing could be performed by the ship's own crew, it had to pay port workers for a full shift of 8 hours, whereas they actually performed work within just one hour. The compulsory use of port workers resulted in a monthly extra cost of 200,000 DEM. In its judgment, the Federal Labour Court considered EU law irrelevant. Because the ship owner was not established in the port, it held that the ship owner was not among "port companies where port labour is carried out" (*Betriebe eines Hafens, in denen Hafenarbeit geleistet wird*) within the meaning of the Port Labour Act; for this reason, it was not bound by the Gesamthafenbetrieb's rules made under the Act. The ship was not considered a port company either. According to the Court, the Port Labour Act does not in itself grant a legal monopoly to the Gesamthafenbetrieb. As a result, the Gesamthafenbetrieb is not allowed to impose, through its executive regulations, compliance with such monopoly rights on companies that are outside the scope of the Port Labour Act. Because the Port Labour Act only applies to "port companies" (*Betriebe eines Hafens*), the Court concluded that port labour not carried out by port companies is not subject to the Port Labour Act and its implementing regulations¹²⁰⁷.

Despite this change in the Federal Labour Court's case law, it appears that self-handling by ship's crews has not become a usual practice in German sea ports¹²⁰⁸. The Verwaltungsordnung for Bremen and Bremerhaven expressly states that ship's crews are not allowed to perform port labour and that employers infringing this principle shall be liable to compensate the Unemployment Fund (*Garantielohnkasse*) for any losses caused by it (§ 8(1) of the Verwaltungsordnung). In 2010, the m/v Global Carrier, a Finnish-flagged vessel, was forced by the ver.di trade union in Lübeck to have the lashing and unlashing of its cargo performed by

¹²⁰⁵ Bundesarbeitsgericht 26 February 1992, 5 AZR 99/91.

¹²⁰⁶ On the latter case, see *infra*, para 1171.

¹²⁰⁷ Bundesarbeitsgericht 6 December 1995, 5 AZR 307/94.

¹²⁰⁸ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

- (a) All longshore activities.
- (b) Exceptions:
 - (1) Opening and closing of hatches, and
 - (2) Rigging of ship's gear.

registered port workers instead of its own crew¹²⁰⁹. In an interview, a major ro-ro carrier calling at Hamburg informed us that new cars must be lashed and secured by the stevedoring company, whereas used cars, vans and lorries may be lashed and secured by the ship's crew. The crew is also allowed to carry out additional lashing of containers on deck. Comparing Hamburg with other European ports, our interviewee stated that the labour organisation is well-regulated and well-planned but also strictly enforced, while Antwerp, for example, is perhaps more flexible and ship owner-oriented. Another carrier stated that the crew is not allowed to lash in Bremerhaven and Hamburg but that this is unofficially tolerated at Cuxhaven. A container terminal operator said that self-handling is not an issue in the transoceanic container trade, even if crews sometimes provide additional lashing and are also tolerated to unlash on board feeder ships before they are berthing and to lash after they have sailed, but this does not give rise to any problem whatsoever.

Case law and legal doctrine unanimously agree that, even if under Paragraph 2(1) *in fine* of the Port Labour Act the Gesamthafenbetriebe have powers to determine the exact meaning of the notion of port labour, the latter should always be interpreted in conformity with the Act¹²¹⁰. As a consequence, a Gesamthafenbetrieb is not allowed to attach a meaning to the concept of port labour that goes beyond the initial intentions of the federal lawmaker.

- Qualification and training issues

997. In 1981¹²¹¹ and again in 1992¹²¹², Gesamthafenbetriebe reported that they encountered difficulties finding skilled workers. In its 2009 National Ports Policy Plan, the Federal Government noted that until the late 1990s, increasing automation resulted in a loss of jobs but also in a higher demand for qualified workers. In the 2000s, ports again served as *Job-Motoren* but the sector continued to face difficulties in finding workers, as other branches offer more attractive working times and have a better image. The skills required from workers have altered as a result of changes in cargo types and port technology and the integration in logistics chains and the growing demand for multimodal transport. A lack of skilled workers may negatively affect the competitiveness of German ports and become a bottleneck to their further development. For these reasons, more investments in training were needed and earlier initiatives to train and engage long-term unemployed were fully endorsed. The Federal Government committed itself to support various training initiatives in conjunction with the Länder and social partners. More cooperation between maritime and inland ports in the field of training, the provision by employers of appropriate wage levels, promotion chances, advanced

¹²⁰⁹ X., "Laschen ist Hafendarbeit", *Der ver.di report – Schifffahrt* 2/2010, 16.

¹²¹⁰ See *supra*, para 953.

¹²¹¹ Abendroth, M., Dombois, R. and Heseler, H., *Vom Stauhaken zum Container. Eine vergleichende Untersuchung der tariflichen und betrieblichen Regelungen der Hafendarbeit in den norddeutschen Häfen*, Stuttgart / Bremen, ÖTV / Kooperation Universität-Arbeiterkammer, 1981, 25.

¹²¹² Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 57.

training opportunities and safe work places as well as the introduction by the employers, in dialogue with the trade unions, of safety management systems, were identified as long-term objectives¹²¹³.

998. A spokesperson at the Gesamthafenbetrieb of Hamburg stated that the privately run Hafenakademie tries to compete with the jointly managed ma-co but that no port employer is willing to rely on its services. The latter statement contradicts information obtained from the Hafenakademie¹²¹⁴.

999. We noted no complaints on the distinction between job categories. Port users seem to appreciate the increasing multi-skilling of German port workers highly.

- Health and safety issues

1000. The statistics reproduced above¹²¹⁵ suggest that port labour is among the most dangerous occupations in the German economy.

1001. As we have mentioned¹²¹⁶, health and safety issues in port labour attracted the attention of both public authorities and occupational accident insurers. Recently, a number of in depth-studies were commissioned on specific aspects.

1002. Between 1996 and 1998, for example, the Hamburg Society for Social Research (Hamburger Sozialforschungsgesellschaft e.V. (HSFG)) conducted a major study on safety and health in container transshipment in Hamburg and Bremen on behalf of the Federal Agency for

¹²¹³ Bundesministerium für Verkehr, Bau und Stadtentwicklung, *Nationales Hafenkonzzept für die See- und Binnenhäfen*, 17 June 2009, <http://www.bmvbs.de/cae/servlet/contentblob/31316/publicationFile/3887/nationales-hafenkonzzept-fuer-die-see-und-binnenhaefen.pdf>, 21-22, 29 and 78-85.

¹²¹⁴ See *supra*, para 975.

¹²¹⁵ See *supra*, para 984.

¹²¹⁶ See *supra*, para 986.

Labour Protection and Industrial Medicine. The authors recommended that the activities in this field be better coordinated¹²¹⁷.

1003. In 1998, the Hamburg Labour Inspection drew attention to a number of new risks to port workers such as the lashing of containers, high concentration of exhaust fumes on decks of ro-ro vessels and the handling of dangerous goods after incidents¹²¹⁸.

1004. Between 1997 and 1999, the Institute for Industrial Medicine, Safety Technology and Ergonomics at Wuppertal conducted a study on safety and health in container handling at inland ports which was also commissioned by the Federal Agency for Labour Protection and Industrial Medicine. The authors identified technical and organisational deficiencies and recommended the introduction of high-tech systems for the location of containers¹²¹⁹.

1005. In 2000, a major study conducted by Jürgen Lange highlighted alarming safety risks for container lashers. Even if no precise accident statistics are available, insurance premiums for these workers are considerably higher than for other port workers and office staff at terminals. The author suggested the introduction of new technical solutions for container lashing¹²²⁰.

1006. In 2001, occupational accident insurers published a study on muscular skeletal strain in container handling, which focused on the situation of gantry crane and straddle carrier drivers, and which recommended preventive measures at company level¹²²¹.

1007. Also in 2001, again at the request of the Federal Agency for Labour Protection and Industrial Medicine, HSFG carried out a study on the elaboration of a health protection concept that takes account of the heterogeneous conditions of port labour in the handling in ports of bulk and cars. It recommended the establishment of integrated safety management systems¹²²².

¹²¹⁷ Hamburger Sozialforschungsgesellschaft e.V., *Containerumschlag im Hafensbereich unter besonderer Berücksichtigung der Seeschiffsassistententätigkeiten, beteiligter Verkehrsträger und Diversifikationen in der Hafenwirtschaft*, <http://www.hsfg.de/containerumschlag.html>.

¹²¹⁸ "Entwicklung der Hafenarbeit, Wandel der Gefahren", in Rumpel, E. (Hg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., 325-334.

¹²¹⁹ See <http://www.institut-aser.de/out.php?idart=419>.

¹²²⁰ See <http://duepublico.uni-duisburg-essen.de/servlets/DocumentServlet?id=5156>.

¹²²¹ <http://www.dguv.de/ifa/de/pro/pro1/pr4095/index.jsp>.

¹²²² See <http://www.baua.de/de/Publikationen/Forschungsberichte/2002/Fb961.html>.

1008. In 2009, the Occupational Health and Safety Agency of Hamburg mentioned the following obstacles encountered by inspectors during their inspections in the port:

- surveillance on board of ships: the way in which ships are designed is not satisfactory. They lack lashing platforms, there is no space between containers, nor a safe place for the stevedore at the hatch, and there is a bad gangway or bulwark ladder;
- surveillance of companies: in most cases there are no problems. The majority of port companies are inspected and know what is required of them¹²²³.

9.8.7. Appraisals and outlook

1009. According to the Gesamthafenbetriebe, their *raison d'être* is diverse: lowering the labour costs of port companies; availability at all times of highly qualified and performing professionals; ensuring favourable working conditions and, as a result, industrial peace; serving as a forum for collective bargaining by social partners¹²²⁴. The Gesamthafenbetriebe are convinced that their contribution to the competitiveness of the ports remains of vital importance¹²²⁵. Unsurprisingly, preserving their very existence has always been a prime objective of the Gesamthafenbetriebe¹²²⁶.

In 1999, Peter Bartsch, CEO of the Hamburg Gesamthafenbetrieb, confirmed that both employers and employees judge the Gesamthafenbetrieb positively. Sometimes, the employee representatives in port companies expressed reservations about the institution, for example when initiatives were taken to limit the proportion of pool workers in port companies. Employees remain critical of the placement by the Gesamthafenbetriebe of temporary workers in port companies, as this may hinder the hiring of pool workers¹²²⁷.

¹²²³ Labour Inspectorate (Netherlands), *Meeting European Port Inspectors Rotterdam 2009. Evaluation Report*, <http://www.hamburg.de/contentblob/2547432/data/d501-portinsp-2009-rotterdam.pdf>, 9.

¹²²⁴ Bartsch, P., "Die Entstehung und der Auftrag des Gesamthafenbetriebes (GHB) und der Gesamthafenbetriebs-Gesellschaft M.B.H. (GHBG) und Ihre Entwicklung seit 1645", in Rumpel, E. (Hg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., (46), 61; comp. "Acht Leitsätze zum Unternehmensprofil GHB/GHBG", in Rumpel, E. (Hg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., 73.

¹²²⁵ Comp. Bartsch, P., "Die Entstehung und der Auftrag des Gesamthafenbetriebes (GHB) und der Gesamthafenbetriebs-Gesellschaft M.B.H. (GHBG) und Ihre Entwicklung seit 1645", in Rumpel, E. (Hg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., (46), 63.

¹²²⁶ See especially "Acht Leitsätze zum Unternehmensprofil GHB/GHBG", in Rumpel, E. (Hg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., 73.

¹²²⁷ Bartsch, P., "Die Entstehung und der Auftrag des Gesamthafenbetriebes (GHB) und der Gesamthafenbetriebs-Gesellschaft M.B.H. (GHBG) und Ihre Entwicklung seit 1645", in Rumpel, E. (Hg.), *Menschen im Hafen 1945-1998*, Hamburg, ÖTV, s.d., (46), 61-62.

1010. The succinct and inaccurate wording of the Port Labour Act has been repeatedly criticised. Already in 1965, Assmann advocated a revision, to create more clarity and certainty on the legal nature of the Gesamthafenbetriebe, their regulatory powers and their tasks¹²²⁸. The same author however acknowledged the merits of the Gesamthafenbetrieb regime: employment security for pool workers; availability of experienced workers; voluntary basis of relations between social partners; possibility to adapt the system to local needs and usages; improbability of abuses due to approval by public authorities¹²²⁹.

1011. In 1992, a study of the German port labour regime by Claudia Weinkopf concluded that the Gesamthafenbetriebe are apparently successful in stabilising the port labour market in German ports and that the system seems useful to absorb not only fluctuations in the workload of single companies, but also, to a limited extent however, cyclical fluctuations at port level¹²³⁰. However, she also noted that the use of commercial temporary work agencies would probably be cheaper for the port companies and that the monopoly of the Gesamthafenbetriebe can only be preserved in the long term on condition that quality and performance of work are ensured; for this reason, the efforts of Gesamthafenbetriebe to adapt the qualifications of the workers to the needs of users and to improve the versatility of the workers are of the essence¹²³¹. In view of the specific characteristics of the port sector, she deemed the chances of transposing the pool system to other sectors of the economy rather limited¹²³².

1012. In 2000, Dombois and Wohlleben described recent changes in the organisation of port labour and especially collective bargaining in Bremen. They identified the following main problem areas: firstly, locational and price competition between and within ports; secondly, the privatisation of state-owned cargo handling companies and the defence of collective bargaining; thirdly the increasing, collectively agreed, differentiation of working and employment conditions which is threatening to undermine the principle of the industry-level agreement; fourthly, the flexibilisation of working time¹²³³. Flexible working times were

¹²²⁸ Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 113-114.

¹²²⁹ Assmann, J., *Rechtsfragen zum Gesamthafenbetrieb*, doctoral thesis, University of Cologne, 1965, 112.

¹²³⁰ Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 66-69.

¹²³¹ Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 72-73.

¹²³² See Weinkopf, C., *Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools*, Gelsenkirchen, Institut Arbeit und Technik, 1992, 71-78.

¹²³³ Dombois, R. and Wohlleben, H., "The negotiated change of work and industrial relations in German seaports - the case of Bremen", in Dombois, R. and Heseler, H. (Eds.), *Seaports in the context of globalization and privatization*, Bremen, Kooperation Universität-Arbeiterkammer, 2000, (45), 58 and also 59:

At the beginning of the 1980s, the working and employment conditions of dockers in the ports of Bremen and Bremerhaven were governed by a single collective agreement that laid down special regulations within the framework of the outline collective agreement. Today, there is a number of a supplementary local and company agreements specifying a range of different regulations for individual areas. Some of these agreements relate solely to the

introduced on the basis of 'opening clauses' in the central collective agreement. Innovations included the use of individual working time accounts, an option for firms to cancel shifts at a day's notice, to allocate free shifts and to include the weekend in standard working time, and the option of reducing or extending the daily shift and shifting the starting time¹²³⁴.

1013. In 2001, in its opinion on the first EU Ports Package, the employers' association ZDS stated that rules adopted at EU level should not deprive the Gesamthafenbetriebe of their economic substrate. Their function of ensuring steady employment for port workers should not be jeopardised. According to ZDS, the Gesamthafenbetriebe should be enabled to continue their activities and Member States should be allowed to enact legislation to this effect, without imposing undue restrictions on the free selection of employees however¹²³⁵.

The trade union ver.di, for its part, stated that from safety, social as well environmental perspectives, the introduction of self-handling would be ineffective. Port labour must be reserved for well-trained port workers. At the very most, self-handling can be allowed at public quays only. Ver.di did not question the principle of free selection of workers, but advocated the adoption of minimum standards for port work at EU level. Also, ILO Convention No. 137 must be ratified by all EU Member States, and the activities of the Gesamthafenbetriebe should not be disrupted¹²³⁶.

In the Committee on Port Matters of the Bremen Parliament, the Green party expressly agreed that the first proposal for a Port Services Directive should be so interpreted as to allow the continuation of the Gesamthafenbetriebe¹²³⁷.

In 2005, the North German Chamber of Industry and Commerce stated that self-handling, as proposed in the second draft of a EU Port Services Directive, should be limited to short sea shipping and high-speed connections¹²³⁸.

flexibilisation of working times in certain parts of the port; others, however, such as the collective agreements covering the distribution and container packing depots, contain provisions on pay and social benefits that diverge from the collectively agreed standards in the port's cargo-handling facilities. Compared with the 1980s, the collective bargaining system has become highly differentiated, with separate provisions and regulations applying not only to individual firms but also to individual operational areas within firms.

¹²³⁴ See Dombois, R. and Wohlleben, H., "The negotiated change of work and industrial relations in German seaports - the case of Bremen", in Dombois, R. and Heseler, H. (Eds.), *Seaports in the context of globalization and privatization*, Bremen, Kooperation Universität-Arbeiterkammer, 2000, (45), 56.

¹²³⁵ Zentralverband der deutschen Seehafenbetriebe (ZDS), *Stellungnahme des ZDS zum Richtlinienentwurf über den Marktzugang für Hafendienste*, http://www.zds-seehaefen.de/pdf/2001_05_10_dt.pdf, 5, para 0.4.7 and 13-14, para 3.3.6.

¹²³⁶ Ver.di, *Stellungnahme der Vereinten Dienstleistungsgewerkschaft ver.di zu dem Vorschlag der EU-Kommission vom 13.02.2001 für eine Richtlinie des europäischen Parlaments und des Rates über den Marktzugang für Hafendienste*, 3-4.

¹²³⁷ See <http://www.juramagazin.de/Der-Ausschuss-hat-den-Antrag-zun%C3%A4chst-in-seiner-Sitzung-vom-10-August>.

¹²³⁸ IHK Nord, *Eckpunktepapier der IHK NORD über den Marktzugang für Hafendienste (Port Package II)*, 22 February 2005, 2.

1014. Also in 2001, Bernt Mester of the BLG Logistics Group asserted that, at least in the German sea ports along the Northwest European coast, EU law principles on the free provision of services and non-discriminatory access to the port labour market are fully complied with, and that these principles are indeed essential in order to ensure competition between terminal operators. However, he did not consider the existence of so-called port labour pools a restriction on competition, because these pools serve to meet peak demands and are a useful and indeed necessary complement of the port labour market. He explained that the pools are necessary to satisfy customer requirements in a flexible and cost efficient way and opposed the view that today port labour pools are merely a passing phenomenon. Finally, he argued that a financial participation by the port service providers to the pool is needed because the guaranteed wage of the port workers should not be financed through state aid¹²³⁹.

1015. In its 2009 National Ports Policy Plan¹²⁴⁰, the Federal Government took the view that the harmonisation deficit at EU level is distorting international competition to the detriment of the German port industry. It endorsed the objective of the European Commission's 2007 Port Policy Communication to create more and better jobs in ports. However, it also stressed that European ports policy should be based on the subsidiarity principle. Harmonisation within the EU should not bring about a loss of quality, for example as regards the training of port personnel¹²⁴¹. The Federal position was explicitly supported *inter alia* by the Land Bremen¹²⁴².

1016. In 2012, the Association of Companies at the Ports of Bremen and Bremerhaven (Unternehmensverband Bremische Häfen e.V.) stated that there is no need for a third Ports Package and that no specific rules are needed in relation to the provision of port services. After the defeat of the previous two proposals, a new initiative would be completely incomprehensible. Such regulations would only hamper investments, jeopardise jobs and weaken Europe as a port location. Existing companies must be protected against such developments¹²⁴³.

¹²³⁹ Mester, B., "Wettbewerb und EG-Freiheiten im Bereich der ladungsbezogenen Dienste", in Lagoni, R. (Hg.), *Beiträge zum deutschen und europäischen Seehafenrecht*, Hamburg, LIT, 2001, (139), 143-144.

¹²⁴⁰ On this Plan, see already *supra*, para 997.

¹²⁴¹ Bundesministerium für Verkehr, Bau und Stadtentwicklung, *Nationales Hafenkonzzept für die See- und Binnenhäfen*, 17 June 2009, <http://www.bmvbs.de/cae/servlet/contentblob/31316/publicationFile/3887/nationales-hafenkonzzept-fuer-die-see-und-binnenhaefen.pdf>, 61.

¹²⁴² Senator für Wirtschaft und Häfen, *Vorlage Nr. 208 L für die Sitzung der Deputation für Wirtschaft und Häfen am 19. August 2009*, 6.

¹²⁴³ Unternehmensverband Bremische Häfen e.V., *Jahresbericht 2011*, 29.

1017. In June 2012, Klaus Heitmann, CEO of ZDS, reiterated that existing national rules relating to port labour, in particular the Port Labour Act and training arrangements, should not be jeopardised by any future EU initiative. Any port labour issues at EU level should be addressed within the framework of an EU Social Dialogue. EU port policy should certainly not endanger investments, jobs or the competitiveness of port companies¹²⁴⁴.

1018. In an interview, a spokesman at Hamburg's Gesamthafenbetrieb explained to us that the pool system continues to be widely supported by both employers and unions because it ensures a high level of efficiency and productivity, high wages and a long-standing industrial peace. There are no restrictive working practices such as fixed manning scales. The presence of only one trade union is said to prevent extremism on the part of the workers. In German ports, social dialogue within Workers' Councils is always constructive. The recent emergence of a new workers' movement in the container sector perhaps betrays a general trend towards group-specific bargaining in the German economy. Another success factor is that the pool system does not require state funding.

1019. In an interview, a representative of the German Shipowners' Association (Verband Deutscher Reeder, VDR) confirmed that the current German port labour system is widely supported by all stakeholders. Even if it is strictly regulated, the system allows considerable freedom for social partners to agree collectively on all main issues at the most appropriate level, and the pools ensure a steady availability of skilled and well-trained workers.

1020. Interviewed individual stevedores and ship operators – five in total – concurred that generally the organisation of port labour in German ports is accurate and reliable, even if there is room for improvement, especially in relation to the flexibility of working hours and shift times and the relatively high price level.

1021. In a Communication on the present study posted on the website of trade union ver.di¹²⁴⁵, the latter confirmed that any attempt to produce European rules which jeopardises the interests of the port employees is set to meet “bitter resistance”. It stated that an obligation to subject port services to open bidding procedures will not serve the interests of the port industry and

¹²⁴⁴ Heitmann, K., *Zukünftige europäische Seehafenpolitik*, 28 June 2012, http://www.zds-seehafen.de/pdf/20120628_Unterlage_zur_Zukuenftigen_Europaeischen_Seehafenpolitik.pdf and http://www.zds-seehafen.de/pdf/20120628_Unterlage_zur_Zukuenftigen_Europaeischen_Seehafenpolitik_SPD.pdf.

¹²⁴⁵ *Stellungnahme der ver.di Fachgruppe Häfen zur aktuellen europäischen Hafenpolitik – Fragebogen Portius*, 25 November 2011, <http://verkehr.verdi.de/haefen>. See also *Schifffahrt. Der ver.di-Report* 04/2011, 6-8.

workers in German seaports. It furthermore expressed the fear that any EU deregulation would endanger investments, quality of work and job security in ports and, as a consequence, the growth potential of the economy. Ver.di went on to argue that the productivity of ports largely depends on modern technological equipment and the skills of workers. It stressed that ports already take considerable efforts in order to optimize good quality of work, for example through the job description of professional port logistics workers (*Berufsbild Fachkraft für Hafenlogistik*). Open licensing procedures would threaten job security, and regulations on the transfer of employees upon termination of licences or concessions will not necessarily ensure social protection of workers and job security. Ver.di concludes that existing competitive patterns between ports and between port companies need no further EU regulation and wonders why the EU should liberalise its markets whereas China refuses to do so.

1022. In an interview, Wolfgang Kurz of trade union Conterterm insisted that the Gesamthafenbetriebe must be allowed to continue their operations, and that German ports can not function without them, for example with a view to meet the demand for labour during the holiday season. He suspects the EU of planning the opening up of the port labour market to temporary work agencies, and points out that Gesamthafenbetriebe make available highly qualified workers who cannot be compared to temporary work agency workers.

9.8.8. Developments between January 2013 and September 2014

1022A. The new container terminal Jade-Weser-Port, which opened end September 2012, has not yet proven able to attract any significant traffic volume. In 2014, trade union ver.di accepted a 15 percent wage cut against a commitment by operator Eurogate not to lay off workers. Later in 2014, the employer decided to rely on the *Kurzarbeit* scheme and transferred some workers to its terminals in Hamburg and Bremerhaven. In the context of these start-up difficulties, no Gesamthafenbetrieb has as yet been established for the new facility.

9.8.9. Synopsis

1023.		
SYNOPSIS OF PORT LABOUR IN GERMANY¹²⁴⁶		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 5 main seaports • Landlord model • 299m tonnes • 1st in the EU for containers • 8th in the world for containers • Appr. 300 employers (150 regular) • Appr. 15,000 port workers • Trade union density: 80-85% 	<ul style="list-style-type: none"> • <i>Lex specialis</i> (Port Labour Act, 1950, Joint Agreements and Statutes of Pools) • No Party to ILO C137 • National and local CBAs • 3 categories of port workers in Hamburg, Bremen and Rostock: <ul style="list-style-type: none"> (1) Permanent workers of individual operators (2) Pool workers supplied by Pool (Gesamthafenbetrieb) (3) Auxiliary workers supplied by Pool • In addition, logistics workers (permanent and pool) • Similar system in Lübeck • No pools in other ports • No hiring halls • No mandatory manning scales 	<ul style="list-style-type: none"> • 'Micro-corporatism' • Exclusive right of Pool to supply temporary labour, but high acceptance among social partners • Majority of employers may force system upon minority (in theory) • Delimitation issues • Ban on self-handling • Ban on temporary agency work • To date, no Pool for JadeWeserPort • Few cases of Pool unable to supply sufficient workers • Closed shop (?) and emergence of new workers' movements • Uncertainty over applicability of Temporary Agency Work Act to Pools • Poor wording of Port Labour Act
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Jointly managed training centre (ma-co) trains workers from Hamburg, Bremen and Wilhelmshaven 	<ul style="list-style-type: none"> • No national laws and regulations • Competency-based certification available, consistent with EQF • Right to training for every worker • System promotes multi-skilling 	<ul style="list-style-type: none"> • Need to attract young workers through training • Unclear position of third training providers
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Detailed statistics available • High accident rates as compared with other sectors 	<ul style="list-style-type: none"> • Specific Safety Regulations issued by Accident Insurers • Party to ILO C152 • Local rules on dangerous goods • Provisions in Pool Statutes, CBAs 	<ul style="list-style-type: none"> • High accident rates

¹²⁴⁶ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.9. Greece

9.9.1. Port system¹²⁴⁷

1024. The port system in Greece includes 12 major international ports. The port of Piraeus is the largest Greek port, followed by Thessaloniki, Patras and Igoumenitsa.

In 2012, the gross weight of seaborne goods handled in Greek ports was about 153 million tonnes¹²⁴⁸. As for containers, Greek ports ranked 9th in the EU and 44th in the world in 2011¹²⁴⁹.

1025. Piraeus Port Authority SA¹²⁵⁰ and Thessaloniki Port Authority SA are limited liability companies listed on the Athens Stock Exchange (75 per cent State, 25 per cent private). The other 10 international ports are Ports of National Interest managed by limited liability companies, the share capital of which is fully owned by the State. The latter category includes Alexandroupoli, Corfu, Elefsina, Igoumenitsa, Iraklio, Kavala, Lavrio, Patras, Rafina and Volos.

The port authorities of Piraeus and Thessaloniki function as comprehensive or service ports *i.e.* both as authorities and port operators. In other words, cargo handling is performed by the port authorities' own staff. In the 10 Ports of National Interest, port users hire workers from workers' associations.

¹²⁴⁷ On Greek ports, see Gerapetritis, G., "Public interest versus freedom of competition in sea ports' privatizations: the case of Greece", in Antapassis, A., Athanassiou, L.I. and Røsaeg, E., *Competition and Regulation in Shipping and Shipping Related Industries*, Leiden / Boston, Martinus Nijhoff, 2009, 153-166; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 424-472 (which seems to rely largely on research by A. Pallis); Pallis, A., "Privatization of Greek Ports", http://www.hazliseconomist.com/uploads/speeches/RT2012_B/Pallis_Eng_PPT.pdf; Vaggelas, G.K., "Greek Ports: Structural Challenges and Forms of Adjustment", www.porteconomics.gr. Our account also relies on the *Offering Memorandum for the public offering of existing shares owned by the Greek State and the admission of the company's shares to the main market of the Athens Exchange* by Piraeus Port Authority from July 2003, and on a chapter on the port workforce and labour schemes of a draft *Hellenic Republic National Port Paper* by HPC Hamburg Port Consulting GmbH from 2012. For statistics, see http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#. We should stress that the factual and legal data on port labour in Greece provided below are surrounded by considerable uncertainty, as even direct stakeholders were largely unable to clarify the existing situation or did not reply to requests for specific additional information or for comments on draft texts.

¹²⁴⁸ See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723)

¹²⁴⁹ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

¹²⁵⁰ Société anonyme.

As a departure from the service port model, two major private terminal concessionaires operate in Greek ports: COSCO/PCT¹²⁵¹ is the concessionaire of Piers II and III in the port of Piraeus and Akarport manages and operates the port of Astakos - Navipe. Private companies also operate in some other ports¹²⁵². In total, private ports are said to number 73.

In addition, there is a large number of smaller ports, including 65 ports managed by Municipal Port Funds, 18 ports controlled by Port State Funds and, finally, some 1,250 other small ports, marinas and fishing boat shelters registered under 188 Coast Guard Authorities. All these entities operate under public law¹²⁵³.

9.9.2. Sources of law

1026. The status of the Port Authorities of Piraeus and Thessaloniki is governed by Act 2688/1999¹²⁵⁴, which was repeatedly amended.

The Concession Agreements between the Greek State and the Port Authorities of Piraeus and Thessaloniki contain no provisions on port labour.

The creation of limited companies for the management of the 10 Ports of National Interest is governed by Act No. 2932/2001¹²⁵⁵.

Port Funds under the supervision of the Ministry of Mercantile Marine are governed by Act No. 2987/2002¹²⁵⁶ (Art. 10), while Port Funds under the supervision of the local municipality or the local prefecture are established by Presidential Decree (Act No. 2738/1999¹²⁵⁷, Art 28).

¹²⁵¹ Piraeus Container Terminal (PCT) is a special purpose company of Cosco Pacific Limited.

¹²⁵² Privately run port terminals in Greece include:

- Agroinvest S.A Achladi Fthiotis;
- AGET Heracles S.A. (three ports);
- Aluminium S.A Aspra Spitia Fokida;
- Hellenic Petroleum S.A Attica;
- Hellenic Petroleum S.S Thessaloniki;
- Soya Mills S.A Korinthos;
- Phosphate fertilizers S.A Kavala;
- Neochimiki S.A;
- Motoroil S.A Aspropyrgos;
- TITAN S.A Patra;
- TITAN S.A Elefsis;
- TITAN S.A Thessaloniki;
- Greek Pipeline S.A Korinthos.

¹²⁵³ We received particularly inconsistent data on these categories, their legal regime and the number of ports which they represent. The data above are based on Kastellanos, G., "Reform proposals of the Greek port system", a paper presented at a port reform workshop at Piraeus on 1 October 2012. The author is the director of the Hellenic Port Association (ELIME).

¹²⁵⁴ Νόμος 2688 ΜΕΤΑΤΡΟΠΗ ΤΟΥ ΟΡΓΑΝΙΣΜΟΥ ΛΙΜΕΝΟΣ ΠΕΙΡΑΙΩΣ ΚΑΙ ΤΟΥ ΟΡΓΑΝΙΣΜΟΥ ΛΙΜΕΝΟΣ ΘΕΣ/ΝΙΚΗΣ ΣΕ ΑΝΩΝΥΜΕΣ ΕΤΑΙΡΕΙΕΣ.

¹²⁵⁵ Νόμος 2932 ΕΛΕΥΘΕΡΗ ΠΑΡΟΧΗ ΥΠΗΡΕΣΙΩΝ ΣΤΙΣ ΘΑΛΑΣΣΙΕΣ ΕΝΔΟΜΕΤΑΦΟΡΕΣ - ΣΥΣΤΑΣΗ ΓΕΝΙΚΗΣ ΓΡΑΜΜΑΤΕΙΑΣ ΛΙΜΕΝΩΝ ΚΑΙ ΛΙΜΕΝΙΚΗΣ ΠΟΛΙΤΙΚΗΣ - ΜΕΤΑΤΡΟΠΗΣ ΛΙΜΕΝΙΚΩΝ ΤΑΜΕΙΩΝ ΣΕ ΑΝΩΝΥΜΕΣ ΕΤΑΙΡΕΙΕΣ ΚΑΙ ΑΛΛΕΣ ΔΙΑΤΑΞΕΙΣ.

1027. Port labour in Greek ports, with the exception of Piraeus and Thessaloniki, is regulated by Act No. 5167/1932 on Port Workers¹²⁵⁸ and Legislative Decree No. 1254/1949 on Port Workers¹²⁵⁹ (as amended by Act No. 1082/1980¹²⁶⁰).

Yet another relevant instrument is Presidential Decree No. 31/1990 on the qualifications of crane and machinery operators¹²⁶¹. This Decree applies to all operators employed by state or private companies in the port sector, but also, for example, in the construction industry.

Some provisions on porters can be found in General Port Regulation No. 17, issued under Ministerial Decree No. 685/1978¹²⁶².

The Concession Agreement between Piraeus Port Authority and COSCO/PCT, which was approved by Act No. 3755/2009¹²⁶³, contains a few provisions on port labour as well.

1028. Recently, employment conditions in ports underwent changes as a result of several recent reform and austerity acts and regulations of a general nature to which we shall refer below. For example, restrictions on free access to regulated professions, including that of port worker, were abolished by Act No. 3919/2011¹²⁶⁴.

¹²⁵⁶ Νόμος 2987 ΤΡΟΠΟΠΟΙΗΣΗ ΤΩΝ ΔΙΑΤΑΞΕΩΝ ΤΟΥ Ν. 959/1979 «ΠΕΡΙ ΝΑΥΤΙΚΗΣ ΕΤΑΙΡΕΙΑΣ» (ΦΕΚ 192 Α) ΚΑΙ ΡΥΘΜΙΣΗ ΑΛΛΩΝ ΘΕΜΑΤΩΝ ΑΡΜΟΔΙΟΤΗΤΑΣ ΤΟΥ ΥΠΟΥΡΓΕΙΟΥ ΕΜΠΟΡΙΚΗΣ ΝΑΥΤΙΛΙΑΣ.

¹²⁵⁷ Νόμος 2738 ΣΥΛΛΟΓΙΚΕΣ ΔΙΑΠΡΑΓΜΑΤΕΥΣΕΙΣ ΣΤΗ ΔΗΜΟΣΙΑ ΔΙΟΙΚΗΣΗ ΜΟΝΙΜΟΠΟΙΗΣΕΙΣ ΣΥΜΒΑΣΙΟΥΧΩΝ ΑΟΡΙΣΤΟΥ ΧΡΟΝΟΥ ΚΑΙ ΑΛΛΕΣ ΔΙΑΤΑΞΕΙΣ.

¹²⁵⁸ Νόμος 5167 ΠΕΡΙ ΤΡΟΠΟΠΟΙΗΣΕΩΣ ΚΑΙ ΣΥΜΠΛΗΡΩΣΕΩΣ ΤΟΥ ΝΟΜΟΥ 5453 ΤΗΣ 17 ΜΑΡΤΙΟΥ 1928 "ΠΕΡΙ ΚΥΡΩΣΕΩΣ ΤΟΥ ΑΠΟ 12 ΝΟΕΜΒΡΙΟΥ 1927 Ν.Δ. "ΠΕΡΙ ΚΥΡΩΣΕΩΣ ΤΟΥ ΑΠΟ 26 ΜΑΡΤΙΟΥ 1926 Ν.Δ. ΠΕΡΙ ΡΥΘΜΙΣΕΩΣ ΤΩΝ ΦΟΡΤΟΕΚΦΟΡΤΩΤΙΚΩΝ ΕΡΓΑΣΙΩΝ ΕΙΣ ΤΟΥΣ ΛΙΜΕΝΑΣ ΤΟΥ ΚΡΑΤΟΥΣ".

¹²⁵⁹ Νομοθετικό Διάταγμα 1254 ΠΕΡΙ ΤΡΟΠΟΠΟΙΗΣΕΩΣ ΚΑΙ ΣΥΜΠΛΗΡΩΣΕΩΣ ΕΝΙΩΝ ΔΙΑΤΑΞΕΩΝ ΤΩΝ ΠΕΡΙ ΦΟΡΤΟΕΚΦΟΡΤΩΣΕΩΝ ΝΟΜΩΝ.

¹²⁶⁰ Νόμος 1082 ΠΕΡΙ ΤΡΟΠΟΠΟΙΗΣΕΩΣ, ΑΝΤΙΚΑΤΑΣΤΑΣΕΩΣ ΚΑΙ ΣΥΜΠΛΗΡΩΣΕΩΣ ΔΙΑΤΑΞΕΩΝ ΤΙΝΩΝ ΕΝΙΩΝ ΕΡΓΑΤΙΚΩΝ ΝΟΜΩΝ ΚΑΙ ΡΥΘΜΙΣΕΩΣ ΣΥΝΑΦΩΝ ΘΕΜΑΤΩΝ.

¹²⁶¹ Προεδρικό Διάταγμα 31 ΕΠΙΒΛΕΨΗ ΤΗΣ ΛΕΙΤΟΥΡΓΙΑΣ, ΧΕΙΡΙΣΜΟΣ ΚΑΙ ΣΥΝΤΗΡΗΣΗ ΜΗΧΑΝΗΜΑΤΩΝ ΕΚΤΕΛΕΣΗΣ ΤΕΧΝΙΚΩΝ ΕΡΓΩΝ.

¹²⁶² Νόμος 2738 ΣΥΛΛΟΓΙΚΕΣ ΔΙΑΠΡΑΓΜΑΤΕΥΣΕΙΣ ΣΤΗ ΔΗΜΟΣΙΑ ΔΙΟΙΚΗΣΗ ΜΟΝΙΜΟΠΟΙΗΣΕΙΣ ΣΥΜΒΑΣΙΟΥΧΩΝ ΑΟΡΙΣΤΟΥ ΧΡΟΝΟΥ ΚΑΙ ΑΛΛΕΣ ΔΙΑΤΑΞΕΙΣ.

¹²⁶³ Νόμος 3755 ΚΥΡΩΣΗ ΤΗΣ ΣΥΜΒΑΣΗΣ ΠΑΡΑΧΩΡΗΣΗΣ ΤΩΝ ΛΙΜΕΝΙΚΩΝ ΕΓΚΑΤΑΣΤΑΣΕΩΝ ΤΩΝ ΠΡΟΒΛΗΤΩΝ II ΚΑΙ III ΤΟΥ ΣΤΑΘΜΟΥ ΕΜΠΟΡΕΥΜΑΤΟΚΙΒΩΤΙΩΝ ΤΗΣ ΑΝΩΝΥΜΗΣ ΕΤΑΙΡΕΙΑΣ «ΟΡΓΑΝΙΣΜΟΣ ΛΙΜΕΝΟΣ ΠΕΙΡΑΙΩΣ Α.Ε.» (ΟΛΠ Α.Ε.) ΚΑΙ ΡΥΘΜΙΣΗ ΣΥΝΑΦΩΝ ΘΕΜΑΤΩΝ.

¹²⁶⁴ Νόμος 3919 ΑΡΧΗ ΤΗΣ ΕΠΑΓΓΕΛΜΑΤΙΚΗΣ ΕΛΕΥΘΕΡΙΑΣ, ΚΑΤΑΡΓΗΣΗ ΑΔΙΚΑΙΟΛΟΓΗΤΩΝ ΠΕΡΙΟΡΙΣΜΩΝ ΣΤΗΝ ΠΡΟΣΒΑΣΗ ΚΑΙ ΑΣΚΗΣΗ ΕΠΑΓΓΕΛΜΑΤΩΝ.

1029. The national legal framework for health and safety at work is based on the Occupational Health and Safety Code which was approved by Act No. 3850/2010¹²⁶⁵, on Act No. 3846 of 2010 on Guarantees related to Occupational Safety¹²⁶⁶ and regulations made under these Acts and previous legislative instruments.

Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers was transposed by Presidential Decree No. 66/2004¹²⁶⁷.

Regulations on the loading, unloading and handling of dangerous goods were laid down in Presidential Decree No. 405/1996¹²⁶⁸.

1030. Greece has not ratified ILO Conventions Nos. 32, 137 or 152. In mid-2012, Greek authorities carried out Gap Analyses on ILO Conventions No. 137 and 152 in order to identify gaps and suggest solutions. The ensuing social dialogue did not result in a decision to ratify any of the ILO Conventions however¹²⁶⁹.

1031. All the major ports of Greece, including the COSCO/PCT terminal, have issued internal regulations, including measures on health and safety.

The General Staff Regulations of Piraeus Port Authority, which were adopted in 2004, govern: (1) categories of the personnel and distinctions of those; (2) required qualifications for the hiring of personnel, the relevant procedures and the drafting of the labour agreement; (3) staff registries; (4) the Service Council and Sanitary Committees; (5) obligations and rights of the personnel; (6) disciplinary offences and penalties; (7) working hours and leave; (8) staff training; (9) working terms; (10) wages and benefits; (11) staff movements, transfers and secondment; (12) termination of labour agreements; (13) health and safety of the employees and the workplace; (14) personnel evaluation. Reportedly, these Regulations are based on an

¹²⁶⁵ Νόμος 3850 ΚΥΡΩΣΗ ΤΟΥ ΚΩΔΙΚΑ ΝΟΜΩΝ ΓΙΑ ΤΗΝ ΥΓΕΙΑ ΚΑΙ ΤΗΝ ΑΣΦΑΛΕΙΑ ΤΩΝ ΕΡΓΑΖΟΜΕΝΩΝ. Reportedly, Occupational Health And Safety Act No. 1568/1985 (Νόμος 1568 ΥΓΙΕΙΝΗ ΚΑΙ ΑΣΦΑΛΕΙΑ ΤΩΝ ΕΡΓΑΖΟΜΕΝΩΝ) is no longer in force.

¹²⁶⁶ Νόμος 3846 Εγγυήσεις για την Εργασιακή Ασφάλεια και άλλες διατάξεις.

¹²⁶⁷ Προεδρικό Διάταγμα 66 ΚΑΘΟΡΙΣΜΟΣ ΕΝΑΡΜΟΝΙΣΜΕΝΩΝ ΑΠΑΙΤΗΣΕΩΝ ΚΑΙ ΔΙΑΔΙΚΑΣΙΩΝ ΓΙΑ ΤΗΝ ΑΣΦΑΛΗ ΦΟΡΤΩΣΗ ΚΑΙ ΕΚΦΟΡΤΩΣΗ ΤΩΝ Φ/Γ ΠΛΟΙΩΝ ΜΕΤΑΦΟΡΑΣ ΧΥΔΗΝ ΦΟΡΤΙΩΝ ΣΕ ΣΥΜΜΟΡΦΩΣΗ ΠΡΟΣ ΤΗΝ ΟΔΗΓΙΑ 2001/96/ΕΚ ΤΟΥ ΕΥΡΩΠΑΪΚΟΥ ΚΟΙΝΟΒΟΥΛΙΟΥ ΚΑΙ ΤΟΥ ΣΥΜΒΟΥΛΙΟΥ ΤΗΣ 4/12/2001.

¹²⁶⁸ Προεδρικό Διάταγμα 405 ΚΑΝΟΝΙΣΜΟΣ ΦΟΡΤΩΣΗΣ, ΕΚΦΟΡΤΩΣΗΣ ΔΙΑΚΙΝΗΣΗΣ ΚΑΙ ΠΑΡΑΜΟΝΗΣ ΕΠΙΚΙΝΔΥΝΩΝ ΕΙΔΩΝ ΣΕ ΛΙΜΕΝΕΣ ΚΑΙ ΜΕΤΑΦΟΡΑ ΑΥΤΩΝ ΔΙΑ ΘΑΛΑΣΣΗΣ. A further Decree No. 3131.1/07/95 of 23 February 1995 approved General Port Regulation No. 9 on safety measures relating to the loading and unloading of petroleum products, hazardous chemical liquids and liquified gas.

¹²⁶⁹ See *infra*, paras 1072-1073.

agreement between the Port Authority and the unions. In addition, Internal Regulations on Organisation and Operations¹²⁷⁰ apply.

The Thessaloniki Port Authority also has General Staff Regulations and Internal Regulations on Organisation and Operation.

As an employer of more than 70 employees, COSCO/PCT also has Company Labour Regulations, which have been approved by the Labour Inspectorate.

1032. Port labour in Greece is also governed by collective labour agreements.

Two national collective labour agreements from 2003 contain provisions on the relations between, on the one hand, port workers and administrative staff and, on the other, the state port authorities.

In 2009, the Piraeus Port Authority concluded three collective labour agreements: one with the general port workers, represented by the Union of Dockworkers in Piraeus, one with the technicians and crane drivers organised in trade union OMYLE, and one with the Union of Supervisors and Chief Dockworkers Saint Anthony. These agreements deal with wages and other forms of remuneration. All other matters, such as shifts and manning scales are dealt with in the General Staff Regulations.

The Thessaloniki Port Authority concluded collective agreements with trade unions OMYLE and OFE.

In smaller ports such as Igoumenitsa, where self-employed port workers are directly hired by shipping companies, no collective agreements were signed.

Neither of the above instruments was made public and we were unable to obtain copies.

9.9.3. Labour market

- Historical background

1033. The administration of the Port of Piraeus assumed a relatively structured form as of 1836. In 1848, a Commission of the Piraeus Pier was founded and, in 1925, a Union of

¹²⁷⁰ Αριθμ. 8311.2/01/10/28-01-2010 Νέος Κανονισμός Εσωτερικής Οργάνωσης και Λειτουργίας (Κ.Ε.Ο.Λ.) της εταιρείας Οργανισμός Λιμένος Πειραιώς ανώνυμη εταιρεία (ΟΛΠ Α.Ε.).

Dockworkers of Piraeus. The Piraeus Port Authority was established pursuant to Act No. 1639/1930, which was repeatedly amended. In 1932 and 1949, port labour was regulated in national acts which, albeit in a revised form, are still in force. These acts provide for an exclusive right of registered port workers to perform port labour and for the further regulation of work conditions at a local level. In 1999, Act No. 2688/1999 laid the basis for the transformation of the Port Authorities of Piraeus and Thessaloniki into limited companies which would be listed on the Athens Stock Exchange. In 2000, the Piraeus Port Authority concluded a first collective agreement with the trade union OMYLE. Pursuant to Act No. 2932/2001, limited companies were established for the ten Ports of National Interest. In 2002, the Piraeus Port Authority concluded a Concession Agreement with the Greek State. In 2009, Piraeus Port Authority granted a concession of Piers II and III of its container port to the Chinese company COSCO/PCT which is free to hire its own labour.

As we have already mentioned¹²⁷¹, the port labour system is currently undergoing major changes as a result of reform measures taken in response to the sovereign debt crisis.

- Regulatory set-up

1034. From a legal perspective, there are three main categories of port workers in Greece: (1) workers directly employed by the Port Authorities of Piraeus and Thessaloniki; (2) self-employed workers who are members of an association which organises labour in accordance with specific national laws and regulations on port labour, invoices the carrier via the shipping agent on the basis of official tariffs and pays out a remuneration to the individual workers; and (3) workers employed under general labour law by private terminal operators, the most important case being the COSCO/PCT terminal at Piraeus.

Below, we shall elaborate on each of these three regimes. Subsequently, we shall discuss the impact of the recent liberalisation of regulated professions in Greece.

1035. The Piraeus Port Authority was granted exclusive competence to conduct loading and unloading operations and service passenger traffic within the Piraeus Port area¹²⁷². Under the Concession Agreement between the Authority and the Greek State, the former may grant rights of use to port service providers, and it shall act as the concession grantor in the event of a future liberalisation of the provision of port services¹²⁷³. The Port of Thessaloniki enjoys similar rights.

¹²⁷¹ See *supra*, para 1028.

¹²⁷² See, *inter alia*, Art. 3 of Legislative Decree 449/1970.

¹²⁷³ See Art. 3.1(iii) and 3.7 of the Concession Agreement.

1036. In Piraeus and Thessaloniki, port workers are employed by the local port authority.

1037. The port workers of Pireaus Port Authority belong to two main categories.

The equipment operators (including crane, straddle carrier, RMG and forklift drivers and the technicians or maintenance mechanics) are considered white collar workers and are employed as permanent salaried staff under private law. Until recently, workers recruited under public law conditions prior to the transformation of the Port Authority PA into a limited company in 1999 retained permanence of employment, which could only be terminated on the grounds applicable to public employees. However, this preferential regime was abolished as a result of Act No. 4046/2012¹²⁷⁴ and Emergency Act No. 38/2012¹²⁷⁵ (Art. 5).

The manual workers are remunerated on a daily basis. In addition to a daily minimum wage, they receive a fee on the basis of work performed. A distinction is made between permanent port workers and trainee port workers.

Further categories of workers include supervisors and foremen, and barge guards.

All these workers are employed for an indefinite term, under private law employment conditions, and do not have to be registered.

The workers are distributed by the Port Authority's Directorate for Planning and Coordination of Stevedoring Operations¹²⁷⁶. All stevedoring and storage services are programmed by shifts on a 24-hour basis.

If the employment contract of a worker is terminated – which happens extremely rarely – he enjoys regular unemployment benefit.

1038. As in Piraeus, the port workers of Thessaloniki are permanent staff of the port authority. The general workers receive a standard daily wage supplemented by a performance fee. The workers are registered by the Port Authority.

¹²⁷⁴ ΕΓΚΡΙΣΗ ΤΩΝ ΣΧΕΔΙΩΝ ΣΥΜΒΑΣΕΩΝ ΧΡΗΜΑΤΟΔΟΤΙΚΗΣ ΔΙΕΥΚΟΛΥΝΣΗΣ ΜΕΤΑΞΥ ΤΟΥ ΕΥΡΩΠΑΙΚΟΥ ΤΑΜΕΙΟΥ ΧΡΗΜΑΤΟΠΙΣΤΩΤΙΚΗΣ ΣΤΑΘΕΡΟΤΗΤΑΣ (Ε.Τ.Χ.Σ.), ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ ΚΑΙ ΤΗΣ ΤΡΑΠΕΖΑΣ ΤΗΣ ΕΛΛΑΔΟΣ, ΤΟΥ ΣΧΕΔΙΟΥ ΤΟΥ ΜΝΗΜΟΝΙΟΥ ΣΥΝΕΝΝΟΗΣΗΣ ΜΕΤΑΞΥ ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ, ΤΗΣ ΕΥΡΩΠΑΙΚΗΣ ΕΠΙΤΡΟΠΗΣ ΚΑΙ ΤΗΣ ΤΡΑΠΕΖΑΣ ΤΗΣ ΕΛΛΑΔΟΣ ΚΑΙ ΑΛΛΕΣ ΕΠΕΙΓΟΥΣΕΣ ΔΙΑΤΑΞΕΙΣ ΓΙΑ ΤΗ ΜΕΙΩΣΗ ΤΟΥ ΔΗΜΟΣΙΟΥ ΧΡΕΟΥΣ ΚΑΙ ΤΗ ΔΙΑΣΩΣΗ ΤΗΣ ΕΘΝΙΚΗΣ ΟΙΚΟΝΟΜΙΑΣ.

¹²⁷⁵ Ρύθμιση θεμάτων για την εφαρμογή της παρ. 6 του άρθρου 1 του ν. 4046/2012.

¹²⁷⁶ See Art. 15 of the Internal Regulations on Organisation and Operations.

1039. In other ports than Piraeus and Thessaloniki, such as Corfu, Elefsina, Kavala (Eleftheron, Keramoti and Philip II), Heraklion, Lavrion, Patras, Rafina and Volos, port labour is governed by specific laws and regulations.

First of all, Act No. 5167/1932 defines a dockworker as a person, hired to (1) carry, load, or deliver cargo and other objects from the docks and the warehouses thereon, factories or shops on barges or ships or from barges or ships to barges or ships and (2) unload and deliver or carry cargo and other objects from ships or barges to ships or barges or from these to customs offices or docks or to warehouses, factories or shops thereon (Art. 1).

The definition was established in 1932 and was revised in 1955 to encompass other kinds of dock work. It does not specifically mention “any work incidental thereto”, but in practice all types of work on the dock is covered.

Under Act No. 2212/40, all the provisions applying to loaders and unloaders of cargo, also apply to the workers in the Customs Carrier Service (Art. 1)¹²⁷⁷. We were informed, however, that the latter service does not exist anymore.

Under Act No. 3239/1955, the same provisions also applied to cargo markers and cargo guards (Art. 2-3). This provision was however repealed in 1990¹²⁷⁸.

The General Port Regulation No. 17 provides that the mooring of boats is carried out by boatmen and that porters operate under the same status as boatmen, *i.e.* they can work with a permit from the port authority, but no working relationship is established between the port and the workers (Art. 107).

1040. Act No. 5167/32 provides that Dockworkers’ Regulatory Committees ('Committees for the Regulation of Loading / Unloading to Ports and Land') regulate all matters pertaining to work relationships, subject to administrative approval. Also, the Committees are consulted by the Government on every matter concerning loading and unloading works in ports (Art. 3). In these Committees, representatives from both employers’ and workers’ organisations are represented (Art. 2). Each Port has its own Committee. The decisions of the Committees are subject to approval by the competent authorities.

More in particular, all tariffs and labour regulations are determined (or approved) by Joint Decisions of the Minister of Labour and Social Security and the Minister of Development, Competitiveness and Shipping. The port workers' fees are calculated per ton.

¹²⁷⁷ To be precise, this Article completed, replaced or amended provisions of several earlier Acts.

¹²⁷⁸ To be precise, by Art. 23, § 1 of Act No. 1876/1990.

The legal framework assures permanent employment for port workers. Only persons issued with a professional certificate by the local Dockworkers' Regulatory Committee are allowed to work as port workers in any given port. The Committee also establishes the maximum number of active port workers allowed at each port, taking into account the specific needs of the port, assuring that supply never exceeds demand.

In Elefsina and Igoumenitsa, conditions to become a port worker include: (1) minimum age of 21; (2) secondary education; (3) physical and mental fitness; (4) proficiency in Greek (the validity of this requirement was disputed by other commentators); (5) good behaviour; (6) clean criminal record; (7) trade union membership. The latter condition is seen as a legal requirement. In Volos, the system seems more or less similar. The Volos Port Authority mentioned the following conditions to become a licensed port worker: (1) minimum age of 18; (2) having performed 300 working days as an apprentice; (3) clean criminal record. The Port Authority also mentions that, in addition to the licensed workers, occasional workers can be hired.

As far as we could ascertain, Decree No. 1254/1949, as amended by Act No. 1082/80, imposes a Greek nationality requirement, age requirements (minimum 18 and under 40), medical fitness and the absence of convictions for criminal offences relating to the security of transportation and utility facilities, smuggling crimes and crimes against property (Art. 4).

Registers are established and maintained by the Dockworkers' Regulatory Committees in each port. Registered dockworkers are the only persons who are allowed to carry out port work. Registered dockworkers who are not available for work when needed will be deregistered. The Port Authorities of Elefsina and Igoumenitsa consider their registers a register within the meaning of ILO Convention No. 137 (even if Greece is not a Party to this instrument).

The Dockworkers' Regulatory Committees are responsible for revising the strength of the registers, so as to achieve levels adapted to the needs of the port. Whenever the strength of the registers needs to be reduced, the redundant workforce stays on until retirement. During that time, no new permits are issued.

The Committees exercise disciplinary authority over the workers.

1041. Port workers governed by the specific laws and regulations summarised above are self-employed, independent service providers. In most cases, they are organised in associations similar to labour unions, which are affiliated to OFE. These associations must obtain a permit to supply workers from the local Port Authority (a limited company in the ten Ports of National Interest, the local Port Committee in smaller ports). The workers are hired by port users on a shift basis, according to the needs of port users. No hiring halls are used.

1042. The involvement of the port authority seems to vary. These authorities are not acting as employers, but in Elefsina, for example, the Port Authority charges a fee to the ship owners for the use of its facilities. In Patras, the workers use the Port Authority's facilities as well.

1043. Act No. 3239/55 provides for the establishment of a Special Account, under the supervision of the Ministry of Labour, to which both port workers and users of port work contribute, with the aim to provide extra income for port workers when their work is reduced, to give out loans to port workers' associations in order to procure machinery and to fund measures for the improvement of work conditions for port workers. This special account applies to all kinds of port work.

In most ports, including Elefsina and Igoumenitsa, unemployed workers receive attendance money which is financed by fees invoiced by the workers' associations to the port users and their agents. In Volos, no unemployment benefit seems to apply.

1044. Only persons fulfilling the conditions stated in Presidential Decree No. 31/1990 and in possession of the appropriate permits may operate machinery in ports (or, for that matter, in any other branch of the Greek economy). The Decree applies equally in the state-run terminals of Piraeus and Thessaloniki and in the COSCO/PCT terminal¹²⁷⁹.

1045. Infringements of the specific laws and regulations on port labour are criminally sanctioned.

1046. A third category of port workers is employed by commercial companies under general labour law conditions. This category includes most port workers at the COSCO/PCT terminal in Piraeus and workers at a number of other private cargo handling and industrial terminals.

1047. Practically, rules on employment of port workers are enforced by the public prosecutor, national labour and transport agencies, the port authority, the harbour master, the terminal operator (where present) and the trade unions.

¹²⁷⁹ For further information on this system, based on data obtained from Dr Dimitrios Makris and Dr Thanos Pallis, see Notteboom, T., *Dock labour and port-related employment in the European seaport system. Key factors to port competitiveness and reform*, ESPO / ITMMA, 2010, www.porteconomics.eu, 71-72.

1048. The specific legal framework of port labour described above was fundamentally altered by Act No. 3919/2011, which abolished restrictions on free access to professions, *inter alia* restrictions on the number of persons entitled to practise a given profession, requirements to obtain an administrative authorisation and limitations on the geographical area where a person may exercise his profession (Art. 2(1)). In theory, this means that any individual fulfilling the required conditions set by the Act is free to work as a port worker. In practice, the conditions are such that only certified members of the port workers' associations fulfil them (e.g. 300 days of apprenticeship as an assistant port worker).

Circular No. 3643/249 of 28 February 2012¹²⁸⁰ specifies which rules of Decree No. 1254/49 are rendered inoperative by Act No. 3919/2011.

- *Facts and figures*

1049. It is nigh impossible to provide any substantiated estimate of the number of port employers in Greece. However, taking into account the current port management system under which workers are mainly employed either by port authorities or through workers' associations, and the existence of a number of large private operators, a total of 30 employers in Greece's main ports may seem a fair guess.

1050. There are no statistics on the total number of port workers in Greece. Data are maintained by individual port authorities.

In the port of Piraeus, the Port Authority employs 343 dockworkers and 325 crane and machinery operators. Over the past fifteen years, the number of workers was considerably reduced (in 1998, there were still 635 general port workers in Pireaus; in 2002 the number had dropped to 436). The reduction of the workforce started back in 1982, when it was decided, in an effort to adapt to new technologies, not to replace retiring workers. The start-up of the COSCO/PCT was also accompanied by an early retirement scheme.

¹²⁸⁰ Αριθ. πρωτ.: 3643/249/28.2.2012 Εφαρμογή των άρθρων 1, 2 και 3 του Ν. 3919/2011 (ΦΕΚ 32 Α') και του άρθρου 1 παρ. 16 του Ν. 4038/2012 (ΦΕΚ 14 Α') Αθήνα 28-2-2012 Α.Π.: 3643/249.

Table 56. Number of employees of the Piraeus Port Authority by category, 31 December 2013 (source: Piraeus Port Authority)

Dockworkers	343
Crane and machinery operators	325
Other technicians	171
Administrative employees	329
Lawyers	12
Total	1,180

In Piraeus, up to 60 tallymen are members of separate unions. Lashing and unlashing is now provided by Piraeus Port Authority and also by the pilotage service of the Ministry.

The COSCO/PCT container terminal is currently employing a staff of 925. The terminal provided us with the following details:

Table 57. Number of port workers employed by PCT and its subcontractors at the COSCO/PCT terminal in Piraeus, 2009-2012 (source: COSCO/PCT)

Employees by category	2009	2010	2011	2012 ¹²⁸¹
Dockworkers	-	77	173	203
Crane and Machinery Operators	-	179	347	426
Other Technicians	6	45	53	63
Administrative Employees	41	137	146	158
Tallymen	-	20	47	75
Total	47	458	766	925

In Thessaloniki, 416 port workers are employed, including 144 general dockworkers (figures for 2011).

¹²⁸¹ Figures are for 30 September 2012.

Table 58. Number of employees of the Thessaloniki Port Authority by category, 2009-2011 (source: Thessaloniki Port Authority)

	General managers	Lawyers	Administrative personnel	Dockworkers	Total
31 December 2009	2	3	338	173	516
31 December 2010	1	3	293	157	454
31 December 2011	1	2	269	144	416

The ports of Elefsina and Volos employed 80 and 56 port workers respectively. We are unaware if these figures concern administrative staff of the port authority (data for 2011).

In Igoumenitsa, the Port Authority employed 18 employees (all permanent staff) while the Igoumenitsa Port Workers' Union has 12 members (data for 2011).

On the basis of the foregoing scattered information, it seems reasonable to estimate the total number of port workers for the purpose of this study in Greece at roughly 2,500.

1051. All (former and current) civil servants of Greek public ports are unionised in local first-level organisations which are affiliated to a federation at a higher level. White collar workers are organised under the umbrella of the Federation of Permanent Employees of Greek Ports (Ομοσπονδία Υπαλλήλων Λιμανιών Ελλάδας, OMYLE). A large number of manual dockers are members of a local first-level union affiliated to the Federation of Loaders and Unloaders of Greece (Ομοσπονδία Φορτοεκφορτωτών Ελλάδος, OFE). The latter federation also organises boatmen, land (truck) porters and carriers; it is active in the road, air, rail and maritime sectors and represents, in total, some 220 unions and 6,500 workers.

In Piraeus, the manual workers are organised in the first-level Piraeus Dockworkers' Union (Ενωση Μονιμων & Δοκιμων Λιμενεργατων Ο.Λ.Π.¹²⁸²). This union is not affiliated to OFE, but to the Piraeus Labour Centre and, at a higher level, to the General Confederation of Greek Workers and IDC. The foremen of Piraeus are members of the ETF-affiliated Union of Supervisors and Chief Dockworkers Saint Anthony. The lashers and tallymen are organised in yet other associations. The equipment operators and technicians employed by Piraeus Port Authority are members of OMYLE. The Piraeus Port Authority, OMYLE and the Union of

¹²⁸² Meaning 'Union of Permanent and Trainee Port Workers of the Port Authority of Piraeus'. Ο.Λ.Π. (OLP) stands for Οργανισμός Λιμένος Πειραιώς or 'Port Authority of Piraeus'. The union was established as a result of a merger of a large number of specialised port workers' unions.

Permanent and Trained Port Workers of the Port Authority of Piraeus all confirmed that 100 per cent of the workers employed at the Port Authority are union members. Workers at COSCO/PCT are not unionised, which was confirmed to us by the terminal operator.

In Thessaloniki, six local unions are active: the Union of Dock Workers, the Union of Tallymen and the Union of Foremen (all affiliated to OFE) and the Union of Drivers, the Union of Technicians and the Union of Administrative Staff (belonging to OMYLE). The Port Authority of Thessaloniki confirmed to us that all port workers are indeed unionised.

In the port of Corfu, all port workers are members of unions of port workers, porters and stevedores affiliated to OFE.

The Port Authority of Elefsina states that all port workers are members of the Elefsina Port Workers' Trade Union.

In the ports of Eleftheron, Keramoti and Philip II, which are managed by the Kavala Port Authority, the independent port workers belong to four distinct unions (one in Eleftheron, one in Keramoti and two in Philip II).

In Heraklion, the independent port workers are all members of the Dockworkers' Union of the Port Authority of Heraklion.

The Port Authority of Igoumenitsa informed us that 100 per cent of port workers are unionised. The relevant union is the Agios Spiridonas Trade Union of Port Workers, a non-profit association.

9.9.4. Qualifications and training

- Regulatory set-up

1052. In Greece, there are no general minimum requirements regarding skills and competences for port workers. In several ports, however, apprenticeship arrangements seem to apply. In addition, vocational training is required for the handling of bulk¹²⁸³.

¹²⁸³ See *infra*, para 1060.

1053. As we have explained¹²⁸⁴, crane drivers and other machinery operators need a licence which is issued by the Greek authorities. Usually, port employers hire crane drivers possessing the appropriate licence and subsequently train them to use the equipment of the port.

- Facts and figures

1054. The Port Training Institute EXANTAS was formally established in 2011 and became operational in April 2012. It aims to issue training certificates to prospective white and blue collar workers. It is based in Thessaloniki and its shareholders are the Hellenic Ports Association (95 percent) and the Federation of Employees of the Greek Ports (5 percent). The Institute aims at providing certified training to port labour. It also aims at offering educational programs to employees involved in sectors related to the port industry, such as shipping, logistics, ship building zones etc. Since its establishment, the Institute has organised more than 30 seminars which have been attended by more than 500 employees of the Greek Ports. The Institute has also signed an exclusive cooperation agreement with the Thessaloniki Port Authority S.A. as a consultant in EU financed programs.

1055. Replies to the questionnaire indicate that the following types of formal training exist in Greek ports (although not every training programme is available in each port):

- specialised training as part of a regular educational programme (secondary school);
- courses for the established port worker (voluntary);
- training in safety and first aid (compulsory);
- specialised courses for certain categories of port workers such as crane drivers, container equipment operators, forklift operators, lashing and securing personnel and tallymen (all compulsory);
- training with a view to multi-skilling (voluntary).

¹²⁸⁴ See *supra*, para 1044.

9.9.5. Health and safety

- Regulatory set-up

1056. There are few special legal provisions regulating health and safety in port work.

The Occupational Health and Safety Code applies to all workplaces in Greece and provides a general framework for the implementation and maintenance of work conditions that do not pose risks to the health and safety of workers. The Act provides for the establishment of Workers' Health and Safety Committees which meet with the employers every three months to consult on work conditions, professional risks and preventive measures.

The Workers' Councils may also look into measures to improve working conditions.

1057. The Dockworkers' Regulatory Committees may advise the Government in health and safety matters. These Committees include a representative of the Ministry of Labour (the Labour Inspector).

1058. The General Port Regulations also contain provisions on safety of work. For example, before placing big and heavy objects on the dock, port workers must take adequate precautions, so as not to damage the floor. As regards heavy lifts, they have to notify the port authorities to ensure that the surfaces can cope with the load (Art. 154). Loading and unloading operations must be carried out in an orderly and careful manner, in order to avoid accidents or damage (Art. 149).

1059. All the major ports of Greece have issued internal Health and Safety Regulations or Plans which are explicitly based on ILO and IMO Recommendations, best practices and the instruction manuals of machinery and parts.

1060. Yet other relevant legal instruments include Presidential Decree No. 405/1996 on the loading and unloading of dangerous substances, which ensures that appropriate health and safety measures are taken depending on the cargo and the risks that it poses to health and safety, and Presidential Decree No. 66/2004 on the safe handling of bulk cargo which deals with the safety of plant and equipment, the use of protective gear by the workers, the

vocational training of the port workers and their rest. The latter instrument also obliges port authorities to have ISO 9001:2000 certification or equivalent.

1061. Rules on health and safety are enforced with the help of the national labour ministry, the port authority, the harbour master and the trade unions.

- Facts and figures

1062. Piraeus Port Authority provided us with the following data on occupational accidents:

Table 59. Number of occupational accidents in the port of Piraeus, 2009-2013 (source: Piraeus Port Authority)

2009	7
2010	15
2011	12
2012	17
2013	6
Total	57
of which	
minor	33
serious	8
on the road	15
fatal	1

COSCO/PCT made available the following statistics on occupational accidents at their terminal:

Table 60. Number and severity rate of occupational accidents at the COSCO/PCT container terminal in the port of Piraeus, 2009-2012 (source: COSCO/PCT)

	2009	2010	2011	2012 ¹²⁸⁵
Accidents involving dockworkers (operators)	-	2	1	-

¹²⁸⁵ Figures are for 30 September 2012.

Accidents involving other personnel	-	3	3	1
Total	-	5	4	1
Accidents per 100 employees	-	1.09	0.52	0.11
Severity rate (days off from work per 100 employees)	-	29.04	7.87	4.22

1063. The Thessaloniki Port Authority provided the following data:

Table 61. Occupational accidents in the port of Thessaloniki, 2004-2011 (source: Thessaloniki Port Authority)

Year	2004	2005	2006	2007	2008	2009	2010	2011
Accidents involving dockworkers	3	6	6	2	3	2	5	4
Accidents involving other personnel	2	1	2	2	4	1	2	2
Total	5	7	8	4	7	3	7	6
Accidents per 100 employees	7.7	11.49	13.79	6.57	12.99	5.66	14.43	13.76
Severity Index (days off work per 100 employees)	27.89	32.02	50.34	31.53	36.18	5.47	57.1	39.22

In 2011, the accidents included 4 lesions, 1 fracture and 1 death (due to a vehicle accident in the port area). Of these 6 accidents, 2 were caused by a crush, 3 by falling objects and one by a vehicle accident. In 4 accidents dockworkers were involved, in 1 an operator of a cargo handling vehicle, and, in the last, a security guard.

The Port Authority of Thessaloniki explained further that it maintains a detailed and up-to-date record of all occupational accidents occurring in the port area and that it has a Health, Safety and Environmental Protection Department which evaluates and supervises the safety system. Once an accident occurs, an official investigation starts in which the Hellenic Coast Guard, the Port Authority and the port workers' union participate. The circumstances under which the accident happened are analysed and a report is prepared. If necessary, additional safety

measures will be taken in order to avoid similar accidents in the future. At the end of the year, the Department produces a report which analyses the work accidents in the port in the past year.

1064. Requests for additional data addressed to the Centre for Occupational Health and Safety, the Hellenic Institute for Occupational Health and Safety and the Ministry of Labour and Social Security remained unanswered. As a result, we are unable to make a comparison with the safety level in other industries.

9.9.6. Policy and legal issues

- Restrictions on the provision of port services and exclusive right of registered port workers

1065. First of all, responses to our questionnaire by port authorities confirm that in Greek ports, the legally defined exclusive right of port authorities to handle cargo and passenger traffic prevents competition between different service providers.

The best-known – but not the only – exception is Piraeus, where the port authority competes with the private concessionaire PCT. But also in other places, some room was given for private port operations. At the Port of Astakos - Navipe which is situated on the Western Coast of Greece between the cities of Igoumenitsa and Patras, a private common-user container terminal operates. Reportedly, some further 20 or 30 private cargo terminals are scattered over the country. Some private terminals handle own-account industrial cargoes (for example, cement) but there are also industrial terminals which handle goods for other companies (for example, in Volos).

These exceptions however confirm the rule, *i.e.* the monopoly of the integrated port authorities, as a result of which port service providers from other EU countries are not allowed to establish themselves in a Greek port or even to offer their services there. This double restriction on freedom of establishment and free movement of services was confirmed by the Port Authorities of Elefsina, Igoumenitsa and Thessaloniki, while the Port Authority of Piraeus only mentioned a ban on establishment, and the Port Authority of Volos denied the existence of any ban. Greek shipowners mentioned that there is a prohibition on the employment of nationals from non-EU countries.

1066. Essentially, the present state of affairs conforms to the situation depicted in 2007 by the Greek authority on port economics Athanasios A. Pallis, who drew attention to manifold entry-barriers and the absence of intra-port competition in Greek ports:

Greek ports have not implemented an organisational restructuring. Given the consolidation in the European container-handling market [...], the interest from shipping and other private companies for investing in both cargo and passenger terminals and the provision of port services is explicit but national legislation continues to limit concessions and intra-port competition. Port authorities remain the sole providers of core services (i.e. handling) whilst the provision of some nautical services by private firms (i.e. towage) is heavily regulated. The direct private sector involvement in port services provision is still outlawed. The attempts by a private company to offer port services (operate a car terminal in Elefsina) were blocked (September 2003) as illegal. One company, Astakos SA has gained the right to serve cargoes in Western Greece; still it has to limit its activities to the development of an industrial and commercial free zone that provides logistics solutions.

This situation diminishes, inter alia, the advancement of specialisation and adaptation to users' requirements, and the implementation of new technologies and business models. At the same time it generates the potential of excess rent seeking by port authorities [...]. For example, the Competition Regulatory Authority already examines port users' complaints regarding the Piraeus Port Authority (PPA) practices, and has in principle decided that the PPA has abused its dominant position favouring particular users. Lowering legislative entry-barriers in port services provision can introduce intra-port competition and reverse the situation [...]. However, such entry-barriers in Greece remain substantially higher than in any other EU member-states. The absence of intra-port competition, along with the lack of business culture and the inexperience of the newly formed port entities in long-term planning, contribute to the existing lack of efficiency [...]¹²⁸⁶.

Pallis commented as follows on the absence of a reform scheme for port labour:

Meanwhile, there was neither a new labour statute, nor any personnel retraining to increase commercial orientation and improve managerial procedures. Many of the 'stone-age' regulations (organograms, operational practices, dockers' payment schemes) are still the same. Whilst modern container terminals employ approximately ten people per crane, the Greek ports employ almost twenty. The legal framework does not allow for redundancies in the public sector and ports are overstaffed.

Moreover, there is no provision for re-training port workers and for integrating technology usage in their core skills; neither is there a mechanism for certifying port workers' qualifications. A port reform would mean that the future of the existing unskilled port workers would be in danger, while it would have to develop schemes for providing appropriately trained personnel. Otherwise, there could be a serious problem

¹²⁸⁶ Pallis, A.A. (Ed.), *Maritime Transport: The Greek Paradigm*, in *Research in Transportation Economics*, 2007, Vol. 21, (343), 363-364.

in meeting the demand of skilled labour, which is required in order to deploy strategies towards quality services.

As it has been suggested by the port authorities themselves [...], the path followed by Italy in the 1980s, with the state assuming specific responsibilities regarding port labour restructuring, might be the one to be followed in Greece as well. Although the endorsed attitude in pushing reforms was to let the real reforms be done by the ports themselves, the central government continues to control several aspects (i.e. the process of hiring employees), questioning how substantive the reforms have been in practice.

In all 12 ports of national interests, port services are provided by the port's personnel. As Psaraftis [...] reviews, the dockers' work regulations vary among ports, with ports such as Piraeus and Thessaloniki having a strict employer–personnel relationship with their dockers' workforce (which guarantees, among other things, a minimum salary), whereas others such as Elefsina having a more loose relationship and engaging dockers on an ad hoc basis. The scholar notes, that there are exceptions concerning the unofficial (yet very much active) presence of 'shipping-line agents' within the terminals of Piraeus, for the provision of supporting services to the shipping lines, such as the lashing of containers, yard planning, logistical support, and others. Yet, the computerisation of the Piraeus container terminal in 2001 reduced drastically the role of the agents in the terminal. Another exception to the 'service' rule is the piers leased to industrial operators (mainly in the dry bulk and liquid bulk trades) for their own exclusive use. As none of these leases is to stevedoring companies or private port operators, Psaraftis [...] was led to the conclusion that the 'landlord' model which prevailed in other European countries is by and large absent in Greece.

All (former and current) civil servant personnel of Greek public ports are unionised under the Federation of Permanent Employees of Greek Ports (OMYLE), which, together with the Federation of Cargo Handlers of Greece (OFE), representing dockers, are the two main port labour unions in Greece. Lower-level unions also exist in all ports. With the total of port personnel actively participating in these unions, the latter have managed to advocate successfully the absence of substantial port labour reforms.

This trend 'ignores' previous experiences of port reform, where the benefits of labour reforms in terms of port efficiency and productivity exceeded the, nevertheless questionable, benefits of privatisation – an illustrative example being the case of the UK seaports' privatisation and performance in the 1980s and 1990s [...]¹²⁸⁷.

1067. It should also be recalled that back in 2003 the Greek port labour regime and especially the exclusive right of registered port workers were the subject of a Written Question by MEP Adriana Poli Bortone¹²⁸⁸. The Question read as follows:

¹²⁸⁷ Pallis, A.A., "Whither port strategy ? Theory and practice in conflict", in Pallis, A.A. (Ed.), *Maritime Transport: The Greek Paradigm*, in *Research in Transportation Economics*, 2007, Vol. 21, (343), 366-367.

¹²⁸⁸ European Parliament, Written Question P-1762/03 by Adriana Poli Bortone (UEN) to the Commission (21 May 2003), OJ 6 February 2004, C 33 E/167.

Having received a large number of complaints, I should like to draw the Commission's attention to the fact that in Greece the job of loading and unloading goods is still governed by a law dating back to 1949 (Law No 1254) under which anyone wishing to engage in this occupation must first be entered in a register kept, without any clear rules, by an association which, according to the complaints received, frequently discriminates between applicants.

Does the Commission consider this situation to be in keeping with current common market rules ?

In her answer, European Commissioner de Palacio stated on behalf of the Commission:

The Commission wishes to point out to the Honourable Member that as a general rule and according to the jurisprudence a service provider has the right to employ personnel of his own choice.

The Commission, following informal contacts with the Greek authorities has been informed that the Law 1254/1949 does not in itself allow for the discriminations described in her written question.

However, the Commission invites the Honourable Member to submit to it any details, which may allow the conclusion that discrimination and abuses stemming from the application of Law 1254/1949 are occurring. In this case the Commission would be willing to investigate this matter in depth, in order to assess what action should be taken.

In any case, the Commission wishes to remind to the Honourable Member of its proposal for a Directive of the Parliament and of the Council on Market Access to Port Services, aiming at creating a level playing field in this area and further ensuring the full respect of the rules of the Treaty, for all parties concerned, workers, service providers and port users.

1068. In 2009, the Hellenic Competition Commission ruled that the Stevedore and Fresh Goods Transporters Unions of the Athens and Thessaloniki Central Vegetable Markets, who enjoyed exclusive rights of employment pursuant to Port Labour Decree No. 1254/1949, had abused their dominant position by (1) intervening in the selection of dockers entitled to a professional card, making it difficult for other associations or companies to obtain access to the market, or even preventing them from doing so; (2) reserving access to the profession to Greek citizens, which was contrary to (current) Article 45 TFEU; (3) imposing arbitrary, unfair and unreasonable prices which were based on obsolete tariffs and not on the actual cost of services and which prevented free competition and negotiation on price levels; (4) charging fees even where no services were requested or performed due to a shortage of workers at peak times. The Competition Commission also decided that the Hellenic Republic must take measures ensuring the compatibility of laws and regulations with EU law. Yet it should be noted that the decision rested mainly on the prohibition on abuses of a dominant position laid down in Greek competition law rather than on (current) Article 102 TFEU, because there was

insufficient evidence that situations at the vegetable markets had an appreciable effect on intra-Community trade in a substantial part of the common market. To no avail, the workers' associations had argued that, as they only defended social solidarity and were not seeking commercial profits, they had not been acting as undertakings, and that their monopoly was necessary to ensure the orderliness of operations and the continuous availability of fit workers. The Competition Commission found that, as the associations invested in the acquisition, maintenance and repair of handling equipment (forklifts) for their members, they had behaved as undertakings. As the associations certified the workers and exercised disciplinary authority over them, they controlled access to the profession and had assumed traditional employers' prerogatives, thereby largely replacing the official Labour Committees. The Competition Commission also held that, from a competition law perspective, the non-profit character of the associations is irrelevant¹²⁸⁹. The Competition Commission explicitly noted that the nationality requirement in Decree No. 1254/1949 infringes (current) Article 45 TFEU which guarantees free movement of workers. The Commission's decision was upheld by the Athens Administrative Court in a judgment of 2010¹²⁹⁰.

As it led to an abuse of dominance by the Stevedore and Fresh Goods Transporters Union of the Athens Central Vegetable Market, the Competition Commission proposed the amendment of the existing legal framework. In particular, the existing legal framework on stevedoring services, as implemented by the competent authority, namely the Regulatory Commission on Land Stevedoring Services (ERFXA), had granted Unions the exclusive right to organise stevedoring in the Athens and Thessaloniki central vegetable markets. ERFXA had supervision authority over the Unions and also issued a price list for the relevant services. During the last fifty years ERFXA had in fact always accepted the Unions' proposals concerning price increases and had never made amendments to the relevant price list (of the year 1949) in order to take into consideration the modern methods of loading¹²⁹¹.

In an interview, the Piraeus Port Authority insisted that it had nothing to do with this case, as it solely concerned situations at the vegetable markets. This does not alter the fact that the case directly relates to the regulatory set-up of port labour. The Competition Commission did not reply to a request for further information on the follow-up of its decision.

1069. According to a Gap Analysis on Convention No. 137 prepared in mid-2012, the definition of dock work in Greece is fragmented, as it is scattered over different legal instruments. The legal framework for port work does not include operators of machinery. As we have explained, Presidential Decree No. 31/1990 regulates the issuing of administrative permits, so that a person can work as an operator of machinery. The conditions and prerequisites established by that Decree, do not allow port workers (in the sense of Act No. 5167/1932) to obtain such a

¹²⁸⁹ Competition Commission, 19 March 2009, Decision No. 438/V/2009.

¹²⁹⁰ Athens Administrative Court, 14 May 2010.

¹²⁹¹ See the *Annual report on competition policy developments in Greece, 2009*, [http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=DAF/COMP\(2010\)12/09&docLanguage=En](http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=DAF/COMP(2010)12/09&docLanguage=En), 10, para 26.

permit. The port of Thessaloniki is the only exception, where the term 'dock work' includes all work on the dock, since dockworkers were issued with the permits required to operate machinery. In all the other ports of Greece, dockworkers and machinery operators form two different categories. The main reason is that the dockworkers cannot be issued with machinery operation permits because Presidential Decree No. 31/1990 requires the approval of the Local Machinery Operators' Union. In practice, this approval is only given to members of that Union, and not to dockworkers.

The authors of the Gap Analysis suggest that Presidential Decree No. 31/1990 be amended, so that the previous approval of the Union does not form a prerequisite for the issuing of the permit. In this way, dockworkers could pass the exams and obtain the necessary permit to operate machinery in ports. This has been a long-standing demand of the dockworkers' unions, which constantly met resistance from the Machinery Operators' Union. As employers, the Port Authorities are in favour of such an arrangement, but vested interests would need to be overcome if steps in this direction are to be taken. So far, the official stance has tried to balance competing interests in this matter.

1070. The Gap Analysis also mentions that, until 2011, employment was assured for port workers, both legally and in practice. The Ministry of Employment in Greece was said to be in the process of revising the conditions to exercise the profession. Until such revision was effected, though, in practice the profession would only be accessible to members of the dockworkers' associations, as the only individuals fulfilling the legal requirements.

The register system is due to change, since the publication of Act No. 3919/2011, which stipulates that the requirement to obtain an administrative authorisation to exercise a profession constitutes an unnecessary restriction and should be abolished. In practice though, so far, only dockworkers registered with the dockworkers' Regulatory Committees are eligible for work on the port.

Any attempt to exempt the port workers' profession from the scope of Act No. 3919/2011 would meet with intense resistance on the part of the employers. It is worth noting that the Act provided the possibility for certain professions to be exempted from its scope by Presidential Decree, to be issued within a deadline of four months (Art. 2(4)). However, despite numerous efforts by the union, no such exemption has been granted by the Greek Government. As a result, any exemption or amendment would need an Act or parliamentary regulation. It should also be noted, that the Economic Adjustment Programmes for Greece provide for the total liberalisation of all professions, allowing exemptions only on grounds of public interest¹²⁹².

The apparent non-respect of Act No. 3919/2011 would appear to cast some doubt on the unanimous assurance by port authorities replying to our questionnaire that rules on employment in ports are properly enforced.

¹²⁹² See *infra*, para 1104.

A neutral expert confirmed to us that port workers employed by the port authorities continue to be treated as civil servants enjoying a 'job for life'. In another interview, the Piraeus Dockworkers' Union and OMYLE said that Act No. 3919/2011 was based on unsubstantiated and totally unrealistic assumptions that the liberalisation of professions would increase Greek GDP by 7 per cent and confirmed that the Act is not implemented in practice.

1071. To the extent that requirements for registered port workers to have Greek nationality and to be under 40 of age, which were introduced by Decree No. 1254/1949, as amended by Act No. 1082/80, are still applicable¹²⁹³, they would amount to unjustifiable restrictions on free movement and/or apparent discriminations contrary to international and EU law¹²⁹⁴.

1072. Still with respect to ILO Conventions No. 137 and 152, the Piraeus Dockworkers' Union and OMYLE explained that in the past they had not pushed for a ratification by Greece, as existing collective agreements and regulations essentially conformed to the requirements of these instruments. Since the opening of the COSCO/PCT terminal and the changes in the Government's policy on port governance, the situation has changed. A recent social dialogue on ratification yielded no result however, because the Piraeus Port Authority, COSCO/PCT and the shipping agents oppose ratification¹²⁹⁵.

1073. As a matter of fact, private sector representatives vigorously opposed the accession to ILO Convention No. 137, because it is considered outdated in the view of modern technologies, would deter prospective investors and close off the profession without any necessity. Furthermore, ILO rules on port labour continuously lag behind, Greece's general health and safety laws are perfectly adequate, and it is unclear who would finance the minimum income for dockers as required under the Convention. In these times of grave national unemployment, it would be provocative to ratify an international instrument guaranteeing payment without occupation. The competitiveness of Greek ports is all the more at stake since Belgium, Germany and the UK are not parties to ILO Convention No. 137, and the Netherlands decided to denounce it.

¹²⁹³ See *supra*, paras 1028 and 1048.

¹²⁹⁴ On the nationality requirement, see already *supra*, para 1068.

¹²⁹⁵ Ratification of ILO Convention No. 137 was already discussed in the early 2000s (see International Labour Conference (90th Session 2002), *General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, <http://www.ilo.org/public/english/standards/reIm/ilc/ilc90/pdf/rep-iii-1b.pdf>, 88, para 220).

- *Closed shop*

1074. Whereas trade union density in Greece as a whole is generally estimated at some 25 per cent, which is not particularly high when compared to other European countries¹²⁹⁶, the Port Authorities of Elefsina, Igoumenitsa and Piraeus as well as Greek shipowners confirmed in their replies to the questionnaire that trade union members enjoy an exclusive right to be employed in the ports. The latter Port Authority added that the closed shop system is a major competitive disadvantage.

1075. Industrial relations in Greek ports have been dominated for decades by the presence of powerful first-level labour unions. As we have explained, all port workers are unionised, and in addition they are represented in the decision-making bodies or the Port Authorities of Piraeus and Thessaloniki. For example, two representatives of the employees sit on the Board of Directors of the Piraeus Port Authority¹²⁹⁷. Pursuant to Acts No. 2688/99 and 2932/2001, representatives of the main workers' unions must be represented in the Board of Directors of the Port Authorities. To this end, the workers elect their representatives. Workers participate in the management of the Port Authorities of all major ports in the country. In the Port Committees of small ports, representatives from the local workers' unions participate as well¹²⁹⁸. In practice, cooperation between workers and employers in ports is fully assured, since no decision by the management can come into effect unless approved by the workers.

In an interview, representatives of the Piraeus' Dockworkers' Unions and OMYLE said that freedom of association is fully guaranteed and cited, as an illustration, the case, two or three years ago, of one worker in Piraeus who left the union yet was allowed to continue his work. They also pointed out that workers freely join the union because they enjoy special benefits. Moreover, the Piraeus Dockworkers' Union has a strong tradition of democratic decision-making.

- *Other restrictions on employment and restrictive working practices*

1076. The Piraeus Port Authority and Greek shipowners report that the mandatory composition of gangs is a major competitive handicap. The Thessaloniki Port Authority also mentions restrictions resulting from mandatory manning levels and, in addition, a ban on multi-skilling or

¹²⁹⁶ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

¹²⁹⁷ Art. 6(2) of Act No. 2414/1996.

¹²⁹⁸ Ministerial Decree No. 4221.9/22/90.

multi-tasking. Yet, it does not consider the latter restriction a major competitive disadvantage. In an interview, both the management of Piraeus Port Authority and a neutral expert confirmed that manning scales at public terminals are a major issue which should be addressed during negotiations over a new collective agreement in 2013. The Port Authority is said to employ a considerable excess workforce as a result of the opening of the COSCO/PCT terminal. Greek shipowners also complain about overmanning.

1077. The Port Authority of Thessaloniki mentions a ban on self-handling which is, however, not seen as a major competitive disadvantage. In an interview, Piraeus Port Authority said that self-handling happens in some cases, but that this is not an issue. However, tariff regulations provide that if work is performed by the crew, 25 per cent of the normal fee for a docker must be paid. In practice, self-handling takes place, for example, where the cargo is damaged. Shipowners responding to the questionnaire complained that the ban on self-handling is a competitive disadvantage¹²⁹⁹.

1078. The Port Authorities of Elefsina, Igoumenitsa, Piraeus, Thessaloniki and Volos and Greek shipowners confirmed that temporary work agencies have no access to the port labour market. The Piraeus Port Authority and the shipowners specified that this restriction is a major competitive disadvantage.

1079. As a rule, workers cannot be transferred temporarily to another employer or another port. Such a prohibition was reported by the Port Authorities of Elefsina, Igoumenitsa, Piraeus, Thessaloniki and Volos. It would appear that, legally, this restriction was abolished by Act No. 3919/2011, but, practically, this instrument is not implemented in ports.

1080. The Piraeus Port Authority and Greek shipowners also complain that non-respect of official working hours affects the competitive position of ports. In an interview, Piraeus Port Authority informed us that working times of machinery operators and technicians, on the one hand, and general port workers, on the other hand, do not coincide. A harmonisation of working times and other regulations is needed, but this cannot be achieved quickly. In this respect, the Piraeus Dockworkers' Union and OMYLE added that the Port Authority does not allow general workers belonging to the former organisation trained to operate equipment to actually perform such work. The same interviewees also stated that the workers prefer to exercise one single task. If qualified, they can also exercise other jobs, but for security and efficiency reasons this

¹²⁹⁹ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) Operation of shore-based equipment to load/unload a vessel.

does not happen in practice, which makes multi-skilling a rather theoretical possibility. Shipowners confirmed that the exclusive rights of certain categories of port workers and the ban on multi-skilling or multi-tasking are serious competitive issues.

1081. Several interviewees pointed to excessive pay for overtime, which was unacceptable to customers. As a result of austerity measures laid down in Act No. 4024/2011¹³⁰⁰, all overtime payments in the public sector were abolished however. Generally, port workers in Piraeus are believed to earn very high wages, with general dockers earning more than high-level administrative staff at the port authority. In an interview, the Piraeus Dockworkers' Union said that the system of daily performance bonuses ensures a high productivity, a concern which has always been part of the special mentality of the dockers.

1082. In an interview, the management of Piraeus Port Authority mentioned the restrictive working practice of workers who finished their task on one ship refusing to move to another ship unless they get extra pay. As a result of obsolete regulations, workers at car terminals can return home as soon as they have handled a mere 18 cars. Generally, regulations on port work are very complicated, and there are also many differences between ports.

- Qualification and training issues

1083. Upon publication of the first version of this study, the EXANTAS port training institute was not yet fully operational. At the time, the Piraeus Port Authority informed us that it is one of the main promoters of this institute, but that no legislation on training requirements is in place. The Piraeus Dockworkers' Union and OMYLE said that they had been advocating the introduction of a new training system for many years and that they fully support the EXANTAS initiative. The Piraeus Dockworkers' Union added that training, together with health and safety, is its first priority. OMYLE said that EXANTAS must start functioning, because over the past years training levels deteriorated and the unions even had to organise training themselves. Respondents from the sector of Greek shipowners complained that training of Greek port workers is elementary and is causing accidents.

As we have mentioned, the Institute became operational in April 2012.

¹³⁰⁰ Νόμος 4024 ΟΣΥΝΤΑΞΙΟΔΟΤΙΚΕΣ ΡΥΘΜΙΣΕΙΣ, ΕΝΙΑΙΟ ΜΙΣΘΟΛΟΓΙΟ - ΒΑΘΜΟΛΟΓΙΟ, ΕΡΓΑΣΙΑΚΗ ΕΦΕΔΡΕΙΑ ΚΑΙ ΑΛΛΕΣ ΔΙΑΤΑΞΕΙΣ ΕΦΑΡΜΟΓΗΣ ΤΟΥ ΜΕΣΟΠΡΟΘΕΣΜΟΥ ΠΛΑΙΣΙΟΥ ΔΗΜΟΣΙΟΝΟΜΙΚΗΣ ΣΤΡΑΤΗΓΙΚΗΣ 2012-2015.

- Health and safety issues

1084. In their responses to the questionnaire, the port authorities of Elefsina, Igoumenitsa, Piraeus, Thessaloniki and Volos all stated that rules on health and safety are satisfactory and properly enforced.

1085. According to a Gap Analysis on ILO Convention No. 152 prepared in mid-2012, Greek port authorities and port operators do not favour the introduction of a specific regulatory legal framework on health and safety in port work, as they believe that the general laws and regulations are adequate and special needs can be met through internal regulations. There is also a widespread conception in the industry that introducing port-specific health and safety requirements would come at the expense of flexibility and adaptability to new conditions.

1086. The same Gap Analysis points to a limited number of legal issues in relation to health and safety. For example, Presidential Decree No. 66/2004 covers only the safe handling of bulk cargo, not other types of goods. Also, there are no rules on electrical installations in ports, so that other regulations must be applied by analogy. The authors suggest that regulations on electrical installations in ports be issued, taking into account health and safety provisions, as well as best practices in the field. Another suggestion concerns the incorporation of provisions concerning the regular inspection of loose gear – which are currently contained in the internal Health and Safety Regulations of port authorities – into national legislation, although the employers deem this unnecessary, as existing internal rules are adequate. Similarly, specific rules on safety of container work could be developed, although the employers would most probably not favour this. Finally, there is no legislation on minimum intervals for medical examinations of port workers, and there is no provision on special investigations where workers are exposed to special occupational health hazards. Both omissions could be rectified through national legislation, although in practice the system has proved flexible and efficient.

1087. In an interview, a representative of OMYLE said that official statistics on work-related diseases (for example, lung problems) of retired port workers are needed. In this respect, she referred to ongoing projects in French ports. Back injuries of crane drivers are another concern.

- Employment conditions at the Piraeus Container Terminal

1088. In a recent paper, Psaraftis and Pallis explain that "continuing intransigence as regards work regulations" played a key role in the decision of the principal shareholder of the port of Piraeus, the Greek State, to adopt the landlord model¹³⁰¹.

It does not come as a surprise, then, that labour issues played a central role during the particularly turbulent procedure which led to the granting of a concession to operate a substantial part of the container port of Piraeus.

The awarding of the Piraeus terminal concession was completed in 2009, following a process which lasted five years and was interrupted by a demand by the European Commission to organise an international tender and repeated industrial action by militant port unions¹³⁰².

The Greek Parliament ratified the concession contract in March 2009¹³⁰³. Port labour unions and the Prefecture of Piraeus questioned the legality of the entire procedure, from the tender itself to the contract and to its ratification by Parliament. Lawsuits to that effect were filed in several courts, including the Supreme Court¹³⁰⁴.

With the new Socialist Government coming to power in October 2009, and at the very date the concession contract was supposed to commence, a series of strikes by the port unions shut down the container terminal for close to 2 months. The fact that the party representing the Government was sympathetic to the unions' cause before the election certainly made it more difficult for it to deal with the unions after the election. Finally, the strikes ended with the port authority agreeing to reopen the case on two fronts: (1) to renegotiate the concession contract and (2) to negotiate with the port unions on a series of demands of the latter¹³⁰⁵.

The opposition to the concession was based on the initial fear that people would lose their jobs. After the Government categorically denied this, it seemed that their opposition was mainly due to the expected loss of income because of the anticipated drastic reduction of overtime pay. In fact, the annual salaries of a few dockers, gantry crane drivers, straddle carrier drivers and selected other personnel working in the container terminal had reached exorbitant levels¹³⁰⁶. Salaries of up to 140,000 EUR a year, with most dockworkers registering for work

¹³⁰¹ Psaraftis, H.N. and Pallis, A.A., "Concession of the Piraeus container terminal: turbulent times and the quest for competitiveness", *Maritime Policy and Management* 2012, (27), 41. On the background to the concession, see also Kousta, E., "Strikes end at Piraeus Port Authority following concession agreement", *Eironline* 4 February 2010, <http://www.eurofound.europa.eu/eiro/2009/12/articles/gr0912019i.htm>.

¹³⁰² Psaraftis, H.N. and Pallis, A.A., "Concession of the Piraeus container terminal: turbulent times and the quest for competitiveness", *Maritime Policy and Management* 2012, (27), 31.

¹³⁰³ See *supra*, para 1027.

¹³⁰⁴ Psaraftis, H.N. and Pallis, A.A., "Concession of the Piraeus container terminal: turbulent times and the quest for competitiveness", *Maritime Policy and Management* 2012, (27), 38.

¹³⁰⁵ Psaraftis, H.N. and Pallis, A.A., "Concession of the Piraeus container terminal: turbulent times and the quest for competitiveness", *Maritime Policy and Management* 2012, (27), 39.

¹³⁰⁶ Psaraftis, H.N. and Pallis, A.A., "Concession of the Piraeus container terminal: turbulent times and the quest for competitiveness", *Maritime Policy and Management* 2012, (27), 33.

from 325 to 335 days per year, were confirmed by a judicial inquiry in 2004 (which we were unable to consult). These were mainly due to antiquated work regulations on the composition of docker gangs and other rules, including payment for work in the terminal¹³⁰⁷.

H. Psaraffis and A. Pallis, two leading authorities on Greek port policy, comment as follows on the role of port labour issues in the award process:

The whole terminal award process contradicted one of the major targets of the concession, i.e. directly challenging the labour regime as an integral part of inefficient public sector traditions. With all of the port personnel actively participating in the unions, the latter have managed to advocate successfully the absence of substantial port labour reforms. In addition, the legal framework does not allow for redundancies in the public sector and ports are overstaffed. [...] Piraeus had had a strict employer–personnel relationship with the dockers’ workforce and the state had decided to wait for the concessionaire to apply ‘market rules’ in order to reverse many of the ‘stone-age’ regulations (organograms demanding nine dock workers per gang, operational practices, dockers’ payment schemes).

The whole process had included neither provisions for re-training port workers and for integrating technology usage into their core skills, nor a mechanism for certifying port workers’ qualifications. Port reform would mean that the future of the existing unskilled port workers would be in danger, while the port would have to develop schemes for providing appropriately trained personnel. The approach leaves open the potential difficulty of meeting the demand from the terminal operators for skilled labour in order to improve quality and technologically upgrade services that generate value for the users.

Nonetheless, the awarding of the terminal implied the de facto potential of reforming existing practices. The private terminal operator secured the flexibility to implement its own practices, as there was no provision restricting such implementation but the obligation to employ existing personnel for the first 18 months of the concession¹³⁰⁸.

From conversations with the terminal operator's executives in Piraeus, Psaraffis and Pallis understand that the composition of the dockers’ gangs at Pier II is 4 people. At the same time, the equivalent port authority dockers’ gangs working at Pier I, a short distance away varied from 6 to 9 people. It was unclear whether the Port Authority would proceed to the harmonisation of these docker gangs to bring them in line with those of its competitor operating at the adjacent pier. Without this harmonisation, the Port Authority would be unable to compete on price as its ability to offer competitive tariffs vis-à-vis those of Cosco Pacific will be severely restricted if excessive personnel work in the terminal. Thus far, the only competitors of the Port Authority have been other Mediterranean ports handling transshipment traffic. From

¹³⁰⁷ Psaraffis, H.N. and Pallis, A.A., "Concession of the Piraeus container terminal: turbulent times and the quest for competitiveness", *Maritime Policy and Management* 2012, (27), 42-43, footnote 19.

¹³⁰⁸ Psaraffis, H.N. and Pallis, A.A., "Concession of the Piraeus container terminal: turbulent times and the quest for competitiveness", *Maritime Policy and Management* 2012, (27), 36.

now on, competition is right at the Port Authority's doorstep, and also includes local (gateway) traffic¹³⁰⁹.

1089. Meanwhile, labour management practices in the privately run container port of Piraeus caused concerns over the situation of port workers¹³¹⁰.

Trade unions complain that the Chinese terminal operator is not allowing unions or collective bargaining among its Greek workers. They report that workers at the terminal are largely unskilled and working on a temporary basis, with no benefits. A former worker declared to the media that he regularly worked eight hours a day with no meal breaks and no toilet breaks¹³¹¹. Also, he stated that there is no training for specialised jobs and that his contract, which was signed by a subcontractor, not by the terminal operator itself, says no money will be paid for overtime, unless there was a prior written agreement with the company. The company is furthermore accused by Greek unionists and by employees of importing Chinese labour practices, including substantially lower wages than at the neighbouring container pier operated by the Port Authority and the absence of set time schedules¹³¹². Still according to a media report, the Greek labour inspection department noted several labour law violations at the pier, and in August 2010 it reportedly fined the company 3,000 EUR after discovering dockworkers working on their rest days. In October 2010, it found the same again, as well as discovering an untrained worker operating a lifting vehicle and a worker with no employment papers. Furthermore, the unions say there have been two accidents in one year involving straddle carriers, which they ascribe to a lack of proper training. The president of the Piraeus Dockworkers' Union told the media that the terminal operator is "importing the Chinese labour model to Greece" and that this will induce other employers to lower the labour costs and reduce workers' rights. Greek authorities however denied knowledge of any labour violations and insisted that Greek law is applicable and being enforced. Still, the media suggested that the arrival of the Chinese company is "threatening no less than Europe's rule of law".

In an interview, union representatives complained to us that COSCO/PCT unilaterally decides on the organisation of the work and that nothing is mutually agreed, that unions are not tolerated, that there is no official qualifications and accreditation system at the terminal, that

¹³⁰⁹ Psaraftis, H.N. and Pallis, A.A., "Concession of the Piraeus container terminal: turbulent times and the quest for competitiveness", *Maritime Policy and Management* 2012, (27), 39.

¹³¹⁰ See especially Lim, L., "In Greek Port, Storm Brews Over Chinese-Run Labor", *NPR* 8 June 2011, <http://www.npr.org/2011/06/08/137035251/in-greek-port-storm-brews-over-chinese-run-labor?ft=1&f=137035251>.

¹³¹¹ The former worker said workers were told by supervisors to urinate into the sea, rather than taking toilet breaks. Those operating straddle carriers had to take cups up into their cabins to urinate into, and he said they were not given breaks, either, despite the clear dangers of operating at such a height for so long.

¹³¹² Still according to the aforementioned media report by L. Lim, the worker said he was paid 600 EUR a month – about 50 EUR each shift – around half the salary at the neighbouring Greek-operated pier, with no extra money for working night shifts or weekends. There was no set schedule; he was kept on 24-hour call for nine months. His wife said the experience changed his personality. "In the end, it was like a nervous breakdown," she says, gazing at him with concern. "All day he was just waiting to see whether they would call. He didn't know if he had time to eat or to sleep. Sometimes they would ring in the night to tell him to go to work. It was like torture."

the obligation in the Concession Agreement to organise training through the Piraeus Port Authority¹³¹³ is ignored, and that serious occupational accidents have occurred. They also drew our attention to a Labour Dispute Report of 2 April 2012 in which the Labour Inspection Office of Piraeus recommended the employer to immediately pay overtime compensation to two workers, in order to preserve industrial peace and avoid criminal and administrative sanctions. The Report also recalls that it is illegal to dismiss workers due to their trade union action¹³¹⁴.

According to other media reports, however, the terminal is employing more than 700 workers and is steadily expanding its activities. A spokesman mentioned that at first there were concerns that they would bring labour from China but that this was not true, as they have only seven Chinese on the workforce¹³¹⁵. Recently, it transpired that COSCO is looking to gain a stake in Pier I of the Piraeus container port once the port of Piraeus is further privatised¹³¹⁶.

1090. In an interview, the management of PCT and its subcontractor Diakinisis explained to us that upon commencement of their operations, they were obliged to use the Piraeus Port Authority as a subcontractor for a period of 8 months¹³¹⁷. When this transitional period expired, all the port authority's workers returned to Pier I. Today, all workers at the PCT terminal are employed in accordance with general labour law and collective agreements for relevant occupations (operators, electricians, etc.). PCT employs 53 quay crane operators of its own, and some 200 drivers of RMCs, straddle carriers and trucks, either under a permanent contract or through subcontractor Diakinisis, which is the largest logistics company in Greece and had been operating at the port for some fifteen years. Diakinisis relies, in its turn, upon five subcontractors. Whereas lashing personnel was formerly paid by the ship owners, PCT is now organising this service itself, but the workers are still self-employed. Likewise, tallymen are hired from their separate association. PCT employs no foremen, but directions are given by a signalman and at each side of Pier II, there are two supervisors. All mechanics, who maintain the terminal's machinery, are permanently employed by PCT. Detailed statistics on current employment at the terminal are provided above¹³¹⁸. A three-shift system applies, and the organisation of shifts and the number of workers are determined by PCT and Diakinisis on a daily basis. This flexibility can be seen as a competitive advantage over the terminal operated

¹³¹³ Training of PCT's personnel by a Training School set up by Piraeus Port Authority is regulated in Section 31 of the Concession Agreement. The Concession Agreement also obliged the concessionaire to agree with Piraeus Port Authority on a training schedule for the latter's staff (Section 10.1, o)).

¹³¹⁴ Social Inspection Division of Piraeus Central Sector, 2 April 2012, Dispute Report No. 83-84, Dimitrios Bratsoulis and Nikolaos Markakis vs. Georgios A. Aliprantis (official translation by the Ministry of Foreign Affairs).

¹³¹⁵ Fu Jing, "Pier pressure pays off in spades", *ChinaDaily Europe* 6 July 2012, http://europe.chinadaily.com.cn/epaper/2012-07/06/content_15554827.htm.

¹³¹⁶ X., "Cosco Pacific eyes privatised Greek port of Piraeus investment opportunity", *Sea News* 29 June 2012, <http://www.seanews.com.tr/article/TURSHIP/80000/Cosco-Pacific/>.

¹³¹⁷ See Section 27 of the Concession Agreement. Under Section 27.4, PCT had the right to employ personnel of Piraeus Port Authority wishing to terminate its employment with the latter. Quite remarkably, PCT was also obliged to employ children of the Port Authority's employees, in order to cover at least 10 per cent of its personnel requirements, provided that such children desire employment with PCT and possess the qualifications required by PCT (same paragraph).

¹³¹⁸ See *supra*, para 1050.

by the Piraeus Port Authority, where fixed manning scales apply, which are probably the highest of all Europe. Moreover, workers at the latter terminal receive excessive pay for weekend and night work.

An interviewed neutral expert stated that the subcontractors who supply workers to PCT can be compared to temporary work agencies, and that, as these workers have no steady employment, they are obliged to do other jobs as well. Reportedly, PCT also relies on the Public Employment Agency. An interviewee at Piraeus Port Authority confirmed that the workers at COSCO/PCT do not enjoy the excessive pay rates of the Pier I workers, but that their wages are certainly decent¹³¹⁹.

Further, PCT stressed that it made substantial investments in infrastructure and handling equipment in order to increase capacity and improve efficiency and that, in order to meet growing demand, they not only renovated Pier II but are also carrying out major construction works at Pier III which is set to re-open in mid-2013. This will enable the port of Piraeus to accommodate the largest container vessels (18,000 - 20,000 TEU) and compete with Port Said, Beirut and Malta. Several interviewees confirmed that technology at Pier I, which is still run by the Port Authority, is lagging behind, and that manning levels at this facility are higher, while productivity is much lower. Nonetheless, PCT stated that the current relationship with the Port Authority is stable, and that, to a certain extent, they handle the same customers. PCT also confirmed its interest to take over operations at Pier I, which would allow them to compete better with foreign ports.

In the same interview, the employer dismissed the media reports on substandard labour conditions as actions by two frustrated individual workers, whereas it is currently employing hundreds of perfectly satisfied staff who are, of course, not forced to work for the company. The terminal has been inspected more than 30 times by the labour agencies, and the last time the company received congratulations. The terminal has also been visited by Parliamentary Committees. Statistics on occupational accidents were provided above¹³²⁰.

In sharp contrast with the closed shop situation at the integrated port authorities, workers at the COSCO/PCT terminal are indeed not unionised at all. In an interview, representatives of the Piraeus Dockworkers' Union and OMYLE reiterated that the employer denies the workers the right to join a trade union and is thereby violating freedom of association. Workers joining a

¹³¹⁹ A recent media report mentions:

Here are the differences between the Greek side of Piraeus Port and the China-owned Cosco side:

On the Greek side, after a series of strikes in the run-up to 2010, unionized labor had created the unsustainable situation where some workers with overtime were earning \$181,000 per year, while Cosco is typically paying \$23,300. On the Greek side of the port, union rules required that nine people work a gantry crane; Cosco uses a crew of four.

Yet Cosco employs 1,000 workers and rising, while the Greek side employs 800 and falling, even after a government-enforced, state-employee 20 percent pay cut. Unions claim Cosco operates to dubious safety standards, but accident rates are no worse and equipment is state of the art compared to the Greek side.

(Burns, S., "The Case for China's Non-Union, Cosco-Run Side of Greece's Piraeus Port", *MetalMiner* 22 October 2012, <http://agmetaminer.com/2012/10/22/the-case-for-chinas-non-union-cosco-run-side-of-greeces-piraeus-port/>).

¹³²⁰ See *supra*, para 1062.

union would immediately be dismissed. Confronted with these accusations, the employer retorted that it fully adheres to the principle of freedom of association, but that its workers do not feel any need to organise, as employment relationships are very open, the employer cares for its staff and any complaint can immediately be discussed between the parties. Neither is there a need to conclude collective agreements. What is more, the workers are most happy that they are at last liberated from the pressure to join a union and take political sides. Also, PCT's workers were not hit by the severe wage cuts of between 25 and 35 per cent which were imposed in the framework of austerity measures on all workers at the State-controlled terminals¹³²¹. PCT's management also stresses that at its terminal, the mentality has changed radically. Workers are motivated and there is no bribery or bureaucracy. When workers see huge unemployment rates elsewhere and strikes going on for months with no result whatsoever, they become afraid to join a union and indeed consider it a privilege not to be unionised.

Commenting on the general situation of port labour in Greece, PCT said that the unions do not like to apply Act No. 3919/2011 on the liberalisation of regulated professions but also pointed out that the job of port worker was never completely closed in Greece, as there are other private terminals, among which the container terminal at the port of Astakos - Navipe. In other words, the closed shop is specific to the State-controlled ports. In order for the privatisation of publicly-operated ports through concessions to be a success, it is essential that the labour issues be solved.

The employer also explained that it made considerable investments in company-based training and certification, for which it relies on the reputable firms of TUV Nord and Lloyd's. PCT does not support the new EXANTAS training institute because it is an instrument for the unions to close the profession. On the other hand, PCT does not wish to cooperate with temporary work agencies, because workers need proper training. The minimum training requirement is 1.5 months for a general worker, 3 months for a machinery operator, and 4 months for a crane driver. Some workers are trained for different skills. For example, we spoke with a forklift driver who is also trained to do lashing work in case of need. During a brief visit to the terminal, which covered existing as well as future facilities, we talked to several workers in the course of their work and could note no apparent anomalies or identify situations which contrast with operations at other big container terminals in Europe.

Diakinisis Port provided us with the following documents:

- ISO Certification - BS OHSAS 18001 : 2007 (Occupational Health & Safety) from TUV Nord;
- ISO Certification - EN ISO 14001 : 2004 (Environmental Management System) from TUV Nord;
- ISO Certification - BS EN ISO 9001 : 2008 (Quality Management System) from Lloyd's;
- Attestation for the provision of a series of seminars on "Safety in lifting and carrying loads at Piraeus Container Terminal" from TUV Nord;
- Certification of Attendance (Draft Copy) from TUV Nord.

¹³²¹ See, once more, Act No. 4024/2011 (Νόμος 4024 ΘΣΥΝΤΑΞΙΟΔΟΤΙΚΕΣ ΡΥΘΜΙΣΕΙΣ, ΕΝΙΑΙΟ ΜΙΣΘΟΛΟΓΙΟ - ΒΑΘΜΟΛΟΓΙΟ, ΕΡΓΑΣΙΑΚΗ ΕΦΕΔΡΕΙΑ ΚΑΙ ΑΛΛΕΣ ΔΙΑΤΑΞΕΙΣ ΕΦΑΡΜΟΓΗΣ ΤΟΥ ΜΕΣΟΠΡΟΘΕΣΜΟΥ ΠΛΑΙΣΙΟΥ ΔΗΜΟΣΙΟΝΟΜΙΚΗΣ ΣΤΡΑΤΗΓΙΚΗΣ 2012-2015).

These documents indicate, *inter alia*, that in May and June 2012, an in-house seminar on "Safety in lifting and carrying loads at Piraeus Container Terminal" was organised by Diakinisis in cooperation with TUV Hellas. The seminar was conducted in groups of 20 delegates of the following skills:

- Operators of lifting equipment
 - o Cranes
 - o RMG cranes
 - o Front loaders
 - o OSME (straddle carriers)
 - o Clark
- Trailers guides (MAFI)
- Experienced craftsmen
- Workers of general duties.

Each seminar included theoretical (5 hours) and practical (3 hours) training. The seminars were held in the Greek language with teaching materials. After each theoretical training, knowledge tests were assessed by the trainers. At the end of each practical training, participants were evaluated in applying the rules of safety at work and good working practices. At the end of each seminar, it was also evaluated by the participants. As evidence of successful monitoring and evaluation of participants, Certificates of Attendance and true copies of Certificates of Attendance were granted to participants who successfully achieved the 8-hour seminar.

Other training course organised recently at COSCO/PCT covered safe maintenance of machinery and security.

Figure 85. BS OHSAS 18001:2007 Management System Certificate issued to Diakinisis Port and Co. E.E., 28 May 2011 (source: Diakinisis Port)

CERTIFICATE



Management system as per
BS OHSAS 18001 : 2007

In accordance with TÜV NORD CERT procedures, it is hereby certified that

DIAKINISIS PORT and CO E.E.

Head Offices: 15 D. Gounari Str., 185 31 Piraeus,
Branch Office: Pier 2, N. Ikonio, Piraeus Port,
188 63 PERAMA/HELLAS



applies a management system for Occupational Health and Safety in line with the above standard for the following scope

Provision of Management Services (such as: Verification, Receipt, Loading, Unloading, Storage) for Containers arriving via Sea or Continent to Pier 2 of Piraeus Port.

Certificate Registration No. 44 116 110625
Audit Report No. 3507 9034

Valid until 2014-05-27

Certification Body
at TÜV NORD CERT GmbH

Essen, 2011-05-28

This certification was conducted in accordance with the TÜV NORD CERT auditing and certification procedures and is subject to regular surveillance audits.

TÜV NORD CERT GmbH

Langemarckstrasse 20


45141 Essen

www.tuev-nord-cert.com



TGA-ZM-07-06-64

Figure 86. Training certificate for port workers of Diakinisis Port, 10 May 2012 (source: Diakinisis Port)



TUV HELLAS
Member of TÜV NORD Group

**ΠΙΣΤΟΠΟΙΗΤΙΚΟ
ΠΑΡΑΚΟΛΟΥΘΗΣΗΣ**

Ο Φορέας Πιστοποίησης & Εκπαίδευσης
TÜV HELLAS (TÜV NORD) A.E.

Πιστοποιεί ότι ο


Ο κ. ΝΙΚΟΛΑΟΣ ΕΜΕΞΙΖΟΒ


παρακολούθησε επιτυχώς Θεωρητικό και Πρακτικό Σεμινάριο
διάρκειας 8 ωρών με θέμα:

**“ΑΣΦΑΛΕΙΑ ΚΑΤΑ ΤΗΝ ΑΝΥΨΩΣΗ
& ΜΕΤΑΦΟΡΑ ΦΟΡΤΙΩΝ
ΣΤΟ ΣΕΜΠΟ”**

που αφορά στην Εκπαίδευση, Αξιολόγηση και Εφαρμογή των
κανόνων εργασίας και ασφαλούς πρακτικής για το ειδικό περιβάλλον
του Λιμένα.

Τόπος διεξαγωγής: **ΣΕΜΠΟ, Ν. ΙΚΟΝΙΟ, Πέραμα, Προβλήτας 2**
Ημ/νία διεξαγωγής: **10 Μαΐου 2012**

Για την:
Υπογραφή:  **για την TUV HELLAS**


Λάμπρος Ζάχος
**Αν. Γενικός Διευθυντής/
Εκπαιδευτής**

Ημερομηνία έκδοσης: **26 Ιουλίου 2012**

Certification Number: 09.09.1122A-03

TUV HELLAS S.A.
A company of the TÜV NORD Group

1091. In July 2012, the European Commission notified Greece of its decision to initiate a state aid procedure in relation to fiscal advantages granted to COSCO/PCT. This decision was provoked by, *inter alia*, complaints by the trade unions¹³²². Although state aid issues are beyond the scope of the present study, it is worth mentioning that the complaints also referred to the provisions of the concession agreement on the training of workers¹³²³.

9.9.7. Appraisals and outlook

1092. Replying to the questionnaire, the Piraeus Port Authority stated that the current port labour system is satisfactory and provides legal certainty. Furthermore, the relationship with workers' unions is considered excellent. At the same time, the Port Authority is convinced that current labour arrangements impact negatively on the competitive position of the port. For lack of adequate information, the Port Authority was unable to put forward any port labour system as an alternative model. Several interviews with internal and external stakeholders and experts confirmed that the Piraeus Port Authority indeed believes that current arrangements must be improved.

1093. The Thessaloniki Port Authority, which sent in two different and conflicting replies to the questionnaire, is apparently not sure whether the current port labour set-up is adequate and whether it impacts negatively on competition. Relations with workers are termed satisfactory to good.

1094. The Volos Port Authority responded that its labour system is adequate and does not impact on the competitive position of the port at all. It sees no issues relating to legal uncertainty. Relations with unions are described as excellent.

1095. The Port Authorities of Elefsina and Igoumenitsa reported that relations with unions are excellent but did not speak out on policy issues. The latter Port Authority added that the port labour system has no competitive impact.

¹³²² Letter of 11 July 2012, C(2012) 4217 final, State aid SA.28876 (2012/C) (ex 2011/N) (ex CP 202/2009) – Greece. Container Terminal Port of Piraeus & Cosco Pacific Limited; see also the Invitation to submit comments in OJ C 301/55, 5 October 2012.

¹³²³ See esp. paras 22 and 86 of the Letter.

1096. In an interview, trade union OMYLE said that the current port labour system must be maintained and improved, and that Greece must ratify ILO Conventions No. 137 and 152. However, we were informed that Greece is currently not considering ratification of any of these Conventions, and that particularly ILO Convention No. 137 is considered out-dated.

The Piraeus Dockworkers' Union and OMYLE further stressed that ports are national assets and essential to local societies. Greece has many islands, the ports of which cannot be privatised.

1097. Greek shipowners replying to the questionnaire described the Greek port labour system as unsatisfactory and as detrimental to the competitive position of the ports. However, they admitted that the situation has improved over the past five years, expected further reforms within the context of the general austerity measures and referred in this context to the labour regime applied in the major North European ports (Rotterdam, Antwerp, Hamburg, *etc.*) as models.

1098. In an interview with a Belgian newspaper from September 2012, the manager of a chemical plant at Thessaloniki said that recent industrial action by port workers' unions amounted to 'sabotage' which was only aimed at preserving the exorbitant privileges of a small number of very well-paid dockers. He complained that his export figures could have been much better if only Thessaloniki would have functioned as a genuine regional hub. The 'enormous delays' had deterred customers, as he could not meet delivery deadlines and the supply of raw materials broke down. In order to continue operations, the entrepreneur had to move to the port of Kavala. A local trade union representative commented that the excessive wages of port workers and strikes caused by unwillingness to work for a commercial employer have become myths from past times¹³²⁴.

1099. In its reply to the questionnaire, the Piraeus Port Authority saw no need for EU action in the field of port labour, as there are too many local particularities, but in an interview, the management stated that the EU should do something on dock work, as it is a closed profession all around the Union, with only a few exceptions.

1100. The authors of one reply to the questionnaire by the Thessaloniki Port Authority are persuaded that there is a need for an EU regulatory framework for the certification of port

¹³²⁴ De Koning, M., "Privatiseren op zijn Grieks", *De Standaard* 1-2 September 2012.

workers and that these certificates should be mutually recognised in all EU Member States, in order to increase flexibility of movement of port workers between the countries.

1101. The Volos Port Authority mentioned that the EU should ensure that ports enjoy flexibility to develop their own policies in order to ensure quality of operations and co-operate with private investors with a view to future developments.

1102. In an interview, the Piraeus Dockworkers' Union said that the EU must intervene in order to stop sub-standard employment at the COSCO/PCT terminal. Together with OMYLE, the union also referred to demands by IDC to the European Commission to take action to improve working conditions at this terminal¹³²⁵. The unions also stressed that they are not against changes, but that they want to be involved in the decision-making process, and that they fear a new unilateral liberalisation initiative by the European Commission.

1103. Greek shipowners reported that they would favour a uniform EU labour regime ensuring fair compensation for workers, safe working conditions and high productivity.

1104. In 2010, the Greek Government, in the context of a new loan package from the EU, the European Central Bank and the International Monetary Fund, announced a sweeping programme of privatisations of corporations in which the Greek State has a stake, including the ports of Piraeus and Thessaloniki¹³²⁶. Concretely, Greece's Memoranda of Economic and Financial Policies mention that between 2011 and 2013, a comprehensive privatisation plan will be implemented which will cover, *inter alia*, the railroad sector, airports, post office, water companies, ports, and gaming companies¹³²⁷. Currently, the Hellenic Republic Asset Development Fund (HRADF)¹³²⁸ is evaluating the most appropriate method for the privatisation of Greek ports. Reportedly, the transfer of shares in Piraeus Port Authority and Thessaloniki to HRADF was challenged before the Supreme Court by the dockworkers' unions¹³²⁹. We are unaware of the current status of these proceedings.

¹³²⁵ On IDC's position, see *supra*, para 287.

¹³²⁶ Psaraftis, H.N. and Pallis, A.A., "Concession of the Piraeus container terminal: turbulent times and the quest for competitiveness", *Maritime Policy and Management* 2012, (27), 40.

¹³²⁷ See the Memoranda of 2010 and 2012; also European Commission / Directorate-General for Economic and Financial Affairs, *The Economic Adjustment Programme for Greece Third Review - Winter 2011*, in *European Economy Occasional Papers*, No. 77, February 2011, http://ec.europa.eu/economy_finance/publications/occasional_paper/2011/pdf/ocp77_en.pdf.

¹³²⁸ See <http://www.hradsf.com/en>.

¹³²⁹ See X., "Athens, Thessaloniki Port Workers Go to Court Over Asset Sales", *Hellenic Shipping News* 27 June 2012, <http://www.hellenicshippingnews.com/News.aspx?ElementId=eba8ed55-9117-4121-b96e-f27a8e93e8e7>.

The Economic Adjustment Programmes for Greece also include a reform of general labour law and the deregulation of closed professions. Although a Circular on the implications of Act No. 3919/2011 for port labour was issued¹³³⁰, the liberalisation of the profession of port worker has so far remained a dead letter. The European Commission insists that the effect of the liberalisation of professions be enhanced by appropriate legislative amendments to the regulations of each profession to ensure that restrictions are effectively identified and removed¹³³¹.

9.9.8. Developments between January 2013 and September 2014

1104A. A further reform of port labour arrangements providing for, *inter alia*, the creation of a National Stevedores Registry, rules on the accreditation of stevedores, health and safety procedures etc. was envisaged under the Second Economic Adjustment Programme for Greece.

In the meanwhile, Greece's *National Port Strategy 2013 - 2018* presented the following vision of the future of port labour:

The profession of Port Stevedores (along with that of land stevedore) was included in the list of «closed» professions, according to Law 3919/2011 on «Principle of freedom of occupation, removal of unjustified restrictions on access to and exercise of professions» (Greek Official Gazette vol. A' 32/2011).

Subsequently, by Law 4093/2012 on «Approval of the Medium Term Fiscal Strategy 2013-2016 - Urgent Implementation Measures of Law 4046/2012 and the Medium Term Fiscal Strategy 2013-2016» (Greek Official Gazette vol. A' 222/2012, Article 1, paragraph IA7), «undue restrictions on access to and exercise of professions», with regard to the profession of stevedores (land and port), were removed. Specifically, the restrictions on the number of persons entitled to exercise a profession were removed, as well as the geographic restrictions in the exercise of the profession, the regulations imposing mandatory minimum or maximum wages or fees and the requirement of prior administrative licensing to exercise the profession.

Nowadays, to exercise the profession a simple announcement of starting the profession is required, together with the necessary supporting documents. At the same time, the National Register of Stevedores is created, comprising two levels: I («Introductory») and II («Certified Level»). All active stevedores are automatically enrolled in Registry II.

¹³³⁰ See *supra*, para 1048.

¹³³¹ See European Commission / Directorate-General for Economic and Financial Affairs, *The Second Economic Adjustment Programme for Greece*, in *European Economy Occasional Papers*, No. 94, March 2012, http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp94_en.pdf, para 50-51. 41,

By delegation of Law 4093/2012, the following Ministerial Decisions are to be issued:

- 1. Joint Ministerial Decision to set up the National Registry of Stevedores and the form and contents of the certificate of stevedores and any other relevant matter. By 31/1/2012*
- 2. Joint Ministerial Decision on vocational training and certification. By 31/12/2012*
- 3. Joint Ministerial Decision on drafting regulations to conduct stevedore works. By 31/3/2013*
- 4. Joint Ministerial Decision on the mandatory training process on hygiene and safety issues, in accordance with Article 12, Directive 391/1989/EC. By 31/3/2013*
- 5. Joint Ministerial Decision on the allocation of funds of the former Protection Account for Stevedores-Dockers (PAS D.). By 31/3/2013*
- 6. Joint Ministerial Decision on all kinds of rights, fees and allowances in favour of a Port Fund and Fleet Managers, being charged on loads during handling. By 31/3/2013*
- 7. Ministerial Decree of the Ministry of Shipping, Maritime Affairs and the Aegean on the entrance terms and procedures of stevedores in port areas. By 31/3/2013 The objective of the intervention is to ensure a workforce with skills meeting modern methods and means of port operations, increase the attractiveness of Greek ports and maintain employment in the industry.*

The provisions of Law 4093/2012 on stevedores exclude stevedores engaged in port areas of the Piraeus and Thessaloniki Port Authorities, as they are salaried staff of these Authorities. The Ministry of Shipping, Maritime Affairs and the Aegean, in cooperation with the Ministry of Labour and the Piraeus and Thessaloniki Port Authorities, have begun preparing the necessary amendments and regulations, so that the labour status and the relevant regulations of stevedores working in these two Authorities are in line with the provisions of Law 4093/2012¹³³².

To date, the following new regulations were adopted:

- Joint Ministerial Decision No. 9296/300/1.4.2013 on the Conditions and Procedure for the Training and Certification of Cargo-handling Workers¹³³³;
- Joint Ministerial Decision No. 14366/416/9.5.2013 on the National Register of Cargo Workers¹³³⁴;
- Joint Ministerial Decision No. 1507/437/15.5.2013 on a General Regulation of Port Cargo Work¹³³⁵.

These instruments provide for a new nationwide organisation of port labour through a uniform training and certification scheme and a national register of port workers (for unskilled and

¹³³² Ministry of Shipping, Maritime Affairs and the Aegean, *National Port Strategy 2013-2018*, December 2012, 43-44.

¹³³³ Κ.Υ.Α. Αριθ. 9296/300/1.4.2013 Προϋποθέσεις και Διαδικασία Πιστοποίησης Επαγγελματικής Κατάρτισης Φορτοεκφορτωτών Ξηράς – Λιμένος.

¹³³⁴ Κ.Υ.Α. Αριθμ. 14366/416 Εθνικό Μητρώο Φορτοεκφορτωτών – καθορισμός δικαιο- λογητικών για την άσκηση του επαγγέλματος του Φορτοεκφορτωτή ξηράς και λιμένος.

¹³³⁵ Κ.Υ.Α. Αριθ. 15107/437 Γενικός Ενιαίος Κανονισμός Εργασίας Διεξαγωγής των Φορτοεκφορτωτικών Εργασιών Λιμένος

skilled workers respectively) which is managed by the Labour Ministry and comprises a number of sub-registers (A for new workers who receive 7 hours' training, Ba for workers with at least 150 days of experience and Bb for licensed machine operators).

Nonetheless, the liberalisation of the port worker's profession still suffers from certain deficiencies such as certificates being reserved for union members, the absence of a functioning training programme and the strict classification of workers in sub-registers, preventing skilled workers (Bb) from performing tasks which require lower qualifications (Ba). On the other hand, port operators reported substantial reductions of the wage bill and, consequently, of the cost of port operations.

We are unaware of any initiatives to accede to ILO Conventions nos. C137 and C152¹³³⁶.

1104B. In 2013, new legal provisions were adopted that provide for the reform of the port management system in Greece and for the privatisation of the 12 major ports of national importance¹³³⁷. At the time of writing, the privatisation of the Port of Piraeus Authority and the establishment of a new Greek Ports Regulator were still in the pipeline (potential bidders for the acquisition of a majority stake in the ports of Piraeus and Thessaloniki were prequalified in the first half of 2014). These projects do not deal specifically with port labour -related matters but it is obvious that privatisation of the ports will have an impact on them. In any case, port workers' unions have challenged the privatisation scheme before Greece's Constitutional Court. At the time of writing, the case was still pending. In the meantime, the container terminals in Piraeus reported a considerable rise in the numbers of containers handled.

¹³³⁶ See, however, X., "Reforming Port Labour: Challenges to the ratification of ILO Port Labour Conventions in Greece", paper for the IAME Conference, July 3-5, Marseilles, France (paper ID 233).

¹³³⁷ See ΝΟΜΟΣ 4150/2013/ΦΕΚ Α/102/29.04.2013 *Ανασυγκρότηση του Υπουργείου Ναυτιλίας και Αιγαίου και άλλες διατάξεις*.

9.9.9. Synopsis

1105.		
SYNOPSIS OF PORT LABOUR IN GREECE¹³³⁸		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> Over 1,300 seaports, 12 major seaports Mix of management models (service port in Piraeus and Thessaloniki, some terminal concessionaires) 153m tonnes 9th in the EU for containers 44th in the world for containers 30 employers (?) Number of port workers: 2,500 (?) Trade union density: 100% except at private terminals (0% at PCT) 	<ul style="list-style-type: none"> Law on National Register of Port Workers (2013) No Party to ILO C137 CBAs and/or Internal Staff Regulations 3 main categories of workers <ul style="list-style-type: none"> (1) In Piraeus and Thessaloniki: workers employed by Port Authority (2) In other ports: self-employed workers hired by port users through workers' associations (3) At private terminals: workers employed under general labour law 	<ul style="list-style-type: none"> Exclusive right of service ports Closed shop Mandatory manning scales Ban on self-handling Wish of unions to ratify ILO C137 not supported by private sector Restrictive working practices Inefficient working hours and excessive overtime pay (locally) Contrast with flexible organisation at PCT (but accusations of substandard working conditions) Transition towards newly adopted national port labour regime Forthcoming port privatisation
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> Port training institute EXANTAS Some private training providers 	<ul style="list-style-type: none"> National training and certification scheme 	<ul style="list-style-type: none"> Insufficient training of workers Implementation of new national framework
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> Elementary statistics available No sector comparisons available 	<ul style="list-style-type: none"> Specific national rules on handling of dangerous goods No Party to ILO C32 or C152 	<ul style="list-style-type: none"> Some specific gaps with ILO C152 Opposition against ILO C152

¹³³⁸ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.10. Ireland

9.10.1. Port system¹³³⁹

1106. In Ireland, there are nine State-controlled commercial port companies: Dublin Port Company (which is also responsible for Dundalk Port), Port of Cork Company, Shannon Foynes Port Company, Port of Waterford Company, Galway Harbour Company, Drogheda Port Company, New Ross Port Company, Wicklow Port Company and Dún Laoghaire Harbour Company.

In addition to these state-owned port companies, the port of Rosslare is owned and operated by the State railway company, and ownership of another commercial port, Greenore, is shared by Dublin Port Company and a private investment group. Since 2005, several of what are termed regional harbours have been transferred to the control of local authorities. These regional harbours primarily serve local recreational and amenity functions. However, a small number continue to handle very low levels of commercial traffic.

Dublin Port Company is the largest Irish port, handling approximately 43 per cent by tonnage of all seaborne trade. The next biggest ports are Shannon Foynes Port and the Port of Cork, which handle approximately 20 per cent and 19 per cent by tonnage of all seaborne trade.

In 2012, the weight of seaborne goods handled in Irish ports was about 47.6 million tonnes¹³⁴⁰. As for container throughput, Irish ports ranked 14th in the EU and 60th in the world in 2011¹³⁴¹.

1107. All ports differ in their geographic layout, infrastructure and ownership and/or control of all of the port landside area or of different areas within the port. There are high levels of private sector involvement in the provision of infrastructure and services, with four principal port business models in operation:

- full service ports such as Rosslare and Dundalk, where the infrastructure, superstructure and most services are delivered by a single public undertaking;
- tool ports, mainly estuary ports where a number of port installations, both private and publicly owned, are geographically dispersed within the estuaries;

¹³³⁹ For general information on Irish ports, see ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 193-227; for statistics, see www.cso.ie and http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

¹³⁴⁰ See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

¹³⁴¹ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

- landlord ports, for example Dublin Port, where the land and infrastructure is leased or licensed to private companies;
- fully privately owned and operated ports, for example Greenore.

9.10.2. Sources of law

1108. The management of Ireland's main ports is governed by the Harbours Acts 1996 as amended by the Harbours (Amendment) Act 2000 and the Harbours (Amendment) Act 2009.

The Harbours Act 1996 regulates the establishment and administration of Port Authorities, safety of navigation and security in harbours and pilotage. It does not deal with port labour as such. However, under Section 42 and Part I of the Sixth Schedule to the Act, Port Companies may issue bye-laws dealing with, *inter alia*, shipping and unshipping, loading and warehousing of goods, the use of cranes and weighbridges belonging to the Company, and specifying how goods shall be placed on quays or docks within the harbour.

1109. Employment of port workers is not governed by any specific legislation. General labour law – which is laid down in a variety of thematic instruments such as the Industrial Relations Act, the Terms of Employment (Information) Acts, the Protection of Employees (Fixed-Term Work) Act and the Unfair Dismissals Acts and the Payment of Wages Act – is fully applicable.

1110. The two principal pieces of legislation on health and safety are the Safety, Health and Welfare at Work Act 2005 and the Safety, Health and Welfare at Work (General Application) Regulations 2007.

Other relevant legislation enforced by the Health and Safety Authority which may be relevant to the port industry includes:

- the Safety, Health and Welfare at Work (Confined Spaces) Regulations 2001;
- the Safety, Health and Welfare at Work (Chemical Agents) Regulations 2001;
- the Safety, Health and Welfare at Work (Biological Agents) Regulations 1994;
- the Safety Health and Welfare at Work (Construction) Regulations, 2006;
- the (Classification, Labelling and Packaging of substances and mixtures) Regulations 2008;
- the REACH Regulations (Registration, Evaluation, Authorisation and Restriction of Chemicals);
- the Dangerous Substances (Oil Jetties) Regulations, 1979.

On its website, the Health and Safety Authority maintains a database on health and safety regulations which are relevant to docks¹³⁴².

1111. The only specific legal instruments on port labour in Ireland are the Docks (Safety, Health and Welfare) Regulations, 1960, which were given on 31 December 1960 (S.I. No. 279/1960) but have since been partly revoked, and the Docks (Safety, Health and Welfare) (Forms) Regulations, 1965 (S.I. No. 63/1965).

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 2003¹³⁴³.

1112. Ireland has ratified neither ILO Convention No. 137, nor ILO Convention No. 152. Apparently, it is still bound by ILO Convention No. 32, which it ratified on 13 June 1972. Previously, it was bound ILO Convention No. 28.

1113. There are no collective agreements on port work at national level. Collective labour agreements in the port sector are concluded between the individual stevedore or terminal operator and the union. In Dublin, for example, there are three distinct container terminals, each dealing with the one union (SIPTU) on separate and distinct terms. Rosslare Europort and SIPTU also concluded a collective agreement. Other ports where collective agreements apply include Cork, Greenore and Foynes. Galway has no collective agreement on port labour. As these agreements are kept confidential, we were unable to consult them. Reportedly, the agreements deal with terms and conditions of employment such as working hours, daily rates to be paid and overtime.

¹³⁴² See http://www.hsa.ie/eng/Your_Industry/Docks/Legislation/.

¹³⁴³ S.I. No. 347/2003 — European Communities (Safe Loading and Unloading of Bulk Carriers) Regulations 2003.

9.10.3. Labour market

- Historical background

1114. In a paper on the story of the Dublin docker, Aileen O'Carroll explains that the conditions under which dock work was conducted can be divided into four phases¹³⁴⁴.

Under casualisation, dockers were hired and paid on a daily basis. They had no guaranteed jobs or income. Their work was based on the docks in general rather than being tied to a specific employer.

Immediately after WW 2, the 'button system' was introduced. Section 62 of the Harbours Act 1946 stipulated that a harbour authority may (either alone or in co-operation with any other body or bodies), take such steps as they think proper to improve conditions of employment of casual workers at their harbour and, in particular, may institute a system of registration of such workers and of confinement of employment to registered workers. However, still according to Section 62 of the Act, the harbour authority could not exercise these powers where workers and their employers had themselves instituted any such system. The 1946 Harbour Act was essentially a response to the grievances of the war and post-war years which had led to increasing dissatisfaction with the casual nature of dock work. On 28 June 1946, 1,000 dockers went on strike for holiday pay. The strike ended on 3 August with the Minister for Industry and Commerce promising to introduce a scheme to abolish casual work the following year. The first buttons were issued in 1947. Under the 'button system', 'button men' were given first preference when jobs were being distributed at the daily 'Read', and dockers had to turn up every day at a certain point in order to get work. These men were so named because the union button or badge they wore indicated that they had the right to be called before any 'non-button' men. The button could be passed from father to son, in cases of ill health or retirement, thus further institutionalising the family nature of docking¹³⁴⁵. However, in all other respects the work remained the same. It was still casual, with no guarantee of job or income.

In 1971, casualisation and the button system were replaced by decasualisation¹³⁴⁶. In Dublin a dockers' register was established so that dock work could only be given to registered dockers. Weekly pay-rates were introduced instead of piecework, as well as 'fallback' money (payment made when no work was available). A rotational system, whereby the available work was shared equally and a pension scheme were also established. Until this point, dockers could be

¹³⁴⁴ O'Carroll, A., "Every ship is a different factory". Work Organisation, Technology, Community and Change: The Story of the Dublin Docker", http://www.academia.edu/226953/Every_ship_is_a_different_factory_Work_Organisation_Technology_Community_and_Change_The_Story_of_the_Dublin_Docker.

¹³⁴⁵ O'Carroll, A., "Every ship is a different factory". Work Organisation, Technology, Community and Change: The Story of the Dublin Docker", http://www.academia.edu/226953/Every_ship_is_a_different_factory_Work_Organisation_Technology_Community_and_Change_The_Story_of_the_Dublin_Docker, 8-9.

¹³⁴⁶ Decasualisation was introduced in 1961 for men in the Channel sector, and in 1971 this was extended to those working in the deep-sea docks.

hired by any one of the many stevedores located on Dublin docks. Decasualisation disrupted the docking family networks. Whereas under the button system the button could be passed from father to son, the permanency granted under decasualisation was not transferable. It also altered the selection process. Now, work was rotated, with men being called alphabetically¹³⁴⁷.

In 1982, Dublin's stevedores were replaced by Dublin Cargo Handling (DCH), a subsidiary of the port authority which was licensed as the sole stevedore in the deep-sea section of Dublin Port. From this time point onwards, dockers worked for this one employer. Dock work became permanent. However, the port's labour problems proved intractable. So bad was the labour situation that the EU made future grants conditional on the port dealing with its dock labour problems, which provided an essential external pressure to deal with the problem once and for all¹³⁴⁸. In 1992 DCH went into liquidation and the work was re-casualised: fallback pay was discontinued, piece work was introduced, dockers were assigned to work for specific companies and restrictive manning and work practices were abolished¹³⁴⁹. The port authority of Dublin sold the cranes that it was operating and absorbed or made redundant the crane men.

¹³⁴⁷ O'Carroll, A., "'Every ship is a different factory'. Work Organisation, Technology, Community and Change: The Story of the Dublin Docker", http://www.academia.edu/226953/Every_ship_is_a_different_factory_Work_Organisation_Technology_Community_and_Change_The_Story_of_the_Dublin_Docker, 11.

¹³⁴⁸ O'Reilly, E., *The Irish Port System – an example of successful privatisation through franchises*, ppt, Athens, 1 October 2012.

¹³⁴⁹ In 1992, at a time when the Dublin Port dispute was at its height, the Irish Minister for Labour described the situation in the following terms before the Dáil Éireann (House of Deputies):

Under the Harbours Act, 1946, Dublin Port and Docks Board are responsible for the management of Dublin Port. The port is divided into three separate labour sectors: (i) the cross channel sector where companies employ their own labour and operate from allocated berths; (ii) a sector comprising oil imports and ore and Guinness exports — companies in this sector employ their own labour but operate from common user berths; and (iii) the deep sea sector where the berths are common user and the labour is provided by Dublin Cargo Handling Limited (DCH), a wholly-owned subsidiary of Dublin Port and Docks Board.

The present difficulties relate to the deep sea sector of the port and the employees of Dublin Cargo Handling. Dublin Cargo Handling Limited were established in 1982 as an initial attempt to rationalise labour in the deep sea sector of the port as a response to the chaotic situation which had arisen, with nine stevedoring companies operating independently of each other and their financial viability being quickly eroded by rigid labour practices.

In 1985 Dublin Port was left with a 100 per cent shareholding in Dublin Cargo Handling following the withdrawal of the private stevedoring company, Associated Port Terminals, in the face of heavy losses. Dublin Cargo Handling have continued since to suffer heavy losses. From 1982 to the end of 1990 Dublin Cargo Handling's accumulated losses, together with redundancy payments of £7.6 million, reached a total of £16.2 million. Dublin Cargo Handling incurred losses of approximately £1.5 million last year.

In the face of these continuing losses, the board and management of Dublin Port and Dublin Cargo Handling took the view that the loss-making situation at Dublin Cargo Handling was unsustainable. A major study by Stokes Kennedy Crowley on the organisation of stevedoring in the port was commissioned and completed in May 1991. The study report concluded that the effect of Dublin Cargo Handling's losses limited the capacity of the port authority to fund necessary capital development and discouraged the growth of trade through the port. The Stokes Kennedy Crowley report identified a range of problems, including overstaffing at all levels, high absenteeism and sickness, low average utilisation of dock labour, inefficiencies, poor labour allocation systems and no prospect of profitability. The lack of choice for ships but to use Dublin Cargo Handling and the high cost of services were also highlighted. The competitiveness of Dublin Port was also a matter of serious concern to the Culliton Review Group on industrial policy, with a low frequency of services and shorter opening hours being particularly highlighted.

(Debate of 26 March 1992, <http://historical-debates.oireachtas.ie/D/0417/D.0417.199203260113.html>).

1115. Alongside these organisational changes, port labour itself underwent major changes in the 1960s as containerisation became dominant. Previously dockers removed cargo piece-by-piece, but containers were lifted off the ships as units. Both decasualisation and containerisation were to cause major changes to the nature of dock work. Decasualisation lasted only a short time, as one docker commented: "in 1972, they decasualised us. In 1982, they made us permanent, and in 1992, they casualised us again". In other words, the twenty years of decasualisation were the exception to the rule¹³⁵⁰.

Containerisation drastically reduced the numbers working on the docks. In the 1960s up to one thousand people were on the dockers' registers in Dublin. With de-casualisation that number was halved to approximately 550. By 1990 only 135 dockers remained¹³⁵¹. By 1992, when casualised work was reintroduced after the collapse of Dublin Cargo Handling, there were 42 permanent dockers (who were offered work first) and 100 part time dockers in a supplementary pool¹³⁵². Today, the port of Dublin again employs approximately 250 port workers.

1116. In 1996, the 1946 Harbour Act was repealed in respect of all the nine State owned commercial ports. The current Harbours Act 1996 (which governs the major commercial ports) does not contain provisions similar to Section 62 of the Harbours Act 1946. Over the past 15 years, pool and registration systems were gradually abolished through dock work rationalisation schemes adopted in individual ports.

In 2001, as part of its future development strategy, EU and customer requirements, the Drogheda Port Company completed the total dismantling of the traditional dock labour system in Drogheda. It is one of a number of Irish ports now operating without a dock labour pool and each operator is free to utilise their own staff, giving them total control of their operations¹³⁵³.

¹³⁵⁰ O'Carroll, A., "'Every ship is a different factory'. Work Organisation, Technology, Community and Change: The Story of the Dublin Docker", http://www.academia.edu/226953/Every_ship_is_a_different_factory_Work_Organisation_Technology_Community_and_Change_The_Story_of_the_Dublin_Docker, 3-4 and also 5.

¹³⁵¹ O'Carroll, A., "'Every ship is a different factory'. Work Organisation, Technology, Community and Change: The Story of the Dublin Docker", http://www.academia.edu/226953/Every_ship_is_a_different_factory_Work_Organisation_Technology_Community_and_Change_The_Story_of_the_Dublin_Docker, 13 with further references.

¹³⁵² O'Carroll, A., "'Every ship is a different factory'. Work Organisation, Technology, Community and Change: The Story of the Dublin Docker", http://www.academia.edu/226953/Every_ship_is_a_different_factory_Work_Organisation_Technology_Community_and_Change_The_Story_of_the_Dublin_Docker, 15. Ocean Manpower Ltd (OML) is the company which took over running of deep-sea section of Dublin Port in 1992. In 2000, OML attempted to employ 15 new dockers. This became the subject of a Labour Court case (Irish Times 15th May 2000; Labour Court Recommendation No. LCR16495 (CC99/1363)). The Labour Court recommended that permanent employees be given a guaranteed employment of 16 hours a week but also that a single Read system be introduced as requested by OML. Ocean Manpower Limited closed in 2003 (*ibid.*, footnote 36).

¹³⁵³ Raymond Burke Consulting, *High Level Review of the State Commercial Ports operating under the Harbours Act 1996 and 2000*, May 2003, <http://www.dcenr.gov.ie/NR/rdonlyres/0D9B0167-7C30-4DAE-B39E-D47FD690E756/0/mtrepmay03.pdf>, 56.

In 2002, a docker rationalisation programme was finalised in the port of Galway.

In 2003, port labour in Dublin was rationalised further at a cost approaching 5m EUR. This rationalisation was funded by the licensed stevedores and the primary outcome was the winding up of the aging original 100-strong casual pool which had been created after the liquidation of DCH in 1992. This initiative led to the direct employment of new dockworkers, some on a casual basis, by the licensed stevedores.

In 2006 a 1.6m EUR redundancy package was adopted for 18 Foynes dockers. The halving of the casual docker numbers came as a new system, involving a pension scheme for the first time, brought Foynes into line with practices in every other commercial port in the country. The rationalisation programme at Foynes saw large redundancy payments to individual dockers because dockers at Foynes had historically enjoyed very high incomes, and the settlement required to reflect this. Negotiations between the port users, union and the port company had taken over a year to conclude, but everyone has signed up, and the dockers have better security of employment. The remaining 19 dockers, who would still be employed by the stevedores, are called on duty in order of seniority¹³⁵⁴.

A key milestone in the port of Cork was the completion of the Dock Rationalisation Programme in 2009. This agreement saw the elimination of the casual dock labour system in the port. The lengthy industrial relations process involving port service providers and port users with dock labour union representatives concluded in February 2009 (following a Labour Court Recommendation in November 2008). This has resulted in the total modernisation of work practices in the port with the 93 casual dockers accepting redundancy and allowing a radical change in the means and methods by which ships in the port are discharged and loaded. The Port of Cork Company, which owns and operates the port container handling equipment, then considered an agreement with the stevedores to allow the Port of Cork Company to carry out all aspects of the lo-lo (lift on lift off) Stevedoring operations, to be an essential part of the modernisation of the Port of Cork and crucial to the future development of a container terminal in the Port of Cork. In July 2009, the Port of Cork Company reached agreement with the stevedores in respect of relinquishing their rights to provide stevedoring services in the lo-lo container trade at the Port of Cork¹³⁵⁵.

In Wicklow, successive phases of dock labour rationalisation were carried out as well, without any disruption of port operations¹³⁵⁶.

As of January 2012 Section 62 of the Harbour Act only applies to one remaining 'regional harbour', Bantry Bay. However, this port has no formal port workers' pool.

¹³⁵⁴ *Limerick Leader*, 20 March 2006.

¹³⁵⁵ Port of Cork Company, *Reports and financial statements for the year ended 31st December 2009*.

¹³⁵⁶ Raymond Burke Consulting, *High Level Review of the State Commercial Ports operating under the Harbours Act 1996 and 2000*, May 2003, <http://www.dcenr.gov.ie/NR/rdonlyres/0D9B0167-7C30-4DAE-B39E-D47FD690E756/0/mtrepmay03.pdf>, 80.

- *Regulatory set-up*

1117. Today, Irish port authorities tend to be limited service providers and it is for each individual port to decide the level of its involvement, if any, in port services. This involvement may embrace port labour, cranes, harbour police, towage *etc.*, but there is no clear overall picture of involvement on the part of ports¹³⁵⁷. A 2006 report by ISL confirmed that in general there is no obstacle to potential commercial port service providers wishing to gain access to the market¹³⁵⁸. This is still the case today.

1118. In practice, port workers in Ireland are employed by a terminal operator, by a stevedoring company, by a labour agency company (temporary work agency) or by a port authority. No restrictions on the use of temporary agency workers are reported.

Depending on the port, port employers need some form of franchise (license, lease, terminal agreement) from the port authority, but there is no legal or factual obligation on port employers to be a member of an employers' association or a similar professional organisation.

Port workers do not have to be registered and there is no pool system for port workers. Although we could trace no specific legal qualification requirements and Dublin Port Company stated that there are no such requirements for port workers, it appears that all workers must be 18 years of age, be medically fit and understand English. In Rosslare Europort, workers must have attended induction training, and in Galway, they must possess a safe pass and be of good behaviour. In Rosslare Europort, trade union membership is a factual requirement to become a port worker.

As a rule, port workers are employed on a permanent basis, but there are also casual and irregularly employed occasional workers. Several stevedoring companies employ a mixture of fully-trained permanent staff (for example, crane operators) and casual workers. The latter are used to meet peaks in demand and in particular to serve irregular traffic. Some companies have their own informal pool of casual workers, while others rely on temporary work agencies (such as O'Neill and Brennan). Ports where stevedores manage informal pools of casual workers include Dublin, Cork, Foynes and Greenore.

Port workers can work on the quay and also in the ship.

¹³⁵⁷ ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 199.

¹³⁵⁸ ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 199.

1119. In Dublin, port workers can be transferred temporarily from employer to employer. This happens regularly, but only to a small extent. In other ports, such transfers occur rarely or not.

In some rare cases, port workers are temporarily transferred to another port.

1120. Ports handling regular traffic operate on a 24/7 basis. Dublin Port Company informed us that, generally, start and finish times are variable. In Foynes, a follow-the-ship regime applies.

1121. Unemployed workers are entitled to the same State unemployment benefit as workers in other sectors.

- Facts and figures

1122. The total number of employers in the cargo handling sector is estimated at about 20 for Ireland as a whole, including 16 to 18 private companies and 4 port companies (Rosslare, Shannon Foynes, Cork and Drogheda) who also look after cargo handling.

In Dublin, 3 container terminals, 4 ro-ro terminals and 2 licensed stevedores are in operation.

1123. There are no official statistics on the total number of port workers in Ireland.

Based on data provided by the Port Authorities of Dublin, Rosslare Europort, Cork and Galway, and on further discussion with a number of Irish port experts, we were able to collect the following data (or reasonable estimates)¹³⁵⁹:

¹³⁵⁹ Estimating the number of port workers in Irish ports is a difficult venture. Firstly, port work is not defined as such in the law. Secondly, some ports handle seasonal traffic. This is the case, for example, in Dún Laoghaire which is reported to employ 3 to 4 port workers and 13 clerical staff including persons selling tickets and checking gates.

Table 62. Number of port workers in Irish ports, October 2012 (source: Port Authorities of Cork, Dublin, Galway and Rosslare Europort, and further estimates by individual Irish port experts)

Cork	66
Drogheda	30
Dublin	250
Dundalk	2
Dún Laoghaire	5
Fenit	26
Foynes	30
Galway	6
Greenore	15
Limerick	10
New Ross	20
Rosslare	71 ¹³⁶⁰
Waterford	40
Wicklow	6
Subtotal	577
Additional casual employees	100
Total	677

Two other sources estimate the total number of port workers in Ireland at some 600, to which some 75 temporary agency workers should be added¹³⁶¹. This corresponds well with the estimate above.

1124. Responding to our questionnaire, the Port Authorities of Dublin and Rosslare Europort stated that most workers are members of the Services, Industrial, Professional and Technical Union (SIPTU), the largest trade union in Ireland. In Galway, 5 out of 6 port workers have joined the union.

Irish port experts from the public and the private sector estimate that approximately 66 per cent of the 600 or so port workers in Ireland are members of the union, the main difference being Dublin where only say 50 per cent of the 250 are in the union. In nearly all the other ports, most of the labour force is unionised.

¹³⁶⁰ Including 50 operative staff, 5 station controllers, 4 coordinators and 12 tug drivers.

¹³⁶¹ On its website, trade union SIPTU mentions a total number of 800 dockers (see http://www.siptu.ie/media/pressreleases2012/fullstory_15796_en.html). In an interview, it specified that 600 port workers may be regarded as dockers within the meaning of our study.

9.10.4. Qualifications and training

- *Regulatory set-up*

1125. There are no minimum requirements regarding skills and competences for port workers in Ireland. Specific curricula for the training of port workers are not available either.

- *Facts and figures*

1126. Practically speaking, training of port workers is mainly organised at company level, but in some cases such as Rosslare Europort, at port level.

The following types of formal training are reported to be available for port workers in Ireland:

- induction courses for new entrants;
- training in safety and first aid;
- specialist courses for certain categories of port workers, such as crane drivers, container equipment operators, Ro-Ro truck drivers, forklift operators and signalmen;
- training aimed at the availability of multi-skilled or all-round port workers.

Whether the training is compulsory or voluntary seems to depend on the local arrangements.

1127. In 2003, a review of Irish ports policy drew attention to the issue of qualifications for port workers. The consultants stated:

*In the event of any serious accident, which could be attributed in any way to a failure by a port to ensure they had provided trained and competent persons, the consequences in relation to cost and even to corporate negligence could be severe*¹³⁶².

Currently, the National Maritime College of Ireland (NMCI)¹³⁶³ is preparing training courses for port workers and specialised courses for container gantry crane operators and mobile dockside

¹³⁶² Raymond Burke Consulting, *High Level Review of the State Commercial Ports operating under the Harbours Act 1996 and 2000*, May 2003, <http://www.dcenr.gov.ie/NR/rdonlyres/0D9B0167-7C30-4DAE-B39E-D47FD690E756/0/mtrepmay03.pdf>, 167.

¹³⁶³ See <http://www.nmci.ie>.

crane operators¹³⁶⁴. The course will take into account the forthcoming Code of Practice for Health and Safety in Dock Work¹³⁶⁵. The NMCI explained to us that it is only organising bespoke courses upon demand. In other words, it is not offering any scheduled courses for port workers.

1128. The Port Authorities of Dublin and Cork jointly own a crane simulator, but the former port never uses it. The simulator was available to terminal operators and stevedores in Dublin but was only used on one occasion by one company. The simulator is now used by the port of Cork to train its own crane drivers.

The simulator (the 'Port of Cork Company KraneSIM') is described as an advanced Seaport Cargo Handling Crane Simulator modeling a wide variety of dockside cranes, spreaders, terminal vehicles and load types:

- Ship-to-Shore (STS) / Quayside Crane (QC);
- Rubber-Tired-Gantry (RTG);
- Rail Mounted Gantry (RMG);
- Mobile Harbour Crane (MHC);
- Straddle Carriers;
- Dock & Ship Pedestals;
- Single, Twin and Tandem Spreaders.

1129. Dublin Port Company established a training centre but in 2009, after three years of mixed success, it decided to close it.

9.10.5. Health and safety

- Regulatory set-up

1130. The Safety, Health and Welfare at Work Act 2005 sets out the basic duties of employers and employees in relation to health and safety at work. For example, the employer must provide and maintain a safe workplace which uses safe plant and equipment, prevent risks from use of any article or substance and from exposure to physical agents, noise and vibration, prevent any improper conduct or behaviour likely to put the safety, health and welfare of employees at risk, provide instruction and training to employees on health and safety and provide protective clothing and equipment to employees (Section 8). The Act also contains

¹³⁶⁴ See <http://www.nmci.ie/professionalshortcourses>.

¹³⁶⁵ On the latter, see *infra*, para 1134.

provision on, *inter alia*, risk assessment and safety statement, protective equipment and measures, the reporting of accidents, health and safety leave, health and safety and young people, violence in the workplace, bullying, harassment and victimisation.

1131. Generally applicable laws and regulations on health and safety in the workplace applying in ports are enforced by the Irish Health and Safety Authority, which is the national statutory body with responsibility for enforcing occupational safety and health law, promoting and encouraging accident prevention and providing information and advice to all companies, organisations and individuals. They inspect health and safety conditions and also investigate work related accidents that occur in a workplace. They may issue improvement or prohibition notices, or can prosecute those responsible for offences under the Safety, Health and Welfare at Work Act 2005 and the relevant statutory provisions.

1132. The Docks (Safety, Health and Welfare) Regulations of 1960 were made under the Factories Act 1955. They apply to the processes of loading, unloading, moving and handling goods in, on or at any dock, wharf or quay and the processes of loading, unloading and coaling any ship in any dock, harbour or canal (Par. 3(1)). The Regulations contain detailed provisions and have as a purpose to prescribe measures which must be taken to ensure the safety, health and welfare of persons employed at docks, wharves and quays.

Even if they have been in part revoked, the Docks (Safety, Health and Welfare) Regulations of 1960 are still relevant particularly in relation to the testing and certification of slings, cranes *etc.* In the event of an accident, they may be used in a civil action to try to establish an employers' negligence. In the event of an audit / investigation by the Health and Safety Authority, non-conformities with the Regulations would be identified and acted upon. In general, the Regulations feed into and are referenced in Health and Safety statements, risk assessments *etc.* prepared by companies in conformance with more recent health and safety legislation.

1133. The Health and Safety Authority devote special attention to health and safety in dock work. Their website has a separate section on docks¹³⁶⁶.

The HSA have prepared an information sheet, "Management in Health and Safety in Docks", to assist employers in meeting their duties. This document explains how employers should apply the following principles:

(1) Work should be planned and organised

¹³⁶⁶ http://www.hsa.ie/eng/Your_Industry/Docks/.

- (2) *Relevant risk assessments must be conducted*
- (3) *Effective coordination and cooperation is essential*
- (4) *Communication and consultation mechanisms should be in place*
- (5) *Instruction, information and training should be provided*
- (6) *Emergency plans should be in place*
- (7) *Comply with relevant health and safety legislation*¹³⁶⁷.

1134. The Health and Safety Authority is currently undertaking a review of port labour-related health and safety legislation which will result in a national Code of Practice for Health and Safety in Dock Work. The Code will be published in accordance with Section 60 of the Safety, Health and Welfare at Work Act 2005¹³⁶⁸. The Docks (Safety, Health and Welfare) Regulations of 1960 will be revoked¹³⁶⁹.

¹³⁶⁷ Health and Safety Authority, *Management of Health and Safety in Docks*, http://www.hsa.ie/eng/Publications_and_Forms/Publications/Information_Sheets/Management_in_Health_and_Safety_in_Dock.pdf.

¹³⁶⁸ The latter provision reads:

- (1) *For the purpose of providing practical guidance to employers, employees and any other persons to whom this Act applies with respect to safety, health and welfare at work, or the requirements or prohibitions of any of the relevant statutory provisions, the Authority—*
 - (a) *may, and shall if so requested by the Minister, prepare and publish codes of practice, and*
 - (b) *may approve of a code of practice or any part of a code of practice made or published by any other body.*
- (2) *Before publishing or approving of a code of practice or any part of a code of practice under this section, the Authority—*
 - (a) *shall obtain the consent of the Minister,*
 - (b) *may publish in such manner as the Authority considers appropriate a draft of the code of practice or sections of a draft code of practice and shall give persons one month from the date of publication of the draft code or sections within which to make written representations to the Authority in relation to the draft code or sections of the draft code, or such further period, not exceeding 28 days, as the Authority in its absolute discretion thinks fit, and*
 - (c) *following consultation and, where relevant, having considered the representations, if any, made, shall submit the draft code to the Minister for his or her consent to its publication or approval under this section, with or without modification.*
- (3) *Where the Authority publishes or approves of a code of practice or approves of any part of a code of practice, it shall publish a notice of such publication or approval in Iris Oifigiúil and that notice shall—*
 - (a) *identify the code,*
 - (b) *specify the matters relating to safety, health and welfare at work or the relevant statutory provisions in respect of which the code is published or approved of, and*
 - (c) *specify the date on which the code shall come into operation.*
- (4) *The Authority may with the consent of the Minister and following consultation with any other person or body that the Authority considers appropriate or as the Minister directs—*
 - (a) *amend or revoke any code of practice or part of any code of practice prepared and published by it under this section, or*
 - (b) *withdraw its approval of any code of practice or part of any code of practice approved by it under this section.*
- (5) *Where the Authority amends or revokes, or withdraws its approval of a code of practice or any part of a code of practice published or approved under this section, it shall publish notice of the amendment, revocation or withdrawal, as the case may be, in Iris Oifigiúil.*
- (6) *The Authority shall make available for public inspection without charge at its principal office during normal working hours—*
 - (a) *a copy of each code of practice published or approved by it, and*
 - (b) *where a code of practice has been amended, a copy of the code as so amended.*

A draft version of the Code of Practice has been finalised and is expected to be launched in September 2012. The Code has been developed in close cooperation with representatives of the stevedoring companies and the unions.

The forthcoming Code of Practice covers common work activities in commercial ports and dock premises, harbours and canals, where goods and passengers are transported, handled or held for the purpose of loading or unloading on or off ships. This includes container terminals, dry and liquid bulk terminals, ro-ro, ferry and passenger terminals and general cargo docks, with the exception of port facilities already subject to Control of Major Accident Hazards (COMAH) regulations. It does not apply to passenger only vessels.

The Code of Practice is aimed at providing practical guidelines, based on a risk management framework, to help employers, employees and others with duties under the Safety, Health and Welfare at Work Act 2005, the Safety, Health and Welfare at Work (General Application) Regulations 2007, and associated regulations to identify, assess and control the risks specific to their operations within port and docks facilities. Its objective is to:

- set out the basic roles and responsibilities of those who have duties in relation to ensuring health and safety in port operations;
- give practical guidance on how health, safety and welfare at work can be achieved in the ports and docks sector, in accordance with the various legislative requirements;
- help in the assessment of risk arising in docks operations and the identification of appropriate control measures;
- increase the awareness of the hazards associated with the transfer of cargo between ship and shore and all related activities on the dock;
- encourage consistent application of safe practice in all Irish ports and docks facilities;
- address dock safety issues and regulatory requirements;
- provide a basis upon which safety training programmes can be developed and implemented;
- reinforce the safety culture in the ports sector.

Interestingly, the draft Code of Practice contains definitions of the basic concepts of 'cargo handler'¹³⁷⁰ and 'dock work'¹³⁷¹.

(7) Notwithstanding the repeal of the Act of 1989 by section 4, a code of practice in operation immediately before the commencement of that section continues to be a code of practice as if prepared and published under this section.

Section 61 of the Act describes the status of the Code in criminal proceedings.

¹³⁶⁹ A Regulatory Impact Analysis (RIA) identified as the preferred option revoking the Docks Regulations 1960 and relevant elements of the Safety in Industry Acts 1955 and 1980 and publishing a guidance document or a Code of Practice to address specific docking hazards which are within the Health and Safety Authority's administration and enforcement remit.

¹³⁷⁰ The definition reads as follows:

Cargo handler means any person engaged in cargo work shipside and/or shoreside. Docker and Stevedore, for the purposes of this document, means any person engaged in handling cargo on/to/from a ship on the dock. Different definitions and local interpretations of the terms "docker" and "stevedore" exist but for the purposes of this document, they are defined as cargo handlers. Any seafarer while engaged in handling cargo on/to/from a ship on the dock shall also be defined as a cargo handler.

¹³⁷¹ This definition reads:

The draft Code of Practice clearly sets out the responsibilities of the various entities and bodies involved. For example, it emphasizes that every employer has a duty to protect the safety, health and welfare of employees, whether permanent, temporary or fixed-term contract basis in accordance with the Safety, Health and Welfare at Work Act, 2005 and associated regulations. Also, it expressly mentions the duties in this respect of employment agencies and labour suppliers¹³⁷².

The Table of Contents of the draft Code of Practice gives an impression of the scope and structure of the document.

Figure 87. Table of contents of the draft Irish Code of Practice for Health and Safety in Dock Work (source: Health and Safety Authority)

1. Foreword
2. INTRODUCTION
 - 2.1 Safety In Ports And Docks
3. SCOPE
4. DEFINITIONS
5. BACKGROUND
6. LEGISLATION
 - 6.1 THE SAFETY, HEALTH AND WELFARE AT WORK ACT, 2005 (S.I. No. 10 of 2005)

Dock work means the loading, unloading, handling, checking and inspecting of cargo directly into or from a ship within the confines of a port. It also includes ship bunkering and storing work, and authorised activities by crew member on the dock, including embarking / disembarking, tending moorings, checking ships draughts, checking cargo and similar activities.

¹³⁷² The relevant section reads:

A port employer who hires temporary or fixed-term employees through a temporary employment business must inform the employment agency or labour supplier about the occupational skills or qualifications required for the job and the specific features of the work. The employment agency or labour supplier is obliged to give this information to employees, and the port employer must ensure that this information is provided to the employees concerned. Fixed-term employees include any workers employed for a specific purpose, e.g., for the loading or unloading of a ship.

Health and safety and other relevant information must also be provided by an employer to any contractors involved in the operations, and this information must be passed on to all employees concerned.

The port operator, labour supplier or stevedoring company providing cargo handling services to a ship has a duty to ensure that all employees concerned are:

- *Physically / medically fit for the work;*
- *Appropriately trained;*
- *Provided with relevant information regarding any hazards or risks to their safety, welfare and health, and the control measures in place in relation to:*
 - *The cargo they will be handling;*
 - *The port facility, the berth or the ship they will be working on;*
 - *Working in accordance with a safe system of work;*
 - *Properly supervised;*
 - *Provided with a means of reporting any hazards or defective equipment;*
 - *Provided with appropriate welfare facilities;*
 - *Provided with the appropriate PPE.*

- 6.2 *Safety, Health and Welfare at Work (General Application) Regulations 2007*
- 6.3 *Maritime Legislation*
- 6.4 *Local Regulations*
- 6.5 *Regulatory Bodies*
- 7. **RESPONSIBILITIES**
 - 7.1 *Ownership and control of port properties, premises and facilities*
 - 7.2 *Port Authorities*
 - 7.3 *Multi-Operator Ports*
 - 7.4 *Shared and Common User Port Facilities*
 - 7.5 *Port, Dock or Berth Operators*
 - 7.6 *Port Employers*
 - 7.7 *Employment Agencies and Labour Suppliers*
 - 7.8 *Self-Employed*
 - 7.9 *Employees who Visit Ports and Docks in the Course of their Work*
 - 7.10 *Responsibility of Cargo Interests*
 - 7.11 *Equipment Hire*
 - 7.12 *Responsibilities of Ships' Masters*
 - 7.13 *Responsibility for the Safety of Ships*
- 8. **MANAGING HEALTH AND SAFETY IN PORTS**
 - 8.1 *Port Employers*
 - 8.2 *Port Authorities*
 - 8.3 *Port Risk Management*
 - 8.4 *Ship Risk Management*
 - 8.5 *Cargo Risk Management*
 - 8.6 *Safety Statement*
 - 8.7 *Risk Assessment and Port Operations*
 - 8.8 *Main Hazards in Ports*
 - 8.9 *Types of Port Operations*
 - 8.10 *Risk Assessment Process*
- 9. **GENERAL ARRANGEMENTS FOR PORT WORKPLACE SAFETY**
 - 9.1 *Coordination*
 - 9.2 *Port Access Control*
 - 9.3 *Port Facility Infrastructure, Plant and Equipment*
 - 9.4 *Lighting*
 - 9.5 *Dangerous Cargoes*
 - 9.6 *Cargo Arriving In Port By Ship*
 - 9.7 *Workplace Transport Safety*
 - 9.7.1 *Traffic Safety Procedures*
 - 9.7.2 *Risk Assessment of Vehicle Operations*
 - 9.7.3 *Safe Vehicles*
 - 9.7.4 *Safe Pedestrians*
 - 9.7.5 *Safe Workplace and Safe Systems of Work*
 - 9.7.6 *Safe Driving and Work Practices*
 - 9.8 *Carriage of Dangerous Goods by Road*
 - 9.9 *Accident Reporting*

- 9.10 *Fitness to Work and Fatigue*
 - 9.10.1 *Fitness for Work*
 - 9.10.2 *Fatigue*
- 10. **HAZARDS ON THE DOCKS**
 - 10.1 *Dock Edge Protection*
 - 10.2 *Working Over Water*
 - 10.3 *Lifting Equipment*
 - 10.4 *Planning of Lifting Operations*
 - 10.5 *Banksmen*
 - 10.6 *Dock Lifting Equipment*
 - 10.7 *Ships' Lifting Equipment*
 - 10.8 *Ships' Derricks*
 - 10.9 *Slinging And Lifting Of Cargo*
 - 10.10 *Work At Heights*
 - 10.10.1 *Work at Height in Docks*
- 11. **HAZARDS TO SHORE WORKERS ON BOARD SHIPS**
 - 11.1 *Ship Safety Standards*
 - 11.2 *Safe Means of Access to Working Areas on Board*
 - 11.3 *Shipboard Operations – General*
 - 11.3.1 *Hatchcover Operations*
 - 11.3.2 *Operation of Ships' Cranes*
 - 11.3.3 *Ships' Rail Mounted Gantry Cranes*
 - 11.3.4 *Main Deck Mooring Winches*
 - 11.4 *Cargo Handling Operations On Board Ship*
 - 11.4.1 *Masters' Duties*
 - 11.4.2 *Employers' Duties*
 - 11.5 *Risk Assessment of Stevedoring Operations*
 - 11.6 *Ship Specific Risk Assessment*
 - 11.7 *Visual Inspection*
 - 11.8 *Hazardous Situations*
 - 11.9 *Port Operations and Ship Types*
 - 11.9.1 *Container Operations*
 - 11.9.2 *Container Ship Loading / Unloading Operations*
 - 11.9.3 *Manual Handling on Container Ships*
 - 11.9.4 *Container Top Working*
 - 11.9.5 *Containerised Dangerous Goods*
 - 11.10 *Ro-Ro Operations*
 - 11.10.1 *Ro-Ro Terminal Operations*
 - 11.10.2 *Ro-Ro Operations Safety*
 - 11.11 *Bulk Terminals*
 - 11.11.1 *Bulk Carrier Operations in Port*
 - 11.11.2 *Solid Bulk Cargoes*
 - 11.12 *Bulk Liquid Terminals*
 - 11.13 *Oil and Chemical Tanker Operations in Port*
 - 11.13.1 *Terminal Equipment*

- 11.13.2 *Specific Risks to Port Workers*
 - 11.14 *Breakbulk Operations*
 - 11.14.1 *Breakbulk Cargo Handling Safety*
 - 11.15 *Means of Access to Ships*
 - 11.16 *Confined Space*
 - 11.16.1 *Fumigation*
 - 11.16.2 *Assessment of Risk*
 - 11.16.3 *Authorisation of Entry*
 - 11.16.4 *Rescue from Difficult Locations*
 - 11.17 *Musculoskeletal Disorders (MSDs)*
 - 11.17.1 *Policy on Management of Manual Handling in Dock Work*
 - 11.17.2 *Whole Body Vibration*
 - 11.18 *Dust*
 - 11.18.1 *Control Measures*
 - 11.19 *Mooring Operations*
 - 11.19.1 *Risk Assessments*
 - 11.20 *Emergency Procedures in Ports*
- APPENDICES**
- Appendix 1: IMO Codes*
 - Appendix 2: ISPS Code*

- *Facts and figures*

1135. We were unable to collect nation-wide accident statistics.

However, anecdotal evidence suggests that Ireland is no exception to the fact that port labour remains a dangerous profession.

Between 2001 and 2008, for example, eight people have been killed whilst working in Irish ports (it is unclear, however, how many were dockers within the meaning of the present study). In addition, numerous non-fatal accidents and injuries are reported to the Health and Safety Authority (HSA) every year¹³⁷³.

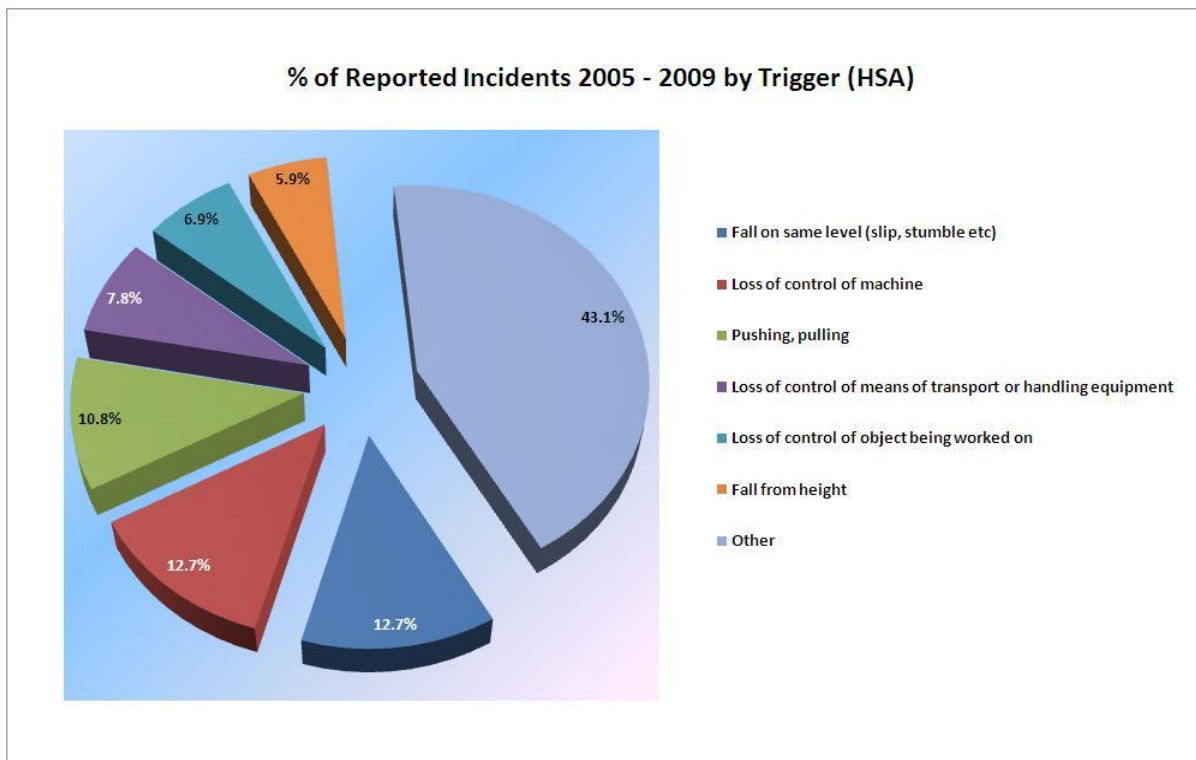
The most common triggers for non-fatal injuries in the sector are slips, trips and falls and loss of control of a machine. The most common accidents in docking operations involve slips, trips and falls; people being hit by objects; and musculoskeletal injuries¹³⁷⁴. Key hazards in the docking industry also include lifting operations, moving vehicles and pedestrian interface;

¹³⁷³ On 28 October 2011, a crane operator at Dublin died as he was struck by a rubber tyred gantry. In 2011 there were 4 minor personal injuries in the port of Rosslare.

¹³⁷⁴ Health and Safety Authority, *Management of Health and Safety in Docks*, http://www.hsa.ie/eng/Publications_and_Forms/Publications/Information_Sheets/Hazards_in_Port_and_Dock_Operations.pdf, 1.

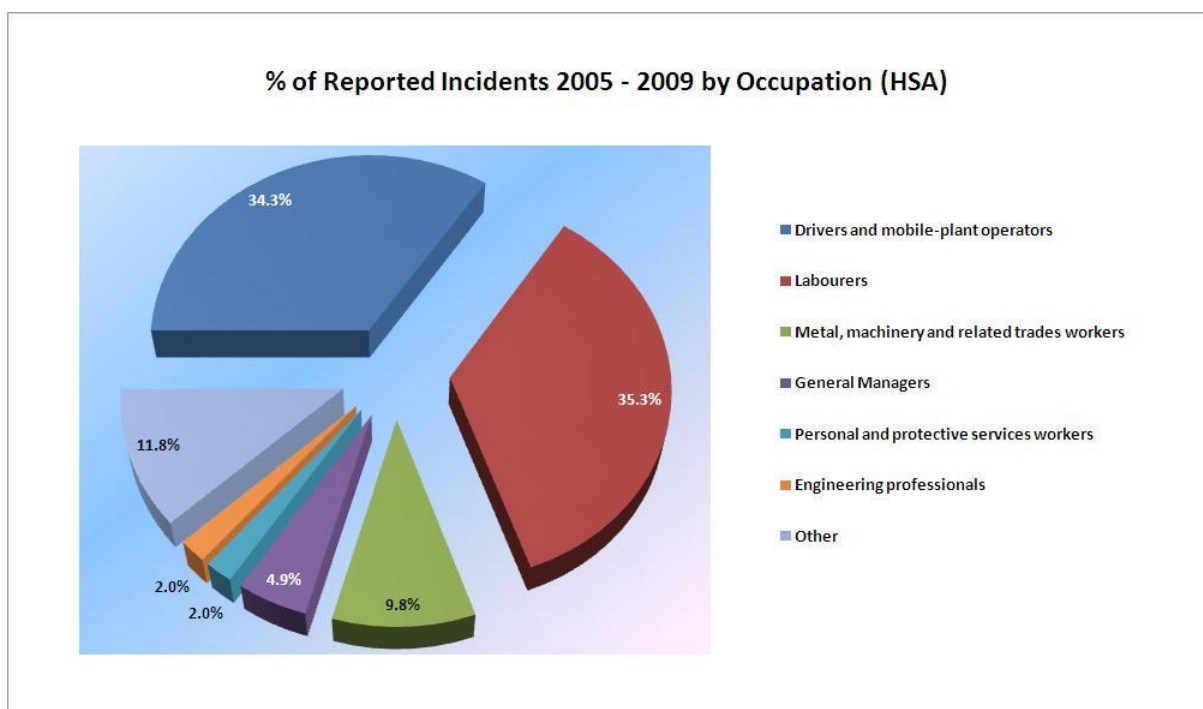
exposure to hazardous substances, environmental hazards and fatigue¹³⁷⁵. Drivers, mobile plant operators and labourers account for more than 70 per cent of all occupational accidents in ports.

Figure 88. Main accident triggers in Irish ports, 2005-2009 (source: Health and Safety Authority)



¹³⁷⁵ See further http://www.hsa.ie/eng/Your_Industry/Docks/Common_Hazards/.

Figure 89. Main occupations involved in accidents in Irish ports, 2005-2009 (source: Health and Safety Authority)



9.10.6. Policy and legal issues

1136. The restructuring of port labour in Ireland has been ongoing since the early 1990s and has occurred at the port level rather than at the regional or national level. According to Dublin Port Company, there are multiple examples in most ports of old restrictive practices having been eliminated through negotiated buy-outs and, in the case of Dublin, by liquidation. In Dublin and Cork, no restrictive practices have survived. In some other ports such as Shannon Foynes, some restrictions relating to manning levels *etc.* may still occur, but this is not seen as a major issue and is said to be "light years away from the past". A major stevedoring company confirmed this information.

1137. According to the port authority of Rosslare Europort, which is a full service port, it is practically speaking not possible for service providers from other EU countries to establish themselves in the port or to provide services there. The Port Authorities of Dublin and Galway mentioned no restrictions on establishment or the provision of services.

1138. Contrary to some responses to our questionnaire suggesting that all workers are still unionised and that in some places union membership is a factual requirement to become a port worker, other sources stated that SIPTU membership is dropping all the time, that workers are free to join a union or not and that today Irish ports can certainly not be considered closed shops. In an interview, one terminal operator active in several Irish ports said that where port workers were not already members of a union, there was no obstacle to prevent them joining a union.

In the absence of official or publicised data we are unable to assess the situation. It seems fair to assume that trade union density in port labour is higher than the national average (which is estimated at 31 per cent¹³⁷⁶) but that today closed shop issues only arise in specific local situations.

1139. On self-handling in Irish ports¹³⁷⁷, a 2006 report on behalf of the European Commission states:

With some exceptions self-handling does not take place. This is mainly because of restrictive dock labour/trade union agreements, although port users would prefer to have the freedom to self-handle¹³⁷⁸.

In 2007, ITF reported that Irish dockers won a victory after ITF pressure prevented seafarers from unloading a vessel docked in Dublin port, against the instructions of the ship's Irish charterer. Ukrainian crew on board the German-owned and managed MV Aase, on charter to Irish specialist cement producer, Ecocem, were expected to unload a bulk cargo of cement in Dublin port, despite the fact that the crew were not trained or paid to carry out such work. ITF representatives went on board the vessel after they were informed that Ecocem was insisting that the crew should carry out the work. They were able to ensure that the cargo handling clause of the management company's agreement with the ITF was implemented. The ship was subsequently unloaded by dockers represented by SIPTU and employed by Dublin Cargo Handling, one of the main stevedoring firms in Dublin port. Irish ITF Inspector Ken Fleming commented:

¹³⁷⁶ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

¹³⁷⁷ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) All longshore activities on pier or on land at port.

¹³⁷⁸ ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 199. Earlier, the same information appeared in European Sea Ports Organisation, *Factual Report on the European Port Sector*, Brussels, 2004-2005, 138.

*It is a scandal what Ecocem was attempting here today.
The approach adopted by Ecocem reflects the 'race to the bottom' attitude that has,
sadly, become prevalent in some sectors of Irish industry.*

Still according to ITF, Ecocem since backed down on the matter¹³⁷⁹.

In an interview, SIPTU representative for ports Ken Fleming stated that ship owners perform self-handling wherever they can get away with it and that the union is planning a campaign to eliminate this practice. An interviewed stevedore said that it is up to the ship owner to decide whether lashing and securing work (including container studding work) is performed by the crew. No general rule applies and while specialised local lashing service providers are available, this stevedore prefers that the crew does the work because they know their ship and the job better than outsiders.

1140. The Port Authority of Rosslare Europort mentions the following restrictions on employment:

- mandatory use of port workers for non-port work;
- exclusive rights for certain categories of workers;
- exclusive rights of trade union members (closed shop);
- 48 hour contracts whether work for 48 hours or not.

These restrictive rules and practices are considered a major competitive disadvantage. The Port Authority of Rosslare Europort considers the port labour regime of the Dublin Port Company to be a best practice. In an interview, the Rosslare Europort specified that the above restrictions mainly relate to the opposition of the union against the contracting in of services which are not strictly marine or port-related. In other words, they do not appear to primarily concern port labour within the meaning of our study.

1141. According to Galway Harbour Company, the following sub-standard labour conditions exist in the port:

- job insecurity;
- lack of social security.

The Galway Harbour Company argues that it is up to each port authority to change bad work practices.

¹³⁷⁹ X., "Win for Irish dockers in self-handling row", 9 August 2007, <http://www.itfglobal.org/news-online/index.cfm/newsdetail/1506/region/1/section/0/order/1>.

1142. Ship owners reported that the mandatory manning scales and the closed shop (although the latter is under change) are restricting freedom of employment in Irish ports. Furthermore, the following restrictive work practices were mentioned:

- late starts, early knocking off;
- inadequate composition of gangs (sometimes, depending on daily requirements).

The ship owners do not regard these problems as major competitive issues.

Moreover, one interviewed Irish port manager insisted that these complaints are a gross misrepresentation which is probably inspired by situations in a remote past. A major stevedore said that the abolition of old work practices has enabled Irish ports to become competitive, to grow and to invest in new cargo handling facilities and equipment. He confirmed that in most ports in Ireland late starts and inadequate composition of gangs is a thing of the past. He said that if you are not providing a quality service to the customer then they will move to another terminal in the port or to another port close by. The recession in Ireland has shown companies "that you need to be lean and mean to survive or somebody else will take your business". Another Dublin port expert confirmed that all workers at the port are flexible and multi-skilled.

1143. Galway Harbour Company mentions that there is a need for the standardisation of training. In an interview, SIPTU complained that employers are not interested in training but admitted that the port of Cork organises regular training and refresher training, providing probably the best example in the whole country. An interviewed stevedore pointed out that while more training may be needed it has an elaborate training programme for manual handlers, reach stacker, RTG and RMG operators.

1144. In 2011, a National Ports Committee to represent dockworkers was formed within trade union SIPTU.

This initiative is driven by concerns over companies in Irish ports allegedly refusing to recognise unions, pay the national minimum wage or even pay some ship's crews any wages. At the launching conference, SIPTU's ITF inspector Ken Fleming said:

In recent years unscrupulous shipping companies have made their crews unload cargoes, work for which they are neither trained, nor paid. In the process these vulnerable seafarers are often forced to labour far beyond the maximum hours permitted by Irish and international law, as well as displacing jobs ashore in the process. Some of these seafarers are not paid at all or are due huge arrears of pay. It is only by seafarers and port workers taking joint action in solidarity with each other that this scandal can be ended and decent quality jobs created onshore and at sea¹³⁸⁰.

¹³⁸⁰ See <http://1913committee.ie/blog/?p=266>; see also Basset, E., "All at sea", *Health and Safety Times*, September 2008, 79-13.

In April 2012, ITF stated that the lives of dockers in Irish ports are being put at risk because they are working alongside seamen who are "drunk" through lack of sleep. According to ITF, ship owners are forcing their crews to work between 90-161 hours per week. ITF said that this is not only endangering the seafarers but also the dockers receiving their cargo. They referred to the draft Irish Code of Practice for Safety and Health in Dock Work which sets out the distinction between a port worker and a seafarer and says that persons exhibiting the signs of fatigue should not be involved in cargo handling and measures should be put in place to ensure rest periods are appropriate. It also says that when organising of the workload and job, account is taken of the Organisation of Working Time Act 1997. According to the ITF, seafarers are being made to work hours at sea which put them far in excess of the limits set by that Act when they reach land. Yet the ITF estimates the owners of 25-35 per cent of the ships bringing cargo into Irish ports are demanding their crews take part in unloading. It said, but for the unionisation of dockworkers who are now taking a stand, up to 75 per cent of ships would force their crews to handle the cargo in port. Still according to the media report, ITF inspector Ken Fleming specified:

There are a growing number of shipping agents and cargo brokerages that have identified the paying of up to \$3 an hour for a seafarer to carry out cargo handling as opposed to paying the local professional cargo handler.

This is an absolute commercial decision by ship owners to disregard safety and cut the cost of operating in the ports of Europe.

He also referred to the findings of the EU-funded Horizon project which gauged fatigue on board ships by scientifically examining those who worked two of the most common watch-keeping patterns. In a number of cases, the participants fell into what the researchers termed "full-blown" sleep and a number of others fell into "micro-sleeps" while supposed to be in control of the ship¹³⁸¹.

In an interview, the same union leader said that the EU single market has "devastated" port labour and the quality of work and that employers "have sucked the blood out of non-Irish EU nationals to displace Irish workers". He said that major stevedores largely rely on cheap

¹³⁸¹ See SIPTU's press release of 23 April 2012 "New draft Code of Practice to end unsafe work practices in Irish ports", http://www.siptu.ie/media/pressreleases2012/fullstory_15796_en.html; Rogers, S., "Sleep-deprived seamen 'put dockers' lives at risk", *Irish Examiner* 21 April 2012, <http://www.irishexaminer.com/archives/2012/0421/ireland/sleep-deprived-seamenput-dockers-lives-at-risk-191307.html>. On the Horizon project, see <http://www.warsashacademy.co.uk/about/our-schools/maritime-research-centre/horizon-project/horizon-project.aspx>. In this respect, it should also be recalled that in 2010, the European Commission sent a formal request to Ireland on the implementation of the Port State Control Directive. This issue is however beyond the scope of the present study. For the same reason, we shall not go into the report by the European Agency for Safety and Health at Work on an accident in Dublin Port in 2007, where a ship's officer was severely injured by a parting mooring line that had not been properly inspected (see <http://osha.europa.eu/en/campaigns/hw2010/maintenance/accidents/1-dublin.pdf>). The official Report on the investigation of the parting of a mooring line on board Dublin Viking alongside at Berth 52 in the Port of Dublin, Ireland resulting in one fatality, 7 August 2007 by the Marine Casualty Investigation Board (Ireland) and the Marine Accident Investigation Branch (UK) (Report No 7/2008 of March 2008) did not point at any specifically port labour-related issues either.

Eastern European workers (Poles and Lithuanians) for whom no taxes or social contributions are paid to the Irish Government and that, as a result, wages have dropped by 50 per cent.

On the other hand, the Port Authorities of Dublin, Rosslare Europort and Galway all stated that health and safety rules in Irish ports are satisfactory and properly enforced. Asked for a further comment, the Dublin Port Company informed us that the allegations by SIPTU and ITF mainly concern the treatment of seafarers. Next year is the anniversary of the great lock-out of 1913 which was an important historical event with linkages into the Easter Rising three years later. Reportedly, the trade unions, and SIPTU in particular, could not ignore the centenary, but the reality in the docks today is that the unions are strongly represented and they routinely do business with employers. Also, our interviewee objected strongly to the tone and veracity of some of the above statements.

A major stevedore said that the new Committee only serves as a means to drum up membership as SIPTU is steadily losing influence in the ports industry. He also referred to the considerable progress at most stevedoring companies in the field of health and safety which is now a huge matter and to the Code of Practice for Health and Safety in Dock Work to which the employers have actively contributed. On the employment of non-Irish workers, our interviewee commented that it is still employing large numbers of Irish nationals, that apparently the union does not like foreigners and that today, stevedoring companies have to act in a commercial environment. He specified that the mix between Irish and European workers at his company is approximately 50/50 with any European or Eastern European employees starting on the same terms as their Irish equivalent. He also stated that these employees do contribute tax and other contributions to the State.

Finally, on the issue of working time of seafarers, we should point out that this matter is already regulated by a specific EU Directive¹³⁸².

1145. For the Health and Safety Authority, dock work is a priority sector.

In its Programme of Work for 2012, it announced that it would be promoting the Code of Practice for docks and ports in conjunction with stakeholders, providing support to inspectors on issues relating to docks and ports and supporting the implementation of the Code of Practice through the inspection programme¹³⁸³.

¹³⁸² Directive 1999/95/EC of the European Parliament and of the Council of 13 December 1999 concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports, OJ 20 January 2000, L 14/29.

¹³⁸³ See http://www.hsa.ie/eng/Publications_and_Forms/Publications/Corporate/Programme_of_Work_2012.pdf.

1146. Ireland is among the EU Member States which continue to be bound by the outdated ILO Convention No. 32.

9.10.7. Appraisals and outlook

1147. Over the past decade, various policy-making authorities and consultants have published reports and recommendations on the Irish port system¹³⁸⁴. A recurrent theme is the possibility to increase the role of the private sector in the state-owned port authorities, including the hypothesis of privatisation. The impact of the proposed EU Port Services Directive also received some attention. As far as we could ascertain, no port policy report however identified port labour as a relevant policy issue.

Responding to our questionnaire, the Department of Transport, Tourism and Sport stated that Irish ports have been engaged in a process of dock labour re-structuring since the 1990s. In line with the organisational model prevalent in the State, this has been driven by the individual Port Companies rather than a 'top-down' approach led by central Government. The Department said that while national ports policy is currently under review, the issue of port labour is unlikely to be addressed in any finalised statement.

1148. In its reply to our questionnaire, Dublin Port Company stated that the current port labour regime is satisfactory. It considers the relationship between port employers and port workers and their respective organisations excellent. Furthermore, Dublin Port Company is of the opinion that the current port labour regime has a positive impact on the competitive position of the port. In this regard, special reference is made to competitive cargo handling rates. The Irish port labour system, with the UK on a par, can be considered the best possible.

1149. Galway Harbour Company, too, considers the current port labour system satisfactory. Its flexibility is regarded as an important competitive asset.

¹³⁸⁴ We reviewed the following documents:

- Raymond Burke Consulting, *High Level Review of the State Commercial Ports operating under the Harbours Act 1996 and 2000*, May 2003;
- the *Port Policy Statement 2005*;
- SKEMA, *Ports organisational and infrastructure strategies*, September 2009 (containing a case study on Dublin Port Company);
- Joint Oireachtas Committee on Transport, *Report on the Ports' Sector*, April 2010;
- the *Ports Policy Review Consultation Document*, August 2010.

1150. According to the Port Authority of Rosslare Europort, the port labour regime negatively impacts on its competitive position of the port. This is due to the fact that the work force is highly unionised whereas the work force of some competitors is not.

1151. A major stevedoring company operating in several Irish ports confirmed that the rationalisation of port labour in Ireland and especially the removal of old restrictive practices have enabled ports to prosper and to modernise.

1152. Ship owners commented that current Irish port labour arrangements are fairly satisfactory – although it is noted that there is always room for improvement – and that it offers sufficient legal certainty.

1153. As we have mentioned¹³⁸⁵, a SIPTU representative for the port sector believes that the opening up of the labour market to non-Irish nationals had a devastating effect on the quality of labour and on social conditions. In relation to health and safety, our interviewee said that the forthcoming adoption of the Code of Practice for Health and Safety in Dock Work will be a huge improvement.

1154. In its reply to the questionnaire, the Irish Ports Association (IPA) stated:

While welcoming the study, the IPA believes that very careful consideration needs to be given to the possibility of the study making recommendations for action at EU level. This concern is founded on the reality that dock labour reform has progressed at different speeds in different countries. As a consequence, recommendations for action at an EU level could well be based on the requirements of a few countries (for example in the Benelux region) rather than the requirements of all countries. Given that other countries have moved in different ways to address dock labour issues, it is possible that recommendations at an EU level could actually damage what has been achieved in countries such as Ireland, for example. It is important that an EU initiative in respect of dock labour should not undermine or adversely affect the progress ports have made on this matter, at a very significant cost.

By way of background, dock labour restructuring in Ireland has been ongoing since the early 1990s and has occurred at the port level rather than at the regional or national level. The collection of local deals that have been done in ports around Ireland have

¹³⁸⁵ See *supra*, para 1144.

generally had the effect of eliminating restrictive practices and introducing the flexibility to match the supply of labour with the demands of ship working.

All of this has been achieved through employer negotiations with trade unions, notably SIPTU, and there is strong trade union representation for dock workers to this day.

On the health and safety side, there is currently a multilateral initiative to introduce a Code of Practice for Health and Safety in Dockwork. This is being prepared by the Health & Safety Authority (a State organisation) in partnership with port employers and trade unions.

Against the above background, the IPA believes that value of the current study can be maximised by identifying what has happened in different countries and by highlighting best practice in areas such as health and safety.

Beyond that, the IPA believes that where restructuring and reform are necessary, the principle of subsidiarity should apply. Circumstances in individual member states will dictate appropriate action at the port, regional or national level.

1155. Asked whether there is a need for EU action in connection with port labour, the CEO of Dublin Port Company replied:

EU involvement / interference would be bad for Ireland. My concern is that remedies that might be needed to address problems in Belgium or Holland or elsewhere could introduce problems in Ireland. Any actions required should be at a national level; the concept of subsidiarity must apply.

1156. The Port Authorities of Rosslare Europort and Galway do not believe that there is a scope for any EU action in the field of port labour either.

1157. Ship owners expressed the opinion that the EU should ensure that they are allowed to handle their own work, but did not specify why or in which circumstances.

9.10.8. Developments between January 2013 and September 2014

1157A. In 2014, the Irish Competition Authority published a major report on competition in the Irish ports sector¹³⁸⁶ which however did not identify any pressing labour-related issues.

¹³⁸⁶ The Competition Authority, *Competition in the Irish Ports Sector*, Dublin, 2013, 114 p., <http://www.tca.ie/EN/Promoting-Competition/Market-Studies/Ports.aspx>.

1157B. So far, the new Code of Practice for Health and Safety in Dock Work has not been officially approved and promulgated.

9.10.9. Synopsis

1158.		
SYNOPSIS OF PORT LABOUR IN IRELAND¹³⁸⁷		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 11 main ports • Mix of management models • 47.6m tonnes • 14th in the EU for containers • 60th in the world for containers • Appr. 20 employers • Appr. 677 port workers • Trade union density: 66% 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • Company CBAs • No Party to ILO C137 • No registration of workers • No general ban on self-handling • No ban on temporary agency work • No restrictive working practices 	<ul style="list-style-type: none"> • Trade union concerns over employment of East European workers
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Training organised at company level • Bespoke training by National Maritime College of Ireland available 	<ul style="list-style-type: none"> • No national requirements • No certification 	<ul style="list-style-type: none"> • Absence of standardised training
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Statistics are maintained • Comparison with other sectors unavailable 	<ul style="list-style-type: none"> • Specific Docks Regulations (to be revoked) • New Code of Practice for Health and Safety in Dock Work forthcoming • No Party to ILO C152 	<ul style="list-style-type: none"> • Trade union concerns over treatment of seafarers involved in port operations • Still Party to outdated ILO C32

¹³⁸⁷ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.11. Italy

9.11.1. Port system¹³⁸⁸

1159. The port of Genoa is Italy's main port. Other major seaports in Italy include the ports of Augusta, Cagliari, Gioia Tauro, La Spezia, Livorno, Messina, Naples, Ravenna, Savona-Vado, Taranto, Trieste and Venice. The port of Gioia Tauro is Italy's largest container port.

In 2012, the gross weight of seaborne goods handled in Italian ports amounted to approximately 476.8 million tonnes¹³⁸⁹. In the container branch, Italian ports ranked 5th in the EU and 15th in the world in 2011¹³⁹⁰.

1160. Since the reform measures of 1994, which were repeatedly adjusted since, Italian ports have been managed according to the landlord model. Today, infrastructure is provided by publicly owned port authorities, while cargo handling services are carried out by three types of port service providers: authorized cargo handlers, concessionaires (*i.e.* terminal operators) and temporary port work providers (*i.e.* port labour pools). The legal status and precise role of each of these categories of undertakings will be described below¹³⁹¹.

9.11.2. Sources of law

1161. Port labour in Italy is mainly governed by Act No. 84 of 28 January 1994 on the reform of port legislation¹³⁹² and the regulations made thereunder.

¹³⁸⁸ For general information on Italian ports, see, in addition to the ISFORT reports referred to below, Beretta, E., Dalle Vacche, A. and Migliardi, A., *Il sistema portuale italiano: un'indagine sui fattori di competitività e di sviluppo*, in *Questioni di Economia e Finanza*, No. 39, Banca d'Italia, February 2009, http://www.bancaditalia.it/pubblicazioni/econo/quest_ecofin_2/qf_39;www.assoporti.it and ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 10-45; for statistics, see the same website and also http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

¹³⁸⁹ See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

¹³⁹⁰ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

¹³⁹¹ See *infra*, para 1180 *et seq.*

¹³⁹² Legge 28 gennaio 1994, n. 84, Riordino della legislazione in materia portuale.

The provisions on port labour of Act No. 84/1994 were subsequently modified by Decree-Law No. 535/1996 on urgent measures for the port, maritime, shipbuilding and shipping sectors as well as measures to ensure certain air connections¹³⁹³, as amended and converted into law by Act No. 647/1996¹³⁹⁴, by Decree-Law No. 669/1996 on urgent provisions on tax, financial and accounting matters to complete the budgetary measures for 1997¹³⁹⁵, as amended and converted into law by Act No. 30/1997¹³⁹⁶, by Decree-Law No. 457/1997 on urgent provisions for the development of the transport sector and the increase of employment, as amended and converted into law by Act No. 30/1998¹³⁹⁷, by Act No. 472/1999 on measures in the transport sector¹³⁹⁸, by Act No. 186/2000 on amendments to Act No. 84/1994 relating to port operations and the supply of temporary port work¹³⁹⁹, by Act No. 172/2003 on provisions for the reorganisation and revitalisation of recreational boating and nautical tourism¹⁴⁰⁰, by Act No. 350/2003 on the budgetary measures for 2004, by Decree-Law No. 136/2004 on urgent measures for the functionality of Public Administration, as amended and converted into law by Act No. 186/2004¹⁴⁰¹, by Act No. 247/2007 on rules implementing the Protocol of 23 July 2007 on social security, labour and competitiveness to promote fairness and sustainable growth and additional rules on labour and social security¹⁴⁰², by Decree-Law No. 70/2011 on urgent measures for the economy, as amended and converted into law by Act No. 106/2011¹⁴⁰³, by Decree-Law No. 1/2012 on urgent measures for competition and the development of infrastructure, as amended and converted into law by Act No. 27/2012¹⁴⁰⁴, by Decree-Law No. 5/2012 on simplification and development¹⁴⁰⁵, as amended and converted into law by Act No.

¹³⁹³ Decreto-Legge 21 ottobre 1996, n. 535, Disposizioni urgenti per i settori portuale, marittimo, cantieristico ed armatoriale, nonche' interventi per assicurare taluni collegamenti aeree.

¹³⁹⁴ Legge 23 dicembre 1996, n. 647, Conversione in legge, con modificazioni, del decreto-legge 21 ottobre 1996, n. 535, recante disposizioni urgenti per i settori portuale, marittimo, cantieristico ed armatoriale, nonche' interventi per assicurare taluni collegamenti aeree.

¹³⁹⁵ Decreto-Legge 31 dicembre 1996, n. 669, Disposizioni urgenti in materia tributaria, finanziaria e contabile a completamento della manovra di finanza pubblica per l'anno 1997.

¹³⁹⁶ Legge 28 febbraio 1997, n. 30, Conversione in legge, con modificazioni, del decreto-legge 31 dicembre 1996, n. 669, recante disposizioni urgenti in materia tributaria, finanziaria e contabile a completamento della manovra di finanza pubblica per l'anno 1997.

¹³⁹⁷ Legge 27 febbraio 1998, Conversione in legge, con modificazioni, del decreto-legge 30 dicembre 1997, n. 457, recante disposizioni urgenti per lo sviluppo del settore dei trasporti e l'incremento dell'occupazione.

¹³⁹⁸ Legge 7 dicembre 1999, n. 472, Interventi nel settore dei trasporti.

¹³⁹⁹ Legge 30 giugno 2000, n. 186, Modifiche alla legge 28 gennaio 1994, n. 84, in materia di operazioni portuali e di fornitura del lavoro portuale temporaneo.

¹⁴⁰⁰ Legge 8 luglio 2003, n. 172, Disposizioni per il riordino e il rilancio della nautica da diporto e del turismo nautico.

¹⁴⁰¹ Legge 27 luglio 2004, n. 186, Conversione in legge, con modificazioni, del decreto-legge 28 maggio 2004, n. 136, recante disposizioni urgenti per garantire la funzionalità di taluni settori della pubblica amministrazione. Disposizioni per la rideterminazione di deleghe legislative e altre disposizioni connesse.

¹⁴⁰² Legge 24 dicembre 2007, n. 247, Norme di attuazione del Protocollo del 23 luglio 2007 su previdenza, lavoro e competitivita' per favorire l'equita' e la crescita sostenibili, nonche' ulteriori norme in materia di lavoro e previdenza sociale.

¹⁴⁰³ Legge 12 luglio 2011, n. 106, Conversione in legge, con modificazioni, del decreto-legge 13 maggio 2011, n. 70, concernente Semestre Europeo - Prime disposizioni urgenti per l'economia.

¹⁴⁰⁴ Legge 24 marzo 2012, n. 27, Conversione in legge, con modificazioni, del decreto-legge 24 gennaio 2012, n. 1, recante disposizioni urgenti per la concorrenza, lo sviluppo delle infrastrutture e la competitività.

¹⁴⁰⁵ Decreto-Legge 9 febbraio 2012, n. 5, Disposizioni urgenti in materia di semplificazione e di sviluppo.

35/2012¹⁴⁰⁶, and by Decree-Law No. 83/2012 on urgent measures for the Country's growth, as amended and converted into law by Act No. 134/2012¹⁴⁰⁷.

Act No. 84/1994 was implemented by Decree No. 585/1995 on the regulations governing the issuance, suspension and revocation of authorisations for the exercise of port activities¹⁴⁰⁸ and by Decree No. 132/2001 on regulations concerning the binding criteria for the regulation of port services by port and maritime authorities, in accordance with Article 16 of Act No. 84/1994¹⁴⁰⁹.

To the extent that no port labour-specific rules apply, employment of port workers is also governed by general labour law which was revamped in 2012¹⁴¹⁰.

1162. Health and safety is port labour regulated in Act No. 833/1978 on the establishment of the national health service¹⁴¹¹, Act No. 485/98 on delegation to the government on occupational safety in the maritime ports sector¹⁴¹², Legislative Decree No. 272/1999 on safety and health in cargo handling and ship maintenance and repair¹⁴¹³, Legislative Decree No. 276/2003 on the implementation of the delegations in respect of employment and the labour market under Act No. 30/2003¹⁴¹⁴ and Legislative Decree No. 81/2008 on the implementation of Article 1 of Act 123/2007 relating to health and safety in the workplace¹⁴¹⁵.

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 2004¹⁴¹⁶.

¹⁴⁰⁶ Legge 4 aprile 2012, n. 35, Conversione in legge, con modificazioni, del decreto-legge 9 febbraio 2012, n. 5, recante disposizioni urgenti in materia di semplificazione e di sviluppo.

¹⁴⁰⁷ Legge 7 agosto 2012, n. 134, Conversione in legge, con modificazioni, del decreto-legge 22 giugno 2012, n. 83, recante misure urgenti per la crescita del Paese.

¹⁴⁰⁸ Decreto 31 marzo 1995, n. 585, Regolamento recante la disciplina per il rilascio, la sospensione e la revoca delle autorizzazioni per l'esercizio di attivita' portuali.

¹⁴⁰⁹ Decreto 6 febbraio 2001, n. 132, Regolamento concernente la determinazione dei criteri vincolanti per la regolamentazione da parte delle autorita' portuali e marittime dei servizi portuali, ai sensi dell'articolo 16 della legge n. 84/1994.

¹⁴¹⁰ Legge 28 giugno 2012, n. 92, Disposizioni in materia di riforma del mercato del lavoro in una prospettiva di crescita.

¹⁴¹¹ Legge 23 dicembre 1978, n. 833, Istituzione del servizio sanitario nazionale.

¹⁴¹² Legge 31 dicembre 1998, n. 485, Delega al Governo in materia di sicurezza del lavoro nel settore portuale marittimo.

¹⁴¹³ Decreto Legislativo 27 luglio 1999, n. 272, Adeguamento della normativa sulla sicurezza e salute dei lavoratori nell'espletamento di operazioni e servizi portuali, nonche' di operazioni di manutenzione, riparazione e trasformazione delle navi in ambito portuale, a norma della legge 31 dicembre 1998, n. 485.

¹⁴¹⁴ Decreto Legislativo 10 settembre 2003, n. 276, Attuazione delle deleghe in materia di occupazione e mercato del lavoro, di cui alla legge 14 febbraio 2003, n. 30.

¹⁴¹⁵ Decreto Legislativo 9 aprile 2008, n. 81, Attuazione dell'articolo 1 della legge 3 agosto 2007, n. 123, in materia di tutela della salute e della sicurezza nei luoghi di lavoro.

¹⁴¹⁶ Decreto del Ministro delle Infrastrutture e dei Trasporti del 16 dicembre 2004 recante recepimento della direttiva 2001/96/CE in materia di "Requisiti e procedure armonizzate per la sicurezza delle operazioni di carico e scarico delle navi portarinfuse".

1163. As we will see below¹⁴¹⁷, Act No. 84/1994 obliges port authorities to further regulate certain aspects of port labour through local port regulations.

1164. Italy has ratified both ILO Convention No. 137¹⁴¹⁸ and ILO Convention No. 152¹⁴¹⁹. Previously, it was bound by ILO Convention No. 32.

1165. Next, port labour in Italy is governed by a National Collective Labour Agreement for Port Workers signed at Rome on 22 December 2008¹⁴²⁰. This 207-page agreement contains provisions on labour organisation (including, for example, classification of workers, working hours, overtime, holidays, sanctions, collective bargaining, strikes, second-level bargaining, specific types of employment such as temporary work), training and health and safety. Prior to the adoption of national collective labour agreements for the port sector, working conditions of port workers were very diverse¹⁴²¹.

1166. Furthermore, the Italian collective bargaining system allows for 'second-level bargaining' (or 'decentralised bargaining').

The Protocol of 23 July 1993, a tripartite agreement between the Government, employers' organisation Confindustria and the trade unions, represents a kind of 'constitutional charter for industrial relations' or 'basic agreement', that forms the basis for subsequent accords. It established a new institutional framework for income policy, bargaining structure and procedures, worker/union representation, employment policies and measures to support the production system. The Protocol defined a two-tier bargaining structure, setting out that collective bargaining can legitimately take place at national-sectoral level and at company level. Alternatively, bargaining can take place at territorial level to cover a particular district, province or region. The national-sectoral level establishes minimum rights and standards for the whole workforce, giving social partners the ability to improve them through a second level of collective bargaining. The articulated system provides a controlled and coordinated

¹⁴¹⁷ See *infra*, para 1182.

¹⁴¹⁸ Legge 10 aprile 1981, n. 157, Ratifica ed esecuzione delle convenzioni numeri 74, 109, 129, 132, 134, 135, 136, 137, 138 e 139 dell'Organizzazione internazionale del lavoro.

¹⁴¹⁹ L. 19 novembre 1984, n. 862, Ratifica ed esecuzione delle convenzioni dell'Organizzazione internazionale del lavoro (OIL) numeri 148, 149, 150, 151 e 152 adottate nel corso della 63^a, della 64^a e della 65^a sessione della Conferenza generale.

¹⁴²⁰ C.C.N.L. dei lavoratori dei porti, 1 gennaio 2009 - 31 dicembre 2012. The first such National Collective Agreement was signed in 2000. For more background, see Ministère de l'emploi, du travail et de la cohésion sociale, *La négociation collective en 2003*, Paris, Editions législatives, 2004, 251.

¹⁴²¹ See Robba, L., "Imprese e lavoro portuale dalla riforma ad oggi. Relazioni sindacali: l'esperienza del C.C.N.L. lavoratori dei porti", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (18), 26.

decentralisation. The national-sectoral level determines the modes and sphere of action of the second level of bargaining¹⁴²².

In 2009 a new tripartite agreement partly reviewing the norms of the Protocol of 23 July 1993 was signed. It offers the opportunity to introduce 'opening clauses' which would permit company-level bargaining or territorial-level bargaining to change the rules of national collective agreements in order to deal with the situation of economic crisis, or to promote economic and employment growth. However, the largest trade union confederation, the CGIL, refused to sign the agreement¹⁴²³.

On 28 June 2011, however, a new intersectoral agreement was signed by Italy's major union confederations CGIL, CISL and UIL and employers' federation Confindustria. It introduced new rules on the certification of representativeness for participation in industry-wide bargaining at national level, and on the validity of company agreements¹⁴²⁴.

So far, the coverage of company-level bargaining in Italy remains low. Coverage is around 40-45 per cent of workers in industry, 35-40 per cent of workers in services and 20-25 per cent of companies. The percentage decreases with company size. Moreover, a survey of the National Council of the Economy and Labour shows a progressive decrease in company-level bargaining intensity¹⁴²⁵.

Under the National Collective Labour Agreement for Port Workers, the remuneration for flexible working hours is left to second-level bargaining, as well as the definition of night labour (Art. 6 and 8). The National Agreement further provides that the second-level agreements may only regulate matters other than the ones covered by the National Agreement and may not change what is established in the national agreement, except where specifically authorised. The matters to be regulated by second-level agreements are explicitly enumerated in the national agreement. Finally, it makes provision for a 4 year duration period for second-level agreements (Art. 52).

The 2011 ISFORT survey of the Italian port labour regime suggests that in the port sector second-level bargaining is not applied in every company¹⁴²⁶, but another survey shows that it occurs in almost all port companies¹⁴²⁷.

¹⁴²² Burrioni, L. and Pedaci, M., *Sector-level bargaining and possibilities for deviations at company level: Italy*, Dublin, Eurofound, 2011, <http://www.eurofound.europa.eu/pubdocs/2010/876/en/1/EF10876EN.pdf>, 1.

¹⁴²³ Burrioni, L. and Pedaci, M., *Sector-level bargaining and possibilities for deviations at company level: Italy*, Dublin, Eurofound, 2011, <http://www.eurofound.europa.eu/pubdocs/2010/876/en/1/EF10876EN.pdf>, 2-3.

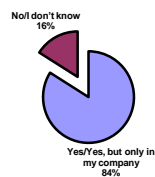
¹⁴²⁴ See Pedersini, R., "Intersectoral agreement on representativeness heals rift", *Eironline* 9 January 2012, <http://www.eurofound.europa.eu/eiro/2011/08/articles/it1108029i.htm>.

¹⁴²⁵ Burrioni, L. and Pedaci, M., *Sector-level bargaining and possibilities for deviations at company level: Italy*, Dublin, Eurofound, 2011, <http://www.eurofound.europa.eu/pubdocs/2010/876/en/1/EF10876EN.pdf>, 1-2.

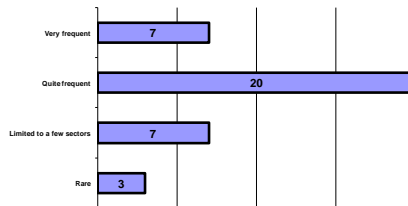
¹⁴²⁶ The ISFORT report contains the following results:

Figure 90. Results of a 2012 questionnaire on the presence of 'second-level' or decentralised bargaining (at regional or company level) in the Italian port sector (source: ISFORT)

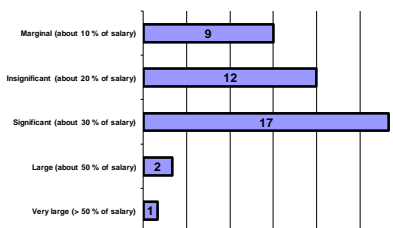
Are you aware of any form of second-level bargaining ?



What is the frequency of this type of bargaining in the undertakings present in the port ?



On average, what is the impact of this form of bargaining on the overall remuneration of the employees ?



(taken from ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 78-79; compare earlier ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_luglio_2011.pdf, 91).

¹⁴²⁷ Robba, L., "Imprese e lavoro portuale dalla riforma ad oggi. Relazioni sindacali: l'esperienza del C.C.N.L. lavoratori dei porti", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (18), 27. In 2011, the renewal of the second-level agreement for the Voltri terminal in the port of Genoa reportedly required lengthy discussions between the management and the unions and even led to an unofficial strike (see, chronologically: X, "Voltri, Vte: prosegue fino ai primi di gennaio lo sciopero dei dipendenti", *Genova24.it*, 29 December 2010, <http://www.genova24.it/2010/12/voltri-vte-prosegue-fino-ai-primi-di-gennaio-lo-sciopero-dei-dipendenti-5513/>; Sa.C., "La Cgil sfida Costa: più soldi ai portuali per aumentare la produttività", *Il secolo XIX*, 9 February 2011, 15; Cafasso, S., "Negri, l'uomo delle trattative impossibili: 'Mi chiedo se a Voltri non abbiamo fallito'", *Il secolo XIX*, 20 April 2011, 15; Ferrari, G., "La trattativa. Genova: Vte-Sindacati, la tregua è vicina", *ShippingOnline.it*, 26 April 2011.; Ferrari, G., "Vte, sindacato e azienda alla meta: 'Nuove relazioni e nuovo contratto'", *Il secolo XIX*, 27 April 2011, 15).

9.11.3. Labour market

- Historical background

1167. Prompted by a series of judgments by the ECJ which condemned various restrictive rules on the organisation of port services, the Italian legislators gradually liberalised the port labour system. Below, we shall first attempt to summarise these developments¹⁴²⁸. We will then describe the current legislative framework and provide factual data on the state of Italy's port labour market.

1168. First of all, it should be noted that the Italian port labour regime is deeply rooted in history and that its evolution through the centuries is similar to that in other European countries. Suffice it to recall that a corporation of port workers existed in Ancient Rome¹⁴²⁹ and that the origin of Genoa's current port labour pool dates back to at least 1340, when the *Compagnia dei Caravana* was founded, which enjoyed exclusive rights for the portage of goods subject to customs¹⁴³⁰. In other Italian ports, too, officially recognised associations of port workers were formed.

In the 19th century, however, the Government dissolved the port corporations, and imposed the principle of free employment. From then on, port workers were hired on a daily basis by representatives of the ship owners and labour conditions were harsh¹⁴³¹.

1169. In the first decades of the 20th century, *compagnie portuali* or associations of port workers were established in several ports. In 1903, despite resistance by the merchants, the Act creating the Consortium of the Port of Genoa reasserted the right of the *compagnie* of the port of Genoa to register workers and conferred on them a monopoly on cargo handling work¹⁴³². The legal status of the *compagnie* of port workers was defined at national level in Royal Decree No. 2476 of 15 October 1923 and later in Ministerial Decree No. 166/728 of 24 January 1929. Further legal provisions on dock work were laid down in the Shipping Code (Codice della

¹⁴²⁸ For an in-depth discussion, see Costa, E.M., *Il diritto del lavoro nei porti*, Turin, G. Giappichelli Editore, 2000, 250 p.

¹⁴²⁹ See *supra*, para 36.

¹⁴³⁰ For a wealth of historical sources, see <http://www.circololuigirum.genova.it>.

¹⁴³¹ See http://www.circololuigirum.genova.it/Ricorrenza_25_Anni_CULMV.htm.

¹⁴³² Barzman, J., "States and dockers: from harbour designers to labour managers", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, II, Aldershot, Ashgate, 2000, (627), 647-648, referring to Doria.

Navigazione) which was enacted in 1942. Its provisions on port labour remained in force until 1994¹⁴³³.

Pursuant to the Code, dockworkers affiliated to the *compagnie portuali* enjoyed exclusive rights to supply labour for all cargo handling activities.

First of all, Article 108 of the Code mentioned among "port operations" the operations of loading, unloading, transshipment, storage and general movement within the port of goods or material of any kind. The scope of the old regime was thus defined by two criteria: a geographical criterion (the port) and a functional criterion (the type of operations)¹⁴³⁴.

Article 110 of the Code provided that, except in special cases determined by the competent Minister, all port operations in Italian ports were reserved to the *compagnie portuali* or corporate bodies of dockworkers. In smaller ports, these were called *gruppi portuali*¹⁴³⁵. This monopoly was safeguarded by Article 1172 of the Code, which prescribed penalties for any person who used for port operations dockworkers not affiliated to a dock work company.

Under Articles 152 and 156 of the Maritime Shipping Regulations (*Regolamento della Navigazione Marittima*) regarding enrolment in and deletion from the register of members of dock work companies, dockworkers had to satisfy certain conditions, one of which was the possession of Italian nationality¹⁴³⁶.

The *compagnie* allocated labour on a daily basis and rotated dockworkers across different operations to ensure the monthly equalisation of hours worked by all their members¹⁴³⁷. The possibility of granting exceptions to the legal monopoly of the *compagnie* was only applied to berths of petrochemical or steel factories¹⁴³⁸.

Next, pursuant to Article 111 of the Shipping Code, the right to perform port operations on behalf of third parties in Italian ports was granted on an exclusive basis to *imprese portuali* or dock work undertakings, which were as a rule companies established under private law and

¹⁴³³ For an in-depth discussion of the pre-1994 port labour regime, see De Sole, D., "Rassegna di legislazione e giurisprudenza sul regime amministrativo del lavoro portuale", *Rivista del diritto della navigazione* 1967, Vol. XXVIII, Parte II, 37-81; see also Raffaelli, P.F., *La somministrazione di lavoro portuale*, doctoral thesis, Ca'Foscari University of Venice, 2010, http://dspace.unive.it/bitstream/handle/10579/925/Raffaelli_955317_tesi.pdf?sequence=1, 8-23.

¹⁴³⁴ Querci, F.A., *Diritto della navigazione*, Padua, CEDAM, 1989, 174-176; Campailla, M., *Le operazioni portuali*, Bologna, Bonomo, 2004, 36.

¹⁴³⁵ Raffaelli, P.F., *La somministrazione di lavoro portuale*, doctoral thesis, Ca'Foscari University of Venice, 2010, http://dspace.unive.it/bitstream/handle/10579/925/Raffaelli_955317_tesi.pdf?sequence=1, 10-11.

¹⁴³⁶ See ECJ 10 December 1991, *Merci*, C-179/90, *ECR* 1991, I-5889, para 3. See also Opinion of Advocate General Van Gerven in ECJ 10 December 1991, *Merci*, C-179/90, *ECR* 1991, I-5889, para 11.

¹⁴³⁷ Turnbull, P., *Social dialogue in the process of structural adjustment and private sector participation in ports: A practical guidance manual*, Geneva, International Labour Organization, 2006, 65.

¹⁴³⁸ Raffaelli, P.F., *La somministrazione di lavoro portuale*, doctoral thesis, Ca'Foscari University of Venice, 2010, http://dspace.unive.it/bitstream/handle/10579/925/Raffaelli_955317_tesi.pdf?sequence=1, 12.

wholly, or largely, controlled by the port authorities¹⁴³⁹. The number of dock work undertakings was determined by the port authority on the basis of traffic needs. However, the right to perform cargo handling services could also be granted to the *compagnie portuali* of dockworkers. The granting of concessions to the *imprese portuali* by the port authorities was governed by Articles 196 to 200 of the Maritime Shipping Regulations. Under the final paragraph of Article 111 of the Shipping Code and in accordance with the aforesaid provisions such undertakings were, for the port operations which they performed on behalf of third parties, only allowed to rely on the said dock work companies and the dockworkers affiliated to them.

Under Article 112 of the Shipping Code and Articles 202 and 203 of the Maritime Shipping Regulations, the scale of charges and other conditions relating to both the performance of dock work by the *compagnie portuali* and the performance of port operations on behalf of third parties by the *imprese portuali* were determined by the port authorities.

Article 201 of the Maritime Shipping Regulations provided port authorities with the possibility of granting authorisations or licences to those that directly employed workers and mechanical means for port operations *on their own behalf*, i.e. as part of their production cycle¹⁴⁴⁰. However, this provision did not seem to have any legal basis and some authors considered it *ultra vires*¹⁴⁴¹.

1170. By the early 1970s, the rigidities of the Italian port labour regime had become the subject of public debate. In the port of Genoa in particular, the position of the *compagnie* was challenged by several stakeholders¹⁴⁴². In the 1980s, the performance of Italian ports was very weak, and they had become excessively costly and were proving vulnerable in the face of the globalisation of maritime trade and growing containerisation¹⁴⁴³. The end of the decade was a time of great conflict. At that time, barely 5 per cent of the port's workforce was classified as '*società*' or direct company employees. The pre-reform port labour regime was characterised by excessive fees charged by dockers, overmanning and low productivity. The restrictive practices and the "guild-style mentality" of the workers and the bureaucratic attitude and the lack of flexibility of the port authorities created a "parasitic" system from which everybody was able to profit, as deficits were passed on to the State¹⁴⁴⁴. In the end, the Government attempted to reform the port labour regime, but the *compagnie* insisted on preserving their old monopoly. However, port users successfully challenged the regime of dock work before the European

¹⁴³⁹ Carbone, S.M., Celle, P. and Lopez de Gonzalo, M., *Il diritto marittimo*, Turin, G. Giappichelli, 2006, 133; Carbone, S.M. and Munari, F., *La disciplina dei porti tra diritto comunitario e diritto interno*, Milan, Giuffrè, 2006, 200.

¹⁴⁴⁰ Carbone, S.M., Celle, P. and Lopez de Gonzalo, M., *Il diritto marittimo*, Turin, G. Giappichelli, 2006, 132.

¹⁴⁴¹ Querci, F.A., *Diritto della navigazione*, Padua, CEDAM, 1989, 191-195.

¹⁴⁴² See, for example, the urgent plea for reform in *Il porto di Genova 1128-2000*, Genoa, Consorzio Autonomo del Porto di Genova / SAGEP, 1971, 317 *et seq.*

¹⁴⁴³ Ministère de l'emploi, du travail et de la cohésion sociale, *La négociation collective en 2003*, Paris, Editions législatives, 2004, 248.

¹⁴⁴⁴ Vezzoso, G., "The Restructuring of the Port of Genoa - from 'Compagnia Portuali' to a port of enterprises", in Dombois, R. and Heseler, H. (Eds.), *Seaports in the context of globalization and privatization*, Bremen, Kooperation Universität-Arbeiterkammer, 2000, (75), 76.

Court of Justice, which in 1991 issued its landmark *Merci* judgment¹⁴⁴⁵ which triggered a long but far-reaching reform process.

1171. In his opinion in the *Merci* case, Advocate-General Van Gerven provided a detailed description of the situation of port labour in the port of Genoa¹⁴⁴⁶. The respondent in the main proceedings, Siderurgica, had purchased a consignment of Brazilian steel which was dispatched by sea to the port of Genoa. On arrival in the port of Genoa, the crew of the ship, in accordance with the Italian legislation, were not authorised to unload the cargo themselves although the ship on which the steel had been sent was equipped for that purpose¹⁴⁴⁷. Siderurgica was obliged to call upon *Merci*, the dock work undertaking holding the concession to organise on behalf of third persons dock work involving general cargo in the port of Genoa. *Merci*, for the actual performance of the dock work, the unloading and the subsequent transport within the port, called upon a dock work company (*compagnia*) and the dockworkers affiliated to it. However, for some months after the unloading of the steel, *Merci* failed to deliver the steel to Siderurgica and also prevented Siderurgica from collecting the steel itself. *Merci* stated that it was unable to deliver the steel to Siderurgica by reason of a long series of strikes by the workforce.

Siderurgica lodged a claim for compensation for the damage it had suffered and for the reimbursement of the sums it alleged had been wrongfully charged for the dockworkers' services which it had been required to use but had not requested. With regard to the damage, Siderurgica claimed that for lack of delivery of the consignment of steel it had had to stop production temporarily and had been unable to deliver to its customers the finished products they had ordered. Moreover it had made a considerable loss because funds equivalent to the purchase price of the steel had been tied up for months.

Siderurgica's claim found support in a study which showed that the dock work services concerned were performed in other European ports at a price much lower than that charged in the port of Genoa¹⁴⁴⁸. Siderurgica and the European Commission also noted that the dock work

¹⁴⁴⁵ See the accounts in Fera, S. and Minella, M., *Genova Porto e Città. Its Port and Town*, Genoa, Sagep, 1999, 265-266 and Turnbull, P., *Social dialogue in the process of structural adjustment and private sector participation in ports: A practical guidance manual*, Geneva, International Labour Organization, 2006, 65; see also; Batini, A., "Recent developments on privatisation of Italian Ports: the case of the port of Genoa" , 2007, 3-4.

¹⁴⁴⁶ Opinion of Advocate-General Van Gerven in ECJ 10 December 1991, *Merci*, C-179/90, ECR 1991, I-5889.

¹⁴⁴⁷ In a similar, famous case from the 1960s, the m/v *Butterfly* was obliged to pay for the services of a dock work undertaking although it had performed the loading and unloading itself, with its own mechanical means (Ales, E. and Passalacqua, P., *Le forniture di lavoro portuale temporaneo*, Working Paper C.S.D.L.E. "Massimo D'Antona.IT – 142/2012, University of Catania, 2012, , 12, fn. 39; Raffaelli, P.F., *La somministrazione di lavoro portuale*, doctoral thesis, Ca'Foscari University of Venice, 2010, http://dspace.unive.it/bitstream/handle/10579/925/Raffaelli_955317_tesi.pdf?sequence=1, 26).

¹⁴⁴⁸ Reference was made to a study by Marconsult SpA of 1990 relating to the organisation and cost of the transshipment of containers in the principal European ports. It emerged from that study that the cost of transshipment of one unit varied between 110,000.00 LIT (about 56.00 EUR) and 116,000.00 LIT (about 60.00 EUR) in the port of Antwerp, between 180,000.00 LIT (about 93.00 EUR) and 200,000.00 LIT (about 103.00 EUR) in the ports of Hamburg, Marseille and Naples and

company had refused to have recourse to modern technology, thus considerably increasing the cost of dock work and giving rise to long waiting periods before the work could be performed. Furthermore, Advocate-General Van Gerven found that after negotiations and in derogation from the scale of charges, Merci also had made a preferential charge to certain port users by reducing the supplementary costs and setting that reduction off by an increase in the charges to other users without any objective consideration justifying such a step. That practice was facilitated by the complexity and lack of transparency of the scale of charges.

In its judgment of 10 December 1991, the ECJ first noted that a dock-work undertaking enjoying the exclusive right to organize dock work for third parties, as well as a dock-work company having the exclusive right to perform dock work must be regarded as undertakings to which exclusive rights have been granted by the State within the meaning of (current) Article 106(1) TFEU (para 9). That article provides that in the case of such undertakings Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaty, in particular those provided for in (current) Article 18 TFEU and the articles relating to competition (para 10).

In the first place, with regard to the nationality condition imposed on the workers of the dock-work company, the Court recalled that according to the case-law of the Court, the general prohibition against discrimination on grounds of nationality laid down in (current) Article 18 TFEU applies independently only to situations governed by Community law with regard to which the Treaty lays down no specific prohibition against discrimination (para 11). With regard to workers, that principle has been specifically applied by (current) Article 45 TFEU (para 12). In this respect the Court further recalled that (current) Article 45 TFEU precludes, first and foremost, rules of a Member State which reserve to nationals of that State the right to work in an undertaking of that State, such as the Port of Genoa company which was at issue before the national court. As the Court had declared earlier, the concept of "worker" within the meaning of (current) Article 45 TFEU pre-supposes that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration. That description is not affected by the fact that the worker, whilst being linked to the undertaking by a relationship of employment, is linked to other workers by a relationship of association (para 13).

In the second place, as to the existence of exclusive rights, the Court stated first that with regard to the interpretation of (current) Article 102 TFEU the Court had consistently held that an undertaking having a statutory monopoly over a substantial part of the common market may be regarded as having a dominant position within the meaning of (current) Article 102 TFEU (para 14). Regarding the definition of the market in question, the Court noted in the order for reference that it is that of the organization on behalf of third persons of dock work relating to ordinary freight in the Port of Genoa and the performance of such work. Regard being had in particular to the volume of traffic in that port and its importance in relation to maritime import and export operations as a whole in the Member State concerned, that market may be regarded

between 230,000.00 LIT (about 119.00 EUR) and 250,000.00 LIT (about 129.00 EUR) in the Ports of Venice, Barcelona and Livorno, while the cost of transshipment of one unit amounted to 270,000.00 LIT (about 139.00 EUR) in the port of Genoa.

as a substantial part of the common market (para 15). Next, the Court stated that the simple fact of creating a dominant position by granting exclusive rights within the meaning of (current) Article 106(1) TFEU is not as such incompatible with (current) Article 102 (para 16). However, a Member State is in breach of the prohibitions contained in those two provisions if the undertaking in question, merely by exercising the exclusive rights granted to it, cannot avoid abusing its dominant position or when such rights are liable to create a situation in which that undertaking is induced to commit such abuses (para 17). According to subparagraphs (a), (b) and (c) of the second paragraph of (current) Article 102 TFEU, such abuse may in particular consist in imposing on the persons requiring the services in question unfair purchase prices or other unfair trading conditions, in limiting technical development, to the prejudice of consumers, or in the application of dissimilar conditions to equivalent transactions with other trading parties (para 18). In that respect it appeared from the circumstances described by the national court and discussed before the Court of Justice that the undertakings enjoying exclusive rights in accordance with the procedures laid down by the national rules in question were, as a result, induced either to demand payment for services which have not been requested, to charge disproportionate prices, to refuse to have recourse to modern technology, which involves an increase in the cost of the operations and a prolongation of the time required for their performance, or to grant price reductions to certain consumers and at the same time to offset such reductions by an increase in the charges to other consumers (para 19). In these circumstances the Court held that a Member State creates a situation contrary to (current) Article 102 TFEU where it adopts rules of such a kind as those at issue before the national court, which are capable of affecting trade between Member States as in the case of the main proceedings, regard being had to the factors relating to the importance of traffic in the Port of Genoa (para 20).

With regard to the interpretation of (current) Article 34 TFEU requested by the national court, the Court recalled that a national measure which has the effect of facilitating the abuse of a dominant position capable of affecting trade between Member States will generally be incompatible with that article, which prohibits quantitative restrictions on imports and all measures having equivalent effect in so far as such a measure has the effect of making more difficult and hence of impeding imports of goods from other Member States (para 21). The Court went on to say that it may be seen from the national court's findings that the unloading of the goods could have been effected at a lesser cost by the ship's crew, so that compulsory recourse to the services of the two undertakings enjoying exclusive rights involved extra expense and was therefore capable, by reason of its effect on the prices of the goods, of affecting imports (para 22).

In its second question the national court in essence asked whether (current) Article 106(2) TFEU must be interpreted as meaning that a dock-work undertaking and/or company in the situation described in the first question must be regarded as being entrusted with the operation of services of general economic interest within the meaning of that provision (para 25). For the purpose of answering that question, the Court noted that it should be borne in mind that in order that the derogation to the application of the rules of the Treaty set out in (current) Article 106(2) thereof may take effect, it is not sufficient for the undertaking in question merely to have been entrusted by the public authorities with the operation of a service of general

economic interest, but it must be shown in addition that the application of the rules of the Treaty obstructs the performance of the particular tasks assigned to the undertaking and that the interests of the Community are not affected (para 26). In that respect the Court held that it did not appear either from the documents supplied by the national court or from the observations submitted to the Court of Justice that dock work is of a general economic interest exhibiting special characteristics as compared with the general economic interest of other economic activities or, even if it were, that the application of the rules of the Treaty, in particular those relating to competition and freedom of movement, would be such as to obstruct the performance of such a task (para 27).

On the basis of the foregoing, the Court ruled as follows:

1. *[Current Article 106(1) TFEU], in conjunction with [current Articles 34, 45 and 102 TFEU], precludes rules of a Member State which confer on an undertaking established in that State the exclusive right to organize dock work and require it for that purpose to have recourse to a dock-work company formed exclusively of national workers;*
2. *[Current Articles 34, 45 and 102 TFEU], in conjunction with [current Article 106], give rise to rights for individuals which the national courts must protect;*
3. *[Current Article 106(2) TFEU] must be interpreted as meaning that a dock-work undertaking and/or company in the position described in the first question may not be regarded, on the basis only of the factors set out in that description, as being entrusted with the operation of services of general economic interest within the meaning of that provision.*

Following the *Merci* judgment, the European Commission initiated an infringement procedure against Italy and indeed expressed the opinion that the prohibition of self-handling was incompatible with free movement of services which is guaranteed under (current) Article 56 TFEU¹⁴⁴⁹. The Italian competition authority, for its part, issued several opinions with regard to competitive distortions in Italian ports, which were aimed at legislative reform¹⁴⁵⁰.

The *Merci* judgment truly opened the door for a national port reform, which was adopted in 1994. Henceforth, the country's major ports would be administered by landlord port authorities (*autorità portuali*) who were excluded from cargo handling. The *compagnie portuali* were to be transformed into commercial companies providing temporary workforce.

1172. The reform of the Italian port labour regime was laid down in the abovementioned¹⁴⁵¹ Act No. 84 of 28 January 1994. This Act repealed the abovementioned Articles of the Shipping

¹⁴⁴⁹ Carbone, S.M., Celle, P. and Lopez de Gonzalo, M., *Il diritto marittimo*, Turin, G. Giappichelli, 2006, 134-135; Carbone, S.M. and Munari, F., *La disciplina dei porti tra diritto comunitario e diritto interno*, Milan, Giuffrè, 2006, 203; Ales, E. and Passalacqua, P., *Le forniture di lavoro portuale temporaneo*, Working Paper C.S.D.L.E. "Massimo D'Antona.IT – 142/2012, University of Catania, 2012, 16 and fn. 49; Campailla, M., *Le operazioni portuali*, Bologna, Bonomo, 2004, 26.

¹⁴⁵⁰ Campailla, M., *Le operazioni portuali*, Bologna, Bonomo, 2004, 27-30.

¹⁴⁵¹ See *supra*, para 1161.

Code dealing with port labour and established an entirely new port labour regime. In the view of the European Commission and the ECJ, however, the initially adopted liberalisation measures were still insufficient. As a result, the new legislative provisions had to be adjusted several times in order to make them compatible with the Treaty. Below, we shall discuss only the currently applicable rules. However, the earlier legal positions on the opening up of the port labour market taken by the Commission¹⁴⁵² in the course of the Italian reform process as well as a number of additional ECJ judgments may still serve as useful touchstones against which restrictive rules in other EU Member States can be assessed.

1173. In *Raso*¹⁴⁵³, for example, the ECJ ruled that EU competition law precludes a national provision which reserves to a port workers' company the right to supply temporary labour to other undertakings operating in the port in which it is established, when that company is itself authorised to carry out cargo handling work. The case concerned the organisation of port labour in the Italian Port of La Spezia following port labour reform measures in the wake of the *Merci* judgment. The new rules essentially restricted the monopoly of the port workers' companies to the supply of temporary labour. Authorised port operators, including concessionaires, were now allowed to employ their own permanent workers to execute cargo handling work. However, when they needed extra staff, they had to rely on the former port workers' companies to provide the necessary workforce, and it was a criminal offence for an port operator or concessionaire to contract with other temporary labour providers. The concessionaire of a container terminal at La Spezia had nevertheless contracted out for labour to be supplied by four undertakings which were authorised to perform port work, but which were not former port workers' companies. In the ensuing criminal proceedings, the case was referred to the ECJ for a preliminary ruling on whether EU law precludes a national provision whereby the right to supply temporary labour to other undertakings operating in the port in which it is established is reserved to a port workers' company, having regard to the fact that that company is also authorised to carry out cargo handling services.

Once again, the ECJ noted that an undertaking with a monopoly in the supply of labour to other undertakings authorised to carry out port work is an undertaking which has been granted exclusive rights by the State within the meaning of (current) Article 106 (1) TFEU (para 23). As regards the definition of the market in question, the Court held that it was that of the organisation on behalf of third persons of port work relating to container freight in the port of La Spezia. Having regard to the volume of traffic in that port, which was regarded as the leading Mediterranean port for container traffic, and its importance in intra-Community trade, it regarded that market as a substantial part of the common market (para 26).

¹⁴⁵² See especially Commission Decision 97/744/EC of 21 October 1997, *OJ* 1997 L 301/17; see also European Parliament, Written question No. 3713/97 by Franco Malerba to the Commission, Genoa's port policy, *OJ C* 158, 25 May 1998, 181; European Parliament, Written question P-0450/01 by Stefano Zappalà to the Commission, Port operations and the provision of temporary port services, *OJ* 235 E, 21 August 2001, 208-209. On state aid aspects, see, *inter alia*, the Commission Communication in Case C 27/93 (ex NN 103/92), *OJ* 1996 C 339/6; the Invitation to submit comments in Case C 81/98 (ex N 421/97), *OJ* 1999 C 108/2; Commission Decision 2001/834/EC of 18 July 2001, *OJ* 2001 L 312/5.

¹⁴⁵³ ECJ 12 February 1998, *Raso*, C-163/96, *ECR* 1998, I-533, paras 28-32.

Next, the ECJ recalled that although the mere creation of a dominant position by the granting of exclusive rights within the meaning of (current) Article 106(1) TFEU is not in itself incompatible with (current) Article 102 TFEU on the abuse of a dominant position, a Member State is in breach of the prohibitions contained in those two provisions if the undertaking in question, merely by exercising the exclusive rights granted to it, is led to abuse its dominant position or when such rights are liable to create a situation in which that undertaking is led to commit such abuses (para 27). The Court held that in so far as the new Italian legislative scheme did not merely grant the former port workers' company the exclusive right to supply temporary labour to terminal concessionaires and to other authorised port operators but also enabled it to compete with them on the market in cargo handling services, such former company had a conflict of interest (para 28). Merely exercising its monopoly would enable it to distort in its favour the equal conditions of competition between the various operators on the market in cargo handling services (para 29). For the Court, the result was that the company in question was led to abuse its monopoly by imposing on its competitors in the cargo handling market unduly high costs for the supply of labour or by supplying them with labour less suited to the work to be done (para 30). The ECJ considered it immaterial that the national court had not identified any particular case of abuse (para 31). The Court concluded that Articles 102 and 106 of the Treaty preclude a national provision which reserves to a port workers' company the right to supply temporary labour to other operators in the port in which it is established, when that company is itself authorised to carry out cargo handling services (para 32)¹⁴⁵⁴.

1174. In 2001, Member of the European Parliament *Stefano Zappalà (PPE-DE)* submitted a written question to the Commission on the compatibility with EU law of the new Italian legislation. The question and the answer read as follows:

Subject: Port operations and the provision of temporary port services

Law No 186 of 30 June 2000 governing port operations and the provision of services consisting of temporary port work, was first brought before the Italian Senate in the form of a text that had already been agreed with the Italian Minister of Transport and Navigation, Claudio Burlando, and the Commissioner responsible for competition policy, Karel Van Miert. The proposed Law No 3409 amended, among other things, Article 16 of Law 84/94 and introduced a new definition of port services under which they must be connected with the carrying out of port operations whether or not they are an intrinsic part of the cycle of port operations themselves.

This formulation covered any activity, whether or not it was included in the cycle of port operations, which can be carried out on a contract basis by any port enterprise authorised in accordance with Article 16.

The rules therefore allowed activities, whether or not they are part of the cycle of port operations, to be outsourced, as explicitly referred to in paragraph 16 of the Decision of the European Commission of 21 October 1997.

¹⁴⁵⁴ ECJ 12 February 1998, Raso, C-163/96, ECR 1998, I-533, paras 27-32.

The text adopted by the Italian Senate on 15 July 1999 was forwarded to the European Commission on 28 July 1999.

Commissioner Karel Van Miert, in a letter of 24 August 1999 to the Italian Minister of Transport and Navigation, expressed serious doubts about the compatibility with Community rules of the Senate's amendments to the original text of the proposed Law No 3409.

In particular, the European Commission stressed the fact that the new definition of port services considerably narrowed the original definition thereby preventing authorised port enterprises from providing, on a contract basis, services consisting of the performance of one or more operations relating to the operating cycle of the terminal enterprise.

Despite these reservations, the text of Law No 3409 was adopted definitively without amendments by the Italian Chamber of Deputies on 30 May 2000.

In view of the above, and of the foregoing legal considerations, can the Commission say whether it considers it appropriate for it to deliver a negative opinion on the substance of the draft regulation in question, which the Italian Government has recently submitted to the Commission for evaluation, in relation to the section which states that port services consist of activities separate from those that form part of the cycle of port operations. These rules would prevent a port enterprise from contracting out one or more port operations that are part of its operating cycle, thereby restricting such contracts to the monopoly operator (the former Port Company) authorised to provide services consisting of temporary port work in accordance with Article 17 of Law No 84/94.

Answer given by Mr Monti on behalf of Commission

On 21 October 1997 the Commission adopted a decision finding that various clauses in Italian port legislation concerning labour were incompatible with the competition rules of the EC Treaty. One of the clauses concerned the granting of exclusive rights for providing temporary labour in ports to firms which were also authorised to carry out port operations. On 12 February 1998 the Court of Justice confirmed the principle of this incompatibility, declaring that the articles [82] and [86] of the Treaty preclude a national provision which reserves to a dock-work company the right to supply temporary labour to other undertakings operating in the port in which it is established, when that company is itself authorised to carry out dock work(2).

In order to put an end to the infringement established by the decision of 21 October 1997, the Italian Government brought in a bill in July 1998 which amends port legislation, in particular as regards temporary work. The Commission stated that when this bill was adopted the infringement would be terminated.

The Italian Parliament amended the bill and on 30 June 2000 passed Law No 186. The new version differs from the initial bill, notably with respect to organisation and free access to various activities (including port operations and services).

This being a matter of bringing national law into line with Community law, it should be remembered that it is for the Member State to identify the appropriate measure or measures and to implement them. The Commission's role is to check whether the measure adopted puts an end to the infringement. In this case, the information

*available to the Commission suggests that Law No 186 together with the adoption of the implementing regulation will effectively put an end to the infringement established in the decision of 21 October 1997 because it is explicitly provided that the role of exclusive supplier of temporary labour cannot be combined with that of port operations and services provider*¹⁴⁵⁵.

1175. As we have mentioned¹⁴⁵⁶, general Italian labour law was reformed in 2012 (the Fornero Reform). The key elements of the law are new rules on: (1) temporary employment agreements and other contractual arrangements aimed at avoiding abuses and to improve the flexibility of the labour market; (2) termination of the employment relationship, restricting reinstatement to certain specific cases of unfair or unjustified dismissal and simplifying the relevant proceedings before the labour courts¹⁴⁵⁷.

- *Regulatory set-up*

1176. Today, Act No. 84/1994 defines “port operations” as “the loading, unloading, transshipment, storage and movement in general of goods and any other materials, carried out in the port area” (Art. 16(1)). Thus, the legal definition of port operations has not fundamentally changed¹⁴⁵⁸. Port operations include operations which imply a contact between the goods and the quay, with the exclusion of nautical operations taking place on board ships lying in port¹⁴⁵⁹. However, in order to determine whether a certain activity is a “port operation” one must ascertain whether it is part of the cycle of activities functionally related to the transportation of the goods. It is not a “port operation” when it follows the transport phase and is rather related to the trade in or the transformation of the goods¹⁴⁶⁰.

1177. The carrying out of “port operations” (*operazioni portuali*), either for the company’s own account or for third parties, is subject to an authorisation by the port authority. The regime of

¹⁴⁵⁵ European Parliament, Written question P-0450/01 by Stefano Zappalà (PPE-DE) to the Commission, Port operations and the provision of temporary port services, *OJ* 235 E, 21 August 2001, 208-209.

¹⁴⁵⁶ See *supra*, para 1161.

¹⁴⁵⁷ For concise overviews, see Ales, E., “The Italian reform of the labour market in a growth perspective”, *European Labour Law Journal* 2012, Vol. 3, No. 1, 70-85; Gangemi, A., Ceccarelli, L. and Piromalli, M., “Reform of the Italian labour market”, <http://www.portolano.it/2012/07/reform-of-the-italian-labour-market/>.

¹⁴⁵⁸ For a thorough discussion of the definition, see Campailla, M., *Le operazioni portuali*, Bologna, Bonomo, 2004, 31-52.

¹⁴⁵⁹ Lefebvre d’Ovidio, A., Pescatore, G. and Tullio, L., *Manuale di Diritto della navigazione*, Milan, Giuffrè, 2008, 143-144, para 86.

¹⁴⁶⁰ Campailla, M., *Le operazioni portuali*, Bologna, Bonomo, 2004, 50.

these authorisations is set out in Article 16 of the Act¹⁴⁶¹. For this reason, authorised operators are often referred to as "Art. 16 undertakings". Authorised port undertakings may use their own employees to physically execute dock work.

The authorisations can be annual or multi-annual and are granted by the port authority in accordance with the principles of transparency and fair competition¹⁴⁶². Applications are assessed against various requirements including the suitability of the owner and administrators, the company's technical, organisational and financial capacity and the presentation of a business plan and an insurance contract for damage caused in the course of port operations. These requirements are laid down at national level (Art. 16(4)). The port authority determines the maximum number of authorisations to be granted, in relation to the needs and the capacity of the port and the objective to maximise competition (Art. 16(7))¹⁴⁶³. Unless only one application is made, the port authority has to grant authorisations to more than one company. Authorized operators must provide financial security and pay a fee (Art. 16(3)). Their tariffs are made public (Art. 16(5)). No authorisation is required for the handling of liquid petroleum and chemical products (Art. 16(7-bis)).

1178. In addition to the definition of "port operations", Article 16(1) of the 1994 Act now also defines "port services" (*servizi portuali*) which are specialised services, complementary or ancillary to the cycle of port operations. These port services include operations such as the cleaning, marking, weighing and packaging of goods, filling and emptying of containers, lashing and unlashng, container repairs and the use of special mechanical means. It is not always easy to ascertain whether a given activity is a port operation, a port service, or neither of these¹⁴⁶⁴. With regard to organisational aspects, port operations and port services are governed by the same rules. In order to provide one or more port services, an authorisation by the port authority is required. The authorisation has a duration of one to four years. The port authorities determine the maximum number of authorisations, ensuring a maximum level of competition (see Art. 16(3) of Act No. 84/1994 and Ministerial Decree No. 132/2001).

1179. Port authorities were established in the ports of Ancona, Augusta, Bari, Brindisi, Cagliari, Catania, Civitavecchia, Genoa, Gioia Tauro, La Spezia, Leghorn, Manfredonia, Marina di Carrara, Messina, Napoli, Olbia Golfo, Palermo, Piombino, Ravenna, Salerno, Savona, Taranto, Trieste and Venice (*cf.* Art. 6(1) and (8) of Act No. 84/1994 and ensuing Presidential and Ministerial Decrees)¹⁴⁶⁵. Port authorities are public bodies enjoying administrative and

¹⁴⁶¹ See also Art. 3-5 of Ministerial Decree No. 585/1995.

¹⁴⁶² De Maestri, M.E., "European Port Policy vs. European Policies Applied to Ports", *Studi sull'integrazione europea* 2009, 165, para 4; Carbone, S.M. and Munari, F., *La disciplina dei porti tra diritto comunitario e diritto interno*, Milan, Giuffrè, 2006, 221.

¹⁴⁶³ See also Carbone, S.M. and Munari, F., *La disciplina dei porti tra diritto comunitario e diritto interno*, Milan, Giuffrè, 2006, 223-227.

¹⁴⁶⁴ Campailla, M., *Le operazioni portuali*, Bologna, Bonomo, 2004, 70-72.

¹⁴⁶⁵ Port authorities for Manfredonia and Trapani were established but wound up.

financial autonomy (Art. 6 (2) of the Act). They are not allowed, either directly or through subsidiaries, to provide port operations or activities connected thereto (Art. 6(6)). Ports where no Port Authority was established are managed by the Maritime Authorities, who are not allowed to provide port services either. Although the matter does not seem to be regulated in any express manner, several Italian lawyers confirmed to us that the provisions of Act No. 84/1994 and other rules which specifically relate to port labour apply in all ports.

1180. Next, Act No. 84/1994 provides that companies holding an authorisation for the carrying out of port operations may be granted a temporary and exclusive concession to use state-owned areas and wharves in the port area¹⁴⁶⁶. These companies are also called *imprese terminaliste* (terminal undertakings) or "Art. 18 undertakings", because their regime is laid down in Art. 18 of Act No. 84/1994. In order to obtain a concession, applicants must provide a programme of activities and possess adequate technical equipment and organisational facilities, as well as a workforce appropriate to the programme of activities (Art. 18(6)). Based on these criteria, the port authority will select the concessionaire. Given the length of concession periods, in some cases up to 50 years, and obligations on the concessionaire to construct immovable facilities, the port authority carries out annual evaluations to check whether the concessionaire is still meeting all requirements and to monitor his investments (Art. 18(8)). This allows the port authority to ensure the successful development of the port's potential¹⁴⁶⁷. The Act also provides for the reservation of operational zones within the port for port operations to be carried out by other undertakings which do not hold a concession (Art. 18(2)). Further rules on the granting of port concessions should be laid down in an implementing Decree at national level. The Minister is expressly entrusted with the task of adapting the rules on port concessions to EU law. The implementing Ministerial Decree has not yet been adopted¹⁴⁶⁸. All these rules also apply to concessions of liquid bulk terminals.

To avoid confusion, terminal operators holding a concession granted under Article 18 of Act No. 84/1994 also need an authorisation under Article 16. In their turn, terminal concessionaires are allowed to contract out services to other operators authorised under Article 16. In practice, many authorised operators indeed work on behalf of the concessionaires, but they also provide services directly to port users¹⁴⁶⁹. Importantly, both authorised operators and concessionaires may employ their own workforce.

¹⁴⁶⁶ In practice, the authorisation to carry out port operations and the concession are frequently granted in one and the same document (Carbone, S.M. and Munari, F., *La disciplina dei porti tra diritto comunitario e diritto interno*, Milan, Giuffrè, 2006, 210). For an overview of the law relating to port concessions, see Ingratoci, C., "La concessione di aree e banchine", *Rivista di diritto dell'economia, dei trasporti et dell'ambiente* 2007, Vol. V, http://www.giureta.unipa.it/VolumeV2007/articoli/publ_ingratoci_19_03_2007.htm.

¹⁴⁶⁷ Carbone, S.M. and Munari, F., *La disciplina dei porti tra diritto comunitario e diritto interno*, Milan, Giuffrè, 2006, 212.

¹⁴⁶⁸ Acquarone, G., *Il piano regolatore delle autorità portuali*, Milan, Giuffrè, 2009, 365; Ingratoci, C., "La concessione di aree e banchine", *Rivista di diritto dell'economia, dei trasporti e dell'ambiente*, http://www.giureta.unipa.it/VolumeV2007/articoli/publ_ingratoci_19_03_2007.htm, fn. 9.

¹⁴⁶⁹ Carbone, S.M., Celle, P. and Lopez de Gonzalo, M., *Il diritto marittimo*, Turin, G. Giappichelli, 2006, 138.

As a rule, terminal companies must carry out all activities themselves (*direttamente*) (Art. 18(7)). Port authorities may set limits to subcontracting by terminal companies. For example, in 2011 the Port Authority of Venice enacted Ordinance No. 347¹⁴⁷⁰ obliging terminal companies to specify in their business plan (which they must submit to the Port Authority) the services which they intend to outsource to other authorised operators, and these services may only relate to one out of three categories (inboard services, services alongside ship or storage services). These restrictions are motivated by the need to prevent extreme fragmentation of the port services market¹⁴⁷¹.

1181. Under certain conditions, the port authority may issue to a port user a special authorisation to practice *autoproduzione* or self-handling. Sea carriers, shipping companies or charterers may obtain a special authorisation to exercise port operations upon the arrival or departure of ships equipped with their own mechanical means and a crew appropriate to perform port operations. The authorisation may be granted on the occasion of the arrival or departure of the ship or for multiple arrivals and departures already scheduled. The applicant must have insurance for damage caused in the course of port operations, pay a fee and provide a financial guarantee (Art. 16(4)(d) of Act No. 84/1994 and Art. 8 of Ministerial Decree No. 585/1995). The port authority has to verify whether appropriate mechanical means and sufficient capable staff are available, for safety reasons but also in order to maintain fair competition in the market for port services¹⁴⁷². A sea carrier who is allowed to self-handle may have rely on its own (third-party) assistants having an appropriate operational structure, as long as they are merely *contributing* to the port operations and are not performing the port operations *autonomously*¹⁴⁷³. When the authorisation to practise self-handling relates to an area used by a concessionaire, it implies a derogation from the concession.

1182. The provision of temporary port labour supplementing the workforce of the authorised undertakings or the concessionaire undertakings is regulated separately in Article 17 of the 1994 Act. Such temporary workforce providers are often termed "Art. 17 undertakings". These undertakings may supply workers for the provision of both port operations and port services within the meaning of Article 16 of the Act.

¹⁴⁷⁰ Ordinanza N. 347 del 22 aprile 2011, Organizzazione del settore del lavoro portuale nel porto di Venezia: definizione, anche ai fini della sicurezza, dei segmenti di operazioni portuali appaltabili e dei servizi specialistici, complementari e accessori al ciclo delle operazioni portuali, da rendersi ai soggetti autorizzati ai sensi degli articoli 16 e 18 della legge 84/1994.

¹⁴⁷¹ ISFORT, *Il futuro dei porti e del lavoro*, II, 2012, *portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 99.

¹⁴⁷² Campailla, M., *Le operazioni portuali*, Bologna, Bonomo, 2004, 177; Portacci, P., *Il Diritto di autoproduzione nel settore dei servizi portuali ed aeroportuali*, Bologna, Bonomo, 2004, 55-56.

¹⁴⁷³ Art. 8(2) of Ministerial Decree No. 585/1995.

Temporary work providers in ports must be authorised by the port authority as well. In line with the ECJ's *Raso* judgment¹⁴⁷⁴ and with the consent of the Commission¹⁴⁷⁵, the Act provides that temporary port work can only be provided by an undertaking having the provision of temporary port work as its sole activity¹⁴⁷⁶. Even parent-subsidiary relationships between the temporary port work provider and companies providing port operations or port services are prohibited. The undertaking must have sufficient staff and resources to perform port operations and be appointed by the port authority following a public tender, which is open to companies from Italy and other Member States (Art. 17(2)-(3)). For example, on 21 December 2011 the Port Authority of Venice published a public procurement notice for the appointment of a temporary port labour undertaking for the period 2012-2015. Through subsequent ordinances issued over the past 10 years, it has appointed the Nuova Compagnia Lavoratori Portuali di Venezia Soc. Coop. for this activity. In its ordinance of 30 April 2012, the Port Authority has once again granted the authorisation to the Nuova Compagnia Lavoratori Portuali di Venezia Soc. Coop.

In ports where no Art. 17 undertaking exists, port authorities are under an obligation to promote the establishment of an agency that provides temporary port work under their control (Art. 17(5)). These pools are financed through the charges for services provided by temporary port workers. The number of port workers in such a pool is set by the Transport Ministry on the basis of a proposal by the port authority.

In practice, temporary port work is not only used in order to meet peaks in demand. Nothing prevents temporary port labour undertakings from supplying workers to a company authorised to perform port operations on a regular, structural basis. Although in principle it only provides workforce, the temporary port work provider may also use mechanical means of its own. For this reason, several commentators consider Article 17 an essential instrument of flexibility in port labour¹⁴⁷⁷.

If the personnel of the temporary port work undertaking or the temporary port work agency is insufficient to provide the temporary labour required, the undertaking or the agency may rely on general temporary work agencies, authorised under the Legislative Decree 276/2003¹⁴⁷⁸ (Art. 17(6)). Interestingly, in its relationship with the general temporary work agency, the temporary

¹⁴⁷⁴ See *supra*, paras 1173.

¹⁴⁷⁵ See *supra*, para 1174.

¹⁴⁷⁶ Since the amendments made by the Law 247/2007, an exception is granted to the former *compagnie portuali* with no more than 15 workers, which are allowed to combine the provision of temporary port labour with other port activities.

¹⁴⁷⁷ See and compare D'Aste, G., "Il lavoro portuale temporaneo ai sensi dell'art. 17 della legge 84/94. Analisi e temi di riflessione", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (4), 5-6; Robba, L., "Imprese e lavoro portuale dalla riforma ad oggi. Relazioni sindacali: l'esperienza del C.C.N.L. lavoratori dei porti", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (18), 24-25; Ghio, L. and Moglia, F., "Il lavoro portuale nel porto di Genova: situazione attuale e prospettive di sviluppo", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (31), 34; Benvenuti, A., "Ruolo e funzioni dell'art. 17 nell'organizzazione del lavoro portuale nel porto di Genova", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (45), 45-46.

¹⁴⁷⁸ The Legislative Decree 276/2003 repealed the Law 1369/1960 and its general prohibition on the hiring out of workers.

port work undertaking or agency is considered to be the client or user company¹⁴⁷⁹. Except in the case dealt with in Article 17(6), recruitment of port workers via general temporary work agencies is prohibited¹⁴⁸⁰. In other words, companies other than the temporary port work undertakings or agencies are not allowed to call upon general temporary employment agencies.

The port authority must adopt regulations with regard to the temporary port work undertaking or agency, in order to control their activities and their adequate capacity and to ensure the equal treatment of all users. These regulations must contain provisions on the adoption of the tariffs, the quantity and quality of the workforce, the professional training of the workers and occupational health and safety (Art. 17(10)). For example, the Annex to the aforementioned Ordinance of the Port Authority of Venice of 30 April 2012 sets out the regulations to be complied with by the temporary port labour undertaking and its users and the tariffs it may charge. Similarly, the Leghorn Port Authority has Regulations on the functioning of the temporary port work agency and Guidelines and a Control Procedure for the provision of temporary port labour. The former *inter alia* contains requirements with regard to the training of interim port workers under Article 17(6). The latter provides *inter alia* for the establishment of a competency accreditation system and a competence passport (*passaporto di competenze*), which every temporary port worker possesses¹⁴⁸¹, and contains an Annex on health and safety in temporary port labour.

In its authorisations for the provision of temporary port labour, as well as in its other authorisations for the performance of port operations and port services, the port authority must include provisions to ensure mandatory minimum rules for the remuneration of workers. These minimum rules may not be inferior to the collective labour agreement for port workers (Art. 17(13))¹⁴⁸².

Certain aspects of temporary port labour must be regulated by collective labour agreements (Art. 17(7) of Act No. 84/1994)¹⁴⁸³. Such rules were agreed upon in the National Collective Labour Agreement for Port Workers signed on 22 December 2008. Article 64 of this Agreement describes the tasks, other than port operations and services, for which employers may hire workers from general temporary work agencies, and the maximum number of such temporary workers.

¹⁴⁷⁹ See on this issue Ales, E. and Passalacqua, P., *Le forniture di lavoro portuale temporaneo*, Working Paper C.S.D.L.E. "Massimo D'Antona.IT – 142/2012, University of Catania, 2012, 26.

¹⁴⁸⁰ See also Robba, L., "Imprese e lavoro portuale dalla riforma ad oggi. Relazioni sindacali: l'esperienza del C.C.N.L. lavoratori dei porti", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (18), 24; Carbone, S.M. and Munari, F., *La disciplina dei porti tra diritto comunitario e diritto interno*, Milan, Giuffrè, 2006, 254. However, recruiting port workers directly via general temporary work agencies may be allowed in very specific circumstances, e.g. when the temporary port labour undertaking or agency is not functioning properly or when its authorisation is suspended or revoked by the port authority (Carbone, S.M. and Munari, F., *La disciplina dei porti tra diritto comunitario e diritto interno*, Milan, Giuffrè, 2006, 259).

¹⁴⁸¹ See also Raffaelli, P.F., *La somministrazione di lavoro portuale*, doctoral thesis, Ca'Foscari University of Venice, 2010, http://dspace.unive.it/bitstream/handle/10579/925/Raffaelli_955317_tesi.pdf?sequence=1, 65.

¹⁴⁸² See further Carbone, S.M. and Munari, F., *La disciplina dei porti tra diritto comunitario e diritto interno*, Milan, Giuffrè, 2006, 261-262.

¹⁴⁸³ See Ales, E. and Passalacqua, P., *Le forniture di lavoro portuale temporaneo*, Working Paper C.S.D.L.E. "Massimo D'Antona.IT – 142/2012, University of Catania, 2012, 29-32.

On the basis of *ad hoc* government measures, the workers employed by the temporary port labour undertaking or agency received a guaranteed minimum wage when they are not hired out. Despite repeated requests by the social partners, not until 2012 was this measure enshrined in permanent legislation¹⁴⁸⁴. The guaranteed income for temporary port workers used to be regulated by the social partners; since the amendments made by the Act 247/2007 the legislator decided on its amount and the conditions for its disbursement. However, the effectiveness of those provisions was conditional upon the annual finance Acts earmarking resources for this purpose¹⁴⁸⁵. Recently, Act No. 92/2012¹⁴⁸⁶ granted structural unemployment benefit to pool workers and organised its funding through contributions by the temporary port labour undertakings and agencies.

Act No. 84/1994 expressly states that temporary port work undertakings and agencies cannot be considered undertakings entrusted with the provision of services of general economic interest within the meaning of (current) Article 106(2) TFEU (Art. 17(9)).

Although Act No. 84/1994 refers for a number of aspects to the general Act No. 276/2003 on temporary work agencies, the Italian legislator still considers temporary port labour a sector with special characteristics which warrant a different legal regulation¹⁴⁸⁷.

Respondents to our questionnaire mentioned no instances of workers being hired via hiring halls.

1183. Workers from authorised port companies as well as employees in temporary port work undertakings are enrolled in special registers kept by the port authority (Art. 24(2) of Act No. 84/1994).

1184. Respondents to our questionnaire provided conflicting information on requirements for recruitment (minimum age is 16 or 18 according to the source; some mentioned medical fitness, language skills, training or safety training¹⁴⁸⁸, good behaviour, absence of a criminal record, drug and alcohol tests, and/or trade union membership).

¹⁴⁸⁴ Robba, L., "Imprese e lavoro portuale dalla riforma ad oggi. Relazioni sindacali: l'esperienza del C.C.N.L. lavoratori dei porti", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (18), 25.

¹⁴⁸⁵ Raffaelli, P.F., *La somministrazione di lavoro portuale*, doctoral thesis, Ca' Foscari University of Venice, 2010, http://dspace.unive.it/bitstream/handle/10579/925/Raffaelli_955317_tesi.pdf?sequence=1, 49-51.

¹⁴⁸⁶ Legge 28 giugno 2012, n. 92 Disposizioni in materia di riforma del mercato del lavoro in una prospettiva di crescita (Art. 3).

¹⁴⁸⁷ On this issue, see *inter alia* Ales, E. and Passalacqua, P., *Le forniture di lavoro portuale temporaneo*, Working Paper C.S.D.L.E. "Massimo D'Antona.IT – 142/2012, University of Catania, 2012, 6 and 24.

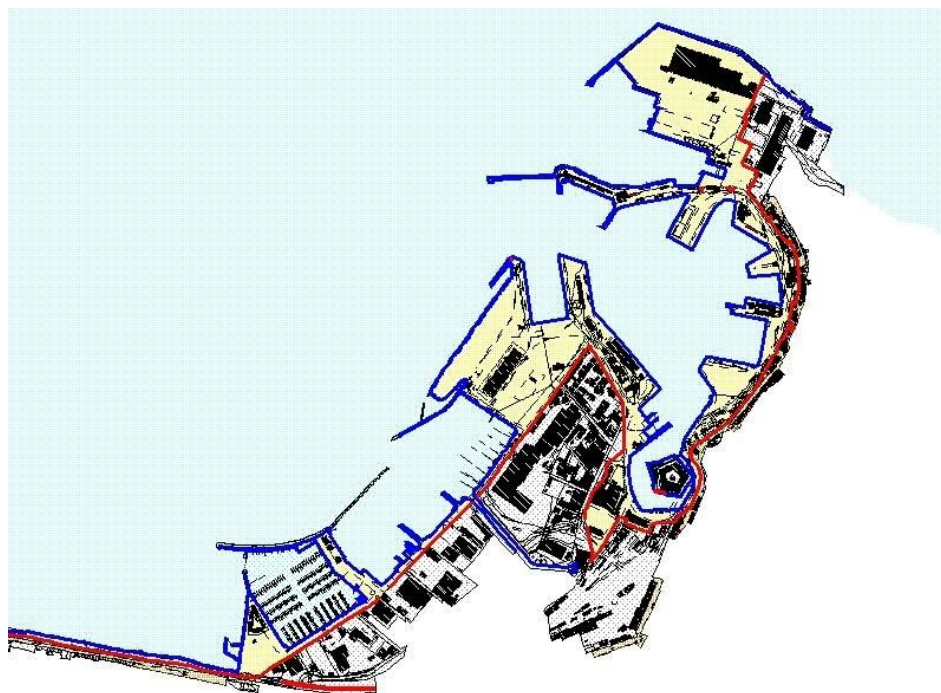
¹⁴⁸⁸ On training, see *infra*, para 1193 *et seq.*

1185. The National Collective Agreement for Port Workers classifies port workers in 7 levels. Within these levels, and taking into account the needs of the company and training requirements, the principle of internal job mobility applies (Art. 4).

The Agreement also regulates specific types of employment such as apprenticeships, fixed-term contracts and part-time contracts (Art. 60 *et seq.*) and sets out a system of disciplinary sanctions (Art. 32 *et seq.*).

1186. The geographical scope of the exclusive right of the Article 17 undertakings coincides with the official limits of the relevant port area which are determined by the Minister of Transport (Art. 6(7) of the Act).

Figure 91. Delimitation of the port area of Ancona (source: Ancona Port Authority)



1187. According to the responses to our questionnaire, rules on employment may be enforced by the public prosecutor, the police, the port authority, the harbour master, national labour and transport agencies and the trade unions.

The National Collective Agreement for Port Workers contains rules for dispute settlement (Art. 47 *et seq.*).

- Facts and figures

1188. In 2012, the Italian Association of port terminals Assiterminal counted about 400 cargo handling companies (all three categories of service providers taken together) which employ approximately 19,000 workers (including administrative staff). The Italian Ministry of Transport estimated the total number of port workers at roughly 20,000¹⁴⁸⁹. The trade unions FILT-CGIL, FIT-CISL and Uiltrasporti mentioned that in ports controlled by a Port Authority, 214 authorised operators, pools and terminal concessionaires are operating, employing 11,615 workers.

1189. The port of Genoa alone employs more than 3,000 staff (including administrative staff and management).

Table 63. Number of port workers in Genoa, 1985-2009 (source: Port Authority of Genoa¹⁴⁹⁰)

Year	Port undertakings (since 1994: authorized handlers and concessionaires)	Pools (<i>compagnie portuali</i> , since 1994: temporary workforce providers)	Total
1985	6	3,899	3,905
1990	206	1,487	1,693
1995	979	698	1,677
2000	1,533	1,046	2,579

¹⁴⁸⁹ A report by Assoporti and Censis mentioned, for 2006, 489 companies employing 19,965 workers. Again, these are totals for the three abovementioned categories of port companies: authorized cargo-handlers, concessionaires and temporary workforce providers (Assoporti and Censis, *La portualità come fattore di sviluppo e modernizzazione*, Rome, 2008, http://www.genoaportcenter.it/Repository/Allegati/Rapporto_finale_Censis_Assoporti.pdf, 49). According to figures put forward by Mario Sommariva of the Port Authority of Levante (Bari), Italian ports in 2009 employed about 17,000 workers (Sommariva, M., "Il lavoro portuale e la legge 84/94", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (11), 11).

¹⁴⁹⁰ As from 2010, the data collection methodology underwent changes. As a result, some caution is needed when comparisons are made with data for 2010 and onwards. See also Musso, E., Benacchio, M. and Ferrari, C., "Ports and Employment in Port Cities", *IJME* 2000, (283), 308.

2001	1,618	1,057	2,675
2002	1,752	1,008	2,760
2003	1,817	973	2,790
2004	1,870	1,104	2,974
2005	1,740	1,099	2,839
2006	1,772	1,091	2,863
2007	2,033	1,125	3,158
2008	2,144	1,075	3,219
2009	2,181	1,079	3,260
2010	2,226	1,051	3,277
2011	2,197	1,044	3,241
2012	2,226	1,024	3,250
2013	2,199	1,018	3,217

In 2010, port workers in Ravenna, Naples and Gioia Tauro numbered 1,061, 837 and 1,359 respectively¹⁴⁹¹. In the ports of North Sardinia (Olbia, Golfo Aranci and Porto Torres) there are 8 port employers and 304 port workers. On 31 December 2011, port operators, the pool and the terminals at Ancona employed 196 workers in total.

1190. The main trade unions representing port workers are the Italian Transport Workers' Federation - General Italian Confederation of Labour (Federazione Italiana Lavoratori Trasporti - Confederazione Generale Italiana del Lavoro, FILT-CGIL), the Italian Transport Federation - Italian Confederation of Trade Unions (Federazione Italiana Trasporti - Confederazione Italiana Sindacati Lavoratori, FIT-CISL) and National Union of Transport Workers (Unione Italiana dei Lavoratori dei Trasporti, Ultrasporti). Another important union is the General Labour Union, Maritime and Ports Sector (Unione Generale del Lavoro, settore Mare e Porti).

The three former unions, who jointly replied to our questionnaire, state that 55 per cent of Italian ports workers are unionised (membership is 2,188 at FILT-CGIL, 3,900 at FIT-CISL 3,900 and 780 at Ultrasporti, or 6,868 members in total out of a total of 11,615 workers plus 895 workers employed at port authorities which the respondents apparently counted in). It seems that some workers have joined yet other unions. According to Assiterminal, at national level more than 60 per cent of port workers are members of a trade union¹⁴⁹². However, union density seems to vary between ports. At Leghorn, 62.5 per cent of workers are unionised (1,310 workers: 960 at FILT-CGIL, 250 at Ultrasporti and 100 at FIT-CISL). But in the port of Gioia Tauro and in the ports of North Sardinia (Olbia, Golfo Aranci and Porto Torres) an

¹⁴⁹¹ See ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_lugliio_2011.pdf, 75.

¹⁴⁹² In 2003, 80 per cent of workers were said to be unionised (see Ministère de l'emploi, du travail et de la cohésion sociale, *La négociation collective en 2003*, Paris, Editions législatives, 2004, 250).

estimated 80 per cent of the port workers are unionised, while in Brindisi, union membership stands at not more than 47.22 per cent (153 workers). The general picture would appear not to deviate substantially from estimated trade union density in the Italian labour market taken as a whole¹⁴⁹³.

1191. Despite the existence of a common national legal framework, the set-up of the port labour market differs widely between individual ports.

In 2012, 32 out of 44 Italian ports had a temporary port work undertaking or agency. Only 3 of them are agencies established under Article 17(5): Leghorn, Catania and Piombino. The largest temporary work undertakings are located in Genoa, Civitavecchia, Ravenna, Palermo and Savona¹⁴⁹⁴. In ports with several terminals, pools tend to be bigger¹⁴⁹⁵. Especially in Ravenna, the temporary port work undertaking still plays a role of prime importance. It often supplies entire gangs of dockworkers. Those sent out to container terminals tend to be composed of the same workers every time and have a steady place in the labour process, working their own planned shifts¹⁴⁹⁶. Also in Genoa, the pool continues to play its central 'historical' role¹⁴⁹⁷, and, from a national perspective, its size is exceptional¹⁴⁹⁸. In Naples, the major container terminal operator, which is controlled by global shipping lines, prefers to employ its own workforce only, and never calls on pool workers. In recent years, especially during the 2009 crisis, the demand for pool workers in the port of Trieste declined dramatically, following which the Compagnia Portuale Soc. Coop. went bankrupt¹⁴⁹⁹ and the Port Authority granted an temporary authorisation to Società Minerva Servizi a.r.l. which is owned by the terminal operators and employs the remaining 26 temporary port workers¹⁵⁰⁰. In 2012, the pool of Leghorn (Agelp –

¹⁴⁹³ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

¹⁴⁹⁴ See further details in Sommariva, M., "Il lavoro portuale e la legge 84/94", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (11), 12.

¹⁴⁹⁵ Sommariva, M., "Il lavoro portuale e la legge 84/94", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (11), 12.

¹⁴⁹⁶ For further details on Ravenna, see ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_lugliio_2011.pdf, 100 et seq.

¹⁴⁹⁷ ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_lugliio_2011.pdf, 77.

¹⁴⁹⁸ Sommariva, M., "Il lavoro portuale e la legge 84/94", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (11), 12.

¹⁴⁹⁹ See ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_lugliio_2011.pdf, 42; X., "Compagnia portuale in liquidazione coatta", *Informa Trieste!* 23 May 2009, .

¹⁵⁰⁰ See Court of Auditors, Determinazione e relazione della Sezione del controllo sugli enti sul risultato del controllo eseguito sulla gestione finanziaria Dell'Autorita' Portuale di Trieste per gli esercizi 2009 e 2010, n. 58/2012, http://www.corteconti.it/export/sites/portalecdc/documenti/controllo/sez_controllo_enti/2012/deliber_a_58_2012.pdf, 34; X., "Trieste: ultimo Comitato Portuale di agosto. Punto focale, il lavoro nel porto", *L'informatore navale* 8 August 2012, <http://www.informatorenave.it/news/trieste-ultimo-comitato-portuale-di-agosto-punto-focale-il-lavoro-portuale/>.

Agenzia di lavoro portuale S.r.l.) encountered serious financial difficulties as well¹⁵⁰¹. Major ports without a temporary port work undertaking or agency are the ports of Gioia Tauro and La Spezia. These are container ports where operations are largely automated and can be planned beforehand. Moreover, they are controlled by Contship Italia, a major international player who employs a large number of workers and prefers to handle employment matters autonomously. In Gioia Tauro, temporary workers may be hired through subcontracting or from regular employment agencies¹⁵⁰².

Apparently, most temporary port work undertakings and agencies are the successors of the old *compagnie portuali* which had to be transformed into business companies; as a rule, the workers of the old *compagnie* (or *gruppi*) had to be integrated into the new pools (see the elaborate transitional regime of Art. 21 of Act No. 84/1994). The port labour agency of Leghorn (Agelp) is a company controlled by local terminal companies and other service providers, while the port's former *compagnia* was transformed into an authorised operator under Article 16 of Act No. 84/1994 (CLP - Compagnia Portuale Livorno Soc. Coop.). The latter holds shares in no less than seven terminals to which it provides services on an exclusive basis¹⁵⁰³.

1192. Of the approximately 20,000 port workers in Italian ports in 2009, only 3,644 were employed by the temporary port work undertakings or agencies¹⁵⁰⁴. According to a paper published in 2011, sizes of Italian pools were as follows:

Table 64. Number of workers employed by temporary port work providers and agencies in Italian ports (source: Mario Sommariva, 2011¹⁵⁰⁵)

Number of workers	Ports
more than 100	Genoa, Civitavecchia, Ravenna, Palermo, Savona
around 90	Cagliari, Naples, Salerno, Venice
between 30 and 50	Chioggia, Leghorn, Manfredonia, Taranto
between 15 and 50	Bari, Barletta, Brindisi, Marina di Carrara, Milazzo, Monfalcone, Oristano

¹⁵⁰¹ See, for example, X., "Agelp a rischio chiusura: lavoratori in assemblea permanente", *Il Tirreno* 30 June 2012, <http://iltirreno.gelocal.it/livorno/cronaca/2012/06/30/news/agelp-a-rischio-chiusura-lavoratori-in-assemblea-permanente-1.5340260>; X., "Nel porto di Livorno verrà sottoscritto un patto sul lavoro", *Informare* 13 July 2012, <http://www.informare.it/news/gennews/2012/20121276-porto-Livorno-verra-sottoscritto-patto-lavoro.asp>.

¹⁵⁰² ISFORT, *Il futuro dei porti e del lavoro*, II, 2012, *portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 51; Sommariva, M., "Il lavoro portuale e la legge 84/94", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (11), 12.

¹⁵⁰³ ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 112.

¹⁵⁰⁴ See *infra*, para 1224.

¹⁵⁰⁵ Sommariva, M., "Il lavoro portuale e la legge 84/94", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (11), 12.

under 15	Ancona ¹⁵⁰⁶ , Baia, Catania, Gaeta, Imperia, Pescara, Pozzuoli, Piombino, Sant'Antioco
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The following tables published by ISFORT in 2012 provide a good overview of the cargo handling market in selected ports.

The first two tables show how port workers are distributed among the three main types of service providers: authorised operators (Art. 16), labour pools (Art. 17) and terminal concessionaires (Art. 18). It should be noted from the outset that in some ports, not all three types are represented. For example, there are no terminal companies in Bari and Palermo, while Gioia Tauro and La Spezia have no labour pool. The first table gives numbers of workers in selected ports. The second table illustrates that, at ports for which all relevant data could be collected, on average 53 per cent of port workers are employed by a terminal company, 32 per cent is employed by an authorised operator, and the remaining 13 per cent work for a labour pool (which is absent in Gioia Tauro and La Spezia). The third table summarises the labour market model of each port.

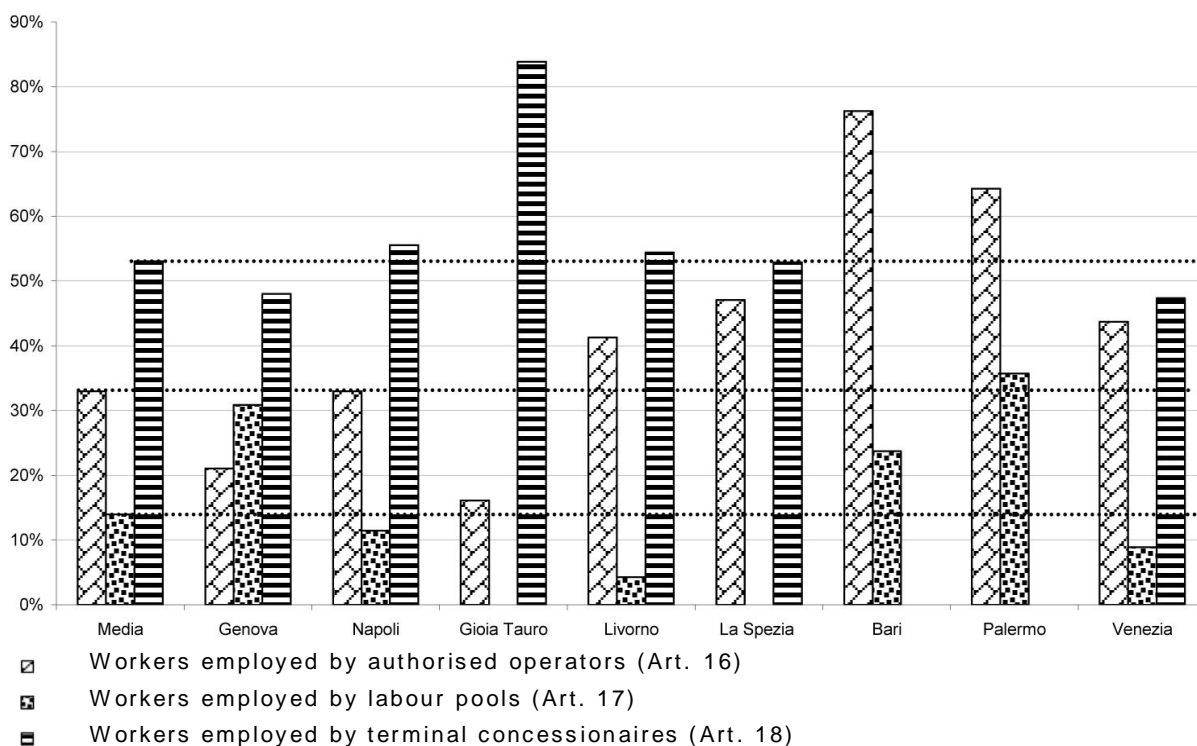
Table 65. Number of port workers employed by authorised operators, labour pools and terminal concessionaires in selected Italian ports, 2012 (source: ISFORT¹⁵⁰⁷)

	Authorised operators	Labour pools	Terminal concessionaires	Total
Trieste	n.a.	25	n.a.	n.a.
Genoa	676	990	1,541	3,207
Naples	276	96	465	837
Gioia Tauro	219	0	1,140	1,359
Ravenna	n.a.	439	n.a.	622
Leghorn	615	64	810	1,489
La Spezia	647	0	727	1,374
Bari	77	24	0	101
Palermo	198	110	0	308
Venice	619	126	671	1,416

¹⁵⁰⁶ The Ancona Port Authority informed us that the pool numbers 6 workers.

¹⁵⁰⁷ ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 17.

Figure 92. Distribution of port workers among authorised operators, labour pools and terminal concessionaires in selected Italian ports, 2012, in per cent (source: ISFORT¹⁵⁰⁸)



¹⁵⁰⁸ ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 15.

Table 66. Modes of operation in port services and distribution of port workers in selected Italian ports, 2012 (source: ISFORT¹⁵⁰⁹)

	Presence of labour pool	Presence of terminal concessionaires	Dominance of authorised operators / Irrelevance of labour pool	Presence of public quays	Liner services (share of throughput)
Trieste	x	x	x	x	n.a.
Genoa	x	x			n.a.
Naples	x	x		x	51%
Gioia Tauro		x	x	x	100%
Ravenna	x	x		x	14%
Leghorn	(Agency)	x	x	x	67%
La Spezia		x	x		n.a.
Bari	x			x	67%
Palermo	x			x	82%
Venice	x	x			7%

The table below provides an overview of port traffic, port service providers, workforce and operations in 10 Italian ports. Interestingly, the Temporary Work Frequency Rate indicates the relative importance of the labour pools. The lower this rate, the greater the role of the pool. In Ravenna, the pool is the main provider of workers in the port. Also in Bari, Genoa and Palermo, the labour pools are not only serving peak demands but are also structural components of the port labour market. In Naples and Venice, the pool is still important but not central. In Leghorn and Trieste, the pool only fulfils a marginal role¹⁵¹⁰.

¹⁵⁰⁹ ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 21.

¹⁵¹⁰ ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 51-52.

Table 67. Overview of port traffic, port service providers, workforce and operations in 10 Italian ports, 2012 (source: ISFORT¹⁵¹¹)

	Trieste	Genoa	Naples	Gioia Tauro	Ravenna	Livorno	La Spezia	Bari	Palermo	Venice
Traffic (distribution in percentages, excluding liquid bulk)										
Ro-ro	47.8	27.4	41.8	1.5	3.7	49.3	0.0	63.6	94.1	13.0
Containers	30.4	53.2	27.8	98.0	12.3	34.8	86.2	0.0	0.0	13.2
Dry bulk	17.4	16.1	30.4	0.5	55.6	4.3	9.2	36.4	0.0	46.3
General cargo	4.3	3.2	0.0	0.0	28.4	11.6	4.6	0.0	0.0	13.0
Liner traffic (in per cent)	n.a.	n.a.	51	100	14	67	n.a.	67	82	7
Port undertakings										
Presence of a labour pool (Art. 17)	YES	YES	YES	NO	YES	YES ¹⁵¹²	NO	YES	YES	YES
Port operators and port service providers (Art. 16) ¹⁵¹³	29	12	19	7	5	13	9	8	7	22
Terminal operators (Art. 18)	16	11	7	2	17	15	8	0	0	21

¹⁵¹¹ ISFORT, *Il futuro dei porti e del lavoro*, II, 2012, *portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 50.

¹⁵¹² Temporary port work agency.

¹⁵¹³ With the exception of the terminal operators (Art. 18).

	Trieste	Genoa	Naples	Gioia Tauro	Ravenna	Livorno	La Spezia	Bari	Palermo	Venice
	Workforce									
Number of port employees ¹⁵¹⁴	n.a.	3,207	837	1,359	622	1,489	1,374	101	308	1,416
<i>Employees of port operators and port service providers</i>	n.a.	676 (21%)	276 (33%)	219 (16%)	n.a.	615 (41%)	647 (47%)	77 (76%)	198 (64%)	619 (44%)
<i>Employees of the pool</i>	25	990 (31%)	96 (11%)	-	439 (71%)	64 (4%)	-	24 (24%)	110 (36%)	126 (9%)
<i>Employees of terminal operators</i>	n.a.	1,541 (48%)	465 (56%)	1,140 (84%)	n.a.	810 (54%)	727 (53%)	-	-	671 (47%)
Average size of terminal operators (number of employees)	n.a.	140	66	570	n.a.	54	91	-	-	32

¹⁵¹⁴ Including the employees of port operators and port service providers, labour pools and terminal operators.

	Trieste	Genoa	Naples	Gioia Tauro	Ravenna	Livorno	La Spezia	Bari	Palermo	Venice
Average size of port undertakings (number of employees) ¹⁵¹⁵	n.a.	134	31	151	27	51	81	11	39	32
Frequency index for use of temporary labour	n.a.	2.2	7.7	-	1.4	22.3	-	3.2	1.8	10.2
	Operations									
Presence of a public dock	YES	NO	YES	YES	YES	YES	NO	YES	YES	NO
Percentage of traffic at a public dock	n.a.	-	<10%	1-2%	7%	n.a.	-	100%	100%	-
Percentage of work contracted out	30-50%	0%	40%	30%	<30%	30-40%	30-50%	0%	0%	30-50%

¹⁵¹⁵ Average number of employees of port operators and port service providers, labour pools and terminal operators.

Some temporary port work providers provide updated details on their workforce, including workers hired from temporary work agencies, on their website¹⁵¹⁶.

9.11.4. Qualifications and training

- *Regulatory set-up*

1193. There are no specific minimum requirements concerning skills and competences of port workers.

However, the temporary port labour undertakings and agencies must cater for the training needs of the temporary port workers (Art. 17(8) of Act No. 84/1994). The regulations on temporary port labour adopted by the port authorities must contain provisions on training plans and programmes for induction as well as permanent training (Art. 17(10.c)). The port authority has to verify the results of this training and will only register the temporary port workers after they have completed an induction course¹⁵¹⁷. The regulations also cover the training of *interim* port workers under Article 17(6).

1194. The aforementioned¹⁵¹⁸ Legislative Decree No. 272/1999 contains provisions on the training of port workers. Article 6 stipulates that the Ministry of Transport and Navigation promotes the training of workers involved in *inter alia* port operations and services, and that procedures must be established with regard to training courses and certification of port workers.

1195. Further, Article 12 of the National Collective Labour Agreement for Port Workers sets out some general principles with regard to training and apprenticeships¹⁵¹⁹.

¹⁵¹⁶ See for example, on the Compagnia Portuale Ravenna, <http://www.compagniaportuale.ravenna.it/htm/struttura.htm>. Today, the Compagnia has 450 members (*soci*), 14 employees and 100 interim workers, 554 workers in total.

¹⁵¹⁷ Ales, E. and Passalacqua, P., *Le forniture di lavoro portuale temporaneo*, Working Paper C.S.D.L.E. "Massimo D'Antona.IT – 142/2012, University of Catania, 2012, , 28.

¹⁵¹⁸ See *supra*, para 1162.

¹⁵¹⁹ See also Robba, L., "Imprese e lavoro portuale dalla riforma ad oggi. Relazioni sindacali: l'esperienza del C.C.N.L. lavoratori dei porti", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (18), 27.

- Facts and figures

1196. Practically speaking, the training of port workers in Italy is organised at company and port level, by public or private or mixed organisations, including organisations managed by employers' associations or trade unions. However, all operators continue to attach great importance to on-the-job training¹⁵²⁰.

In the port of Genoa, for example, an accredited Port School (*Scuola portuale*) with a permanent teaching staff exists within the Compagnia Unica which mainly trains new recruits¹⁵²¹. Within the Port Authority of Venice, a special Training Committee was set up¹⁵²². Since 1993, the Port Authority of Venice runs its own training centre which is called the Intermodal Logistics Training Consortium (Consorzio Formazione Logistica Intermodale, CFLI) and which is equipped with simulators. Training courses are compulsory and all training must be certified. The port of Leghorn also has training curricula and a training centre using a crane simulator¹⁵²³. The Port Authority of Leghorn has adopted an Ordinance on the training of port workers (Ordinanza No. 28/2007). The port of Ancona finances safety training in cooperation with CFLI. The Ravenna Port Authority also finances training courses¹⁵²⁴. In July 2012, the Cagliari Port Authority published a job announcement for trainers¹⁵²⁵.

1197. According to the responses to the port labour questionnaire, the following types of training are available for port workers in Italy (however, :

- induction courses for new entrants;
- courses for the established port workers;
- compulsory training in safety and first aid;

¹⁵²⁰ ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 19.

¹⁵²¹ Benvenuti, A., "Ruolo e funzioni dell'art. 17 nell'organizzazione del lavoro portuale nel porto di Genova", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (45), 47. On a further initiative, see also Zunino, A., "Porto, Burlando al tavolo della Culmv 'A Genova la prima scuola dei camalli'", *La Repubblica* 30 April 2010, <http://ricerca.repubblica.it/repubblica/archivio/repubblica/2010/04/30/porto-burlando-al-tavolo-della-culmv.html>.

¹⁵²² See <https://www.port.venice.it/en/training-needed-to-work-in-the-port.html>.

¹⁵²³ See www.globalservice.livorno.it.

¹⁵²⁴ See the Regulations on <http://www.port.ravenna.it/wp-content/uploads/2013/04/Regolamento-formazione-lavoratori-portuali.pdf>.

¹⁵²⁵ X., "Formazione professionale dei lavoratori delle imprese portuali operanti nel terminal portuale di Cagliari", 25 July 2012, http://www.porto.cagliari.it/index.php?option=com_content&view=article&id=1001%3Aformazione-professionale-dei-lavoratori-delle-imprese-portuali-operanti-nel-terminal-portuale-di-cagliari&catid=40%3Aprimo-piano&Itemid=2&lang=en.

- specialist courses for certain categories of port workers (crane drivers, container equipment operators, ro-ro truck and forklift drivers, lashing and securing personnel, tallymen, signalmen, reefer technicians);
- voluntary training aimed at the availability of multi-skilled or all-round port workers;
- voluntary retraining of injured and redundant port workers.

Whether training is voluntary or compulsory may vary from port to port. In Venice, for example, mandatory training programmes are in place for the following jobs: crane operator; forklift operator; stacker operator; front loader/CVS operator; loader/bobcat/excavator operator; tug master ro-ro operator; shuttle truck/tank truck driver (driver's licence C required); train driver general operator; attendant on board ship; yard attendant; stevedoring operator; yard/quayside coordinator; and weigh bridge operator¹⁵²⁶.

In recent years, employers have given more attention to continued training¹⁵²⁷.

1198. Contship Italia, a German-owned container handler operating at Cagliari, Gioia Tauro, La Spezia, Leghorn, Ravenna and Salerno, organises in-house training courses for new workers as well as courses leading to multi-skilling¹⁵²⁸.

Figure 93. Training plan for new workers at Contship Italia, 2009 (source: Marcucci / Contship Italia)

Workers concerned	Theoretical phase (in hours)	Practical phase (in hours)
Checker Rail / Gate	40	36
Checker Reefer	40	120
RMG	40	80
STS cranes	40	80
FLT	40	80
RTG	40	80
Maintenance	40	160

¹⁵²⁶ See <https://www.port.venice.it/en/training-needed-to-work-in-the-port.html>.

¹⁵²⁷ Robba, L., "Imprese e lavoro portuale dalla riforma ad oggi. Relazioni sindacali: l'esperienza del C.C.N.L. lavoratori dei porti", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (18), 27.

¹⁵²⁸ See Marcucci, N.P., *Training and Qualification Systems. Contship Italia Group case*, Limassol, 26 February 2009, <http://www.itfglobal.org/files/extranet/-75/15446/Marcucci.pdf>.

Figure 94. Training timeframe leading to multiskilling at Contship Italia, 2009 (source: Marcucci / Contship Italia)

From	To	Theoretical phase (in hours)	Practical phase (in hours)
Checker	RMG, FLT, RTG	8	80
RMG, MHC, FLT, STS cranes, RTG	Checker Gate / Rail	4	36
RMG, MHC, FLT, STS cranes, RTG, Checker rail / gate	Checker reefer	8	120
RMG, STS cranes, FLT	RTG	8	60
RMG, STS cranes, FLT	STS cranes	8 + 6	80
STS cranes, RTG, FLT	RMG	8	60
STS cranes, RTG, RMG	FLT	8	60

Companies also provide safety training for their workers (this is the case, for example, at ICO Blg in Gioia Tauro¹⁵²⁹).

9.11.5. Health and safety

- *Regulatory set-up*

1199. Act No. 84/1994 states that all port workers are protected by the provisions on occupational safety and hygiene of Presidential Decree No. 547/1955 and Act No. 833/1978 on the establishment of the national health service (Art. 24(2)). These rules are not specifically aimed at port labour however.

Act No. 84/1994 also authorises the Government to issue regulations on safety and health in port work and ship repair which give effect to ILO Convention No. 152 as well as relevant EU rules (Art. 24(3)).

¹⁵²⁹ See ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_lugliio_2011.pdf, 128, fn. 47.

1200. The aforementioned Presidential Decree No. 547/1955 has been replaced by Legislative Decree No. 81/2008 on the implementation of Article 1 of Act 123/2007 relating to health and safety in the workplace. This Decree, which has 306 articles, is a comprehensive re-codification of rules on risks for health and safety at work. It provides, among other things, for the appointment of a workers' representative for safety purposes. In the context of aviation and maritime transport, its provisions should be applied taking into account the particular requirements connected to the service carried out or to the organisational features (Art. 3(2)).

Legislative Decree No. 81/2008 contains a definition of the employer (Art. 2(1)(b)), but is also uses the concept of the employer-client (*datore di lavoro committente*), who entrusts work to a contractor or to self-employed workers or who uses hire-out workers. The employer-client bears a part of the responsibility for occupational safety measures in relation to the external employees working at his company¹⁵³⁰. He must promote cooperation and coordination between the various employers, contractors and subcontractors working at his company and prepare a single risk assessment document, which identifies the measures taken to eliminate or minimise the risk of interference between the activities of the various entities (Art. 26(3)). This risk of interference is of particular importance in ports, where many different companies are often working together at the same workplace¹⁵³¹.

Legislative Decree No. 81/2008 furthermore provides for the appointment of a workers' representative for safety purposes. These representatives must be appointed at territorial or sectoral level, at company level and at the level of the production site (Art. 47(1))¹⁵³².

Finally, it places certain responsibilities with regard to occupational safety on the Social Dialogue Committees¹⁵³³.

1201. On the basis of Act No. 485/98 on delegation to the government on occupational safety in the maritime ports sector, concrete rules were laid down in Legislative Decree No. 272/1999 on safety and health in cargo handling and ship maintenance and repair. It contains provisions governing the health and safety of workers in the performance of port operations and services, and operations involving the maintenance, repair and conversion of ships in ports.

¹⁵³⁰ Giurini, A., La Tegola, O. and Miranda, L., *La sicurezza sul lavoro nei porti*, in *I Working Papers di Olympus*, 2012, no. 9, http://www.puntosicuro.info/documenti/documenti/120511_WPO_sicurezza_nei_porti.pdf, 12-14.

¹⁵³¹ Giurini, A., La Tegola, O. and Miranda, L., *La sicurezza sul lavoro nei porti*, in *I Working Papers di Olympus*, 2012, no. 9, http://www.puntosicuro.info/documenti/documenti/120511_WPO_sicurezza_nei_porti.pdf, 25.

¹⁵³² For an ample discussion of the role and significance of the workers' representatives for safety purposes in ports, see Giurini, A., La Tegola, O. and Miranda, L., *La sicurezza sul lavoro nei porti*, in *I Working Papers di Olympus*, 2012, no. 9, http://www.puntosicuro.info/documenti/documenti/120511_WPO_sicurezza_nei_porti.pdf, 35-47.

¹⁵³³ On these responsibilities, see Giurini, A., La Tegola, O. and Miranda, L., *La sicurezza sul lavoro nei porti*, in *I Working Papers di Olympus*, 2012, no. 9, http://www.puntosicuro.info/documenti/documenti/120511_WPO_sicurezza_nei_porti.pdf, 47-51.

According to its Article 1, the Decree aims at adapting the existing legislation on health and safety of workers to the particular needs of the operations and services undertaken in ports, including the repair and maintenance of ships. The Decree determines the obligations and responsibilities of employers and workers in view of the assessment of specific risks related to chemical, physical and biological agents in ports. It establishes appropriate rules on prevention, health protection and safety of workers¹⁵³⁴.

Article 2 (1) stipulates that the provisions of the Decree apply to port operations and services and maintenance, repair and conversion of ships in the port area. Article 3, paragraph 1(a), of the Decree defines “port operations and services” as “operations of loading, unloading, transfer, storage and handling of goods in kind and any other material, port-related complementary and ancillary operations”¹⁵³⁵.

The Decree prevails over the more general rules in Legislative Decree No. 81/2008. However, in matters not regulated by Legislative Decree No. 272/1999, Legislative Decree No. 81/2008 does apply¹⁵³⁶. The provisions of both legislative decrees should be coordinated by ministerial decree, and until that time the existing provisions remain in force (Art. 3(2) and (3) of Legislative Decree No. 81/2008). Although it was originally meant to be adopted within twelve months after the adoption of Legislative Decree No. 81/2008, this term has been prolonged several times. The ministerial decree has not yet been adopted and, reportedly, in April 2012 not even a draft version had been prepared¹⁵³⁷. It is easy to understand how this situation might cause a number of interpretative difficulties with regard to the interrelation of both legislative decrees¹⁵³⁸.

The employer, for purposes of occupational safety, is defined as the proprietor of the port undertaking, the captain of the ship in case of self-handling, or the proprietor of the company that carries out ship repair, maintenance or conversion (Art. 3(1)(c)).

The employer must prepare a risk assessment document having a specific content (Art. 4)¹⁵³⁹.

¹⁵³⁴ Giurini, A., La Tegola, O. and Miranda, L., *La sicurezza sul lavoro nei porti*, in *I Working Papers di Olympus*, 2012, no. 9, http://www.puntosicuro.info/documenti/documenti/120511_WPO_sicurezza_nei_porti.pdf, 5.

¹⁵³⁵ See also <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=25052&chapter=9&query=Italy%40ref&highlight=&querytype=bool&context=0>.

¹⁵³⁶ Giurini, A., La Tegola, O. and Miranda, L., *La sicurezza sul lavoro nei porti*, in *I Working Papers di Olympus*, 2012, no. 9, http://www.puntosicuro.info/documenti/documenti/120511_WPO_sicurezza_nei_porti.pdf, 5-6.

¹⁵³⁷ Giurini, A., La Tegola, O. and Miranda, L., *La sicurezza sul lavoro nei porti*, in *I Working Papers di Olympus*, 2012, no. 9, http://www.puntosicuro.info/documenti/documenti/120511_WPO_sicurezza_nei_porti.pdf, 7-8.

¹⁵³⁸ See, for example, the discussion of the different definitions of the employer in the two legislative decrees in Giurini, A., La Tegola, O. and Miranda, L., *La sicurezza sul lavoro nei porti*, in *I Working Papers di Olympus*, 2012, no. 9, http://www.puntosicuro.info/documenti/documenti/120511_WPO_sicurezza_nei_porti.pdf, 12-13.

¹⁵³⁹ For further elaboration on the risk assessment document, see Giurini, A., La Tegola, O. and Miranda, L., *La sicurezza sul lavoro nei porti*, in *I Working Papers di Olympus*, 2012, no. 9, http://www.puntosicuro.info/documenti/documenti/120511_WPO_sicurezza_nei_porti.pdf, 19-24.

The port authority may establish a committee of occupational safety and hygiene, which may then formulate proposals with regard to prevention and the protection of occupational safety and hygiene (Art. 7).

Legislative Decree No. 272/1999 contains a number of specific duties of the employer in the context of port labour. They are *inter alia* related to the means of access to the ship and the stairways leading to the holds (Art. 8-9), the measures needed when work is performed in closed spaces or in the holds (Art. 12-13), the use of lifting equipment (Art. 15-16) and the handling of dangerous goods (Art. 21). However, the Italian legislation is not only focused on the responsibility of the employer, but also on the duties of the employee in order to create a “culture of safety”¹⁵⁴⁰.

1202. Port regulations on temporary port work must contain provisions on occupational safety as well (Art. 17(10.e)).

For example, such provisions were adopted by the Port of Leghorn.

1203. The National Collective Labour Agreement for Port Workers contains a separate section on occupational health and safety (Section 8).

1204. Mention should also be made of the Memoranda of Understanding on the planning of measures with regard to occupational safety, which are signed by the social partners, the port authorities, the harbour masters, the prefects, the territorial authorities and various supervisory bodies. Such memoranda reportedly exist for the ports of Genoa, Naples, Savona, Ravenna, Venice, Carrara, Livorno and Piombino, La Spezia and Viareggio¹⁵⁴¹.

Another relevant document is the National Protocol, signed by the social partners in October 2008, on the implementation of certain provisions of the Legislative Decree No. 81/2008, particularly with regard to the role of the worker’s representative for safety purposes¹⁵⁴².

¹⁵⁴⁰ Giurini, A., La Tegola, O. and Miranda, L., *La sicurezza sul lavoro nei porti*, in *I Working Papers di Olympus*, 2012, no. 9, http://www.puntosicuro.info/documenti/documenti/120511_WPO_sicurezza_nei_porti.pdf, 17-18.

¹⁵⁴¹ Giurini, A., La Tegola, O. and Miranda, L., *La sicurezza sul lavoro nei porti*, in *I Working Papers di Olympus*, 2012, no. 9, http://www.puntosicuro.info/documenti/documenti/120511_WPO_sicurezza_nei_porti.pdf, 6-7 and fn. 26.

¹⁵⁴² Giurini, A., La Tegola, O. and Miranda, L., *La sicurezza sul lavoro nei porti*, in *I Working Papers di Olympus*, 2012, no. 9, http://www.puntosicuro.info/documenti/documenti/120511_WPO_sicurezza_nei_porti.pdf, 7, fn. 26.

1205. Rules on health and safety are enforced by the public prosecutor, the police, national labour and transport authorities, the port authority, the harbour master, the terminal operator and the regional health service.

- *Facts and figures*

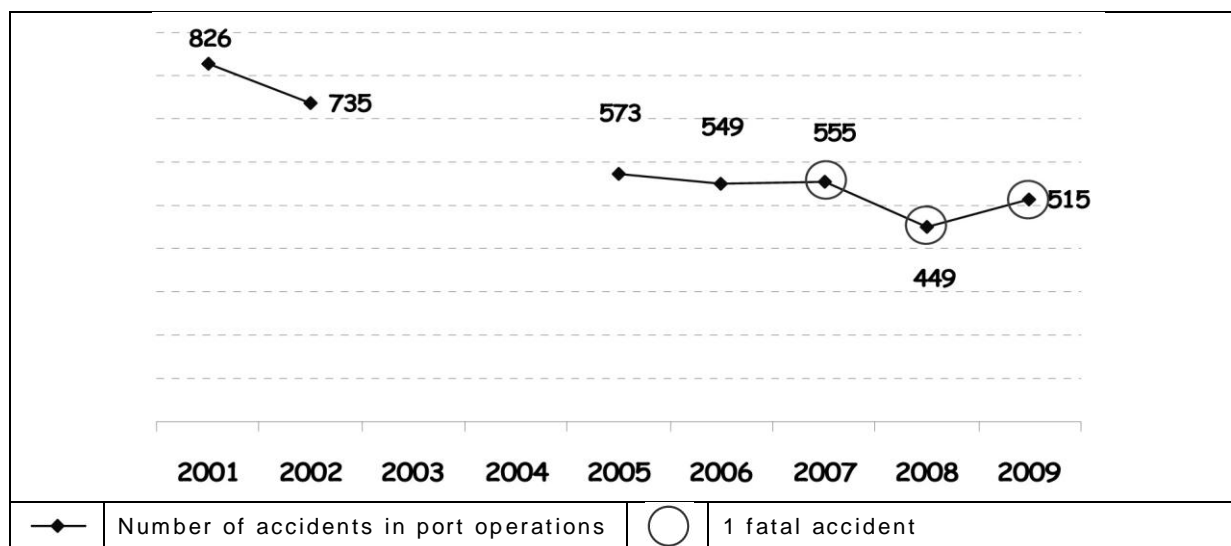
1206. According to Assiterminal and the trade unions FILT-CGIL, FIT-CISL and UILTRASPORTI, there are no official statistics on occupational accidents and diseases concerning port workers in Italy¹⁵⁴³. This information is confirmed in the recent reports on port labour by ISFORT which concludes that only general impressions about the safety level can be given¹⁵⁴⁴. A request for information addressed to the National Institute for Occupational Accident Insurance (*Istituto Nazionale Assicurazione contro gli Infortuni sul Lavoro*) remained unanswered.

1207. In 1996, three Genoese health authorities set up a monitoring programme on port health and safety. On the basis of their data, the Italian research institute ISFORT, in its 2011 survey of the Italian port labour regime, compiled the following statistics on the evolution of occupational accidents in the port of Genoa:

¹⁵⁴³ See further *infra*, para 1222.

¹⁵⁴⁴ See ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 25-26 and 73.

Figure 95. Number of accidents during port operations in the port of Genoa, 2001-2009 (source: ISFORT based on data provided by 3 local health authorities)



The collected data show that over the past years, both the number and the gravity of accidents have decreased considerably¹⁵⁴⁵.

As regards the port of Trieste, where elaborate statistics are maintained, ISFORT collected the following data on the evolution of accidents and days of incapacity¹⁵⁴⁶:

¹⁵⁴⁵ For more details, see ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_luglio_2011.pdf, 147-149 and Carcassi, R., *La valutazione del rischio nel settore portuale: l'esempio genovese*, powerpoint, 2009.

¹⁵⁴⁶ For more information, see ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_luglio_2011.pdf, 116-119.

Figure 96. Number of accidents during port operations in the port of Trieste, 2001-2009 (source: ISFORT based on data provided by the Port Authority of Trieste)

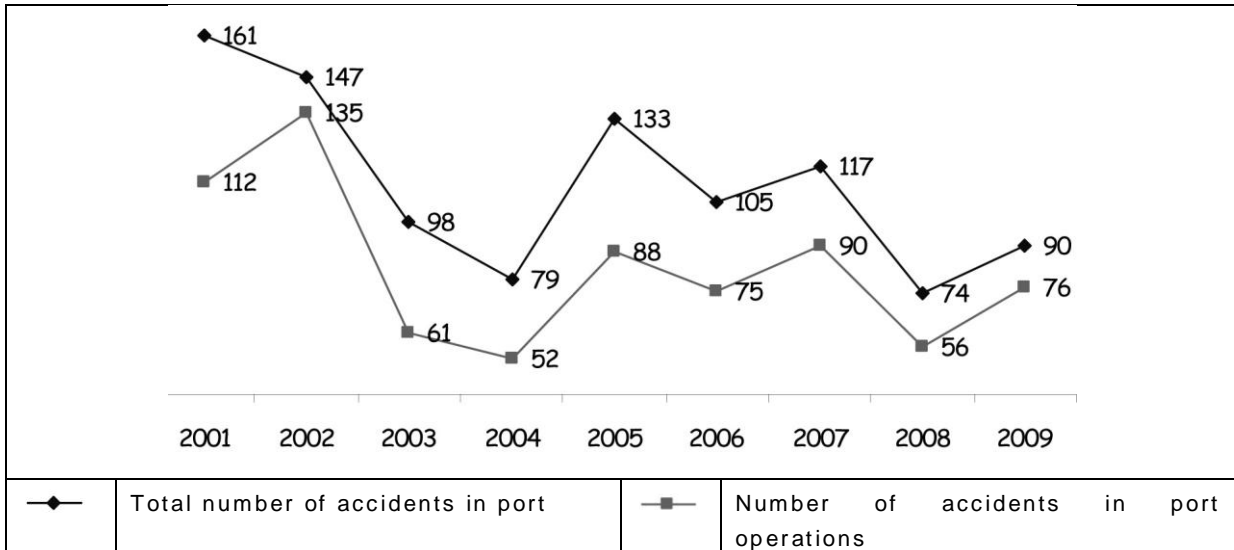
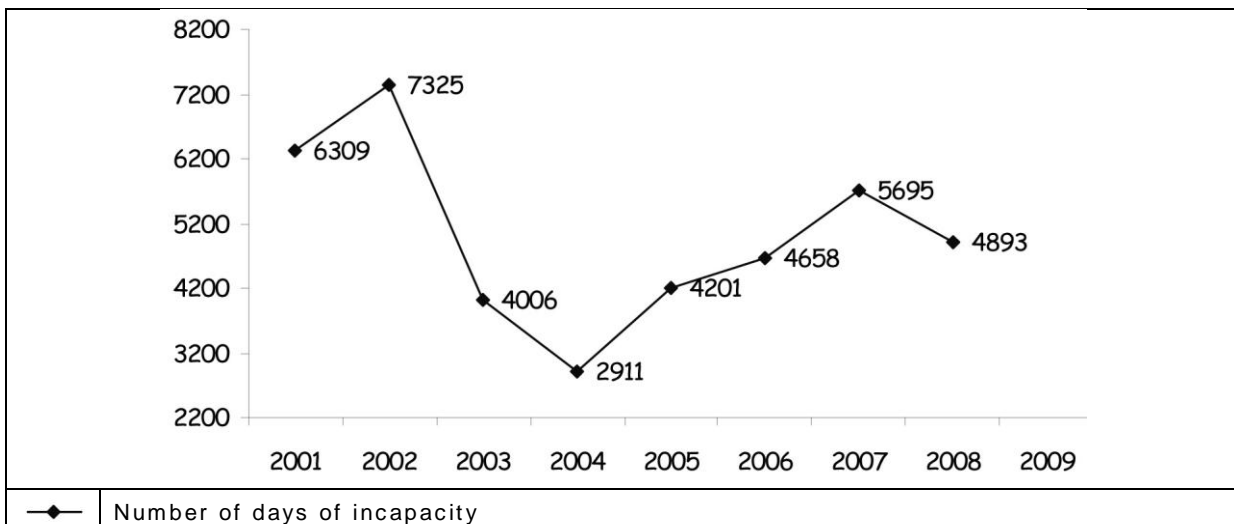


Figure 97. Number of days of incapacity in the port of Trieste, 2001-2009 (source: ISFORT based on data provided by the Port Authority of Trieste)



ISFORT also collected data on Gioia Tauro which show a fall in the number of accidents. In 2009, 129 accidents occurred during port operations. The incidence rate was considerably higher in the container terminal than in the car terminal¹⁵⁴⁷.

Table 68. Incidence rate of occupational accidents in the port of Gioia Tauro, 2008 (source: ISFORT¹⁵⁴⁸)

Port undertakings	Number of accidents	Number of workers	Incidence rate (number of accidents per 100 workers)
Container terminal	113	550	20.5
Automotive terminal	2	49	4.1
Other port undertakings	18	87	20.7
Total	133	686	19.4

The Port Authorities of Brindisi and Leghorn are also among the ports which maintain detailed statistics. 2008 saw 23 occupational accidents in the port of Brindisi; there were 8 accidents in 2009 and 12 in 2010. In 2010, 270 accidents occurred in the port of Livorno. In the ports of North Sardinia, with a total of 304 port workers, there are reportedly about 24 occupational accidents annually. In 2011, the Port Authority of Naples started up a new monitoring programme on occupational accidents¹⁵⁴⁹. The Port Authority of Venice established a system for the monitoring of work accidents in the port. Every accident is catalogued and classified in a computer database according to the undertaking, the area (ship, wharf, yard, warehouse), type of activity, injured body part and severity and expected inability. Statistics are maintained and sent to relevant authorities, including the Ministry of Transport. In the port of Ancona, the Port Authority collects data from each undertaking every six months and sends them to the Ministry of Transport.

1208. Scattered evidence suggests that in Italy, too, port labour remains a particularly dangerous profession.

In 2010, a study was published on the impact of containerisation on safety and health of port workers in the port of Genoa. The study revealed that containerisation had not brought about

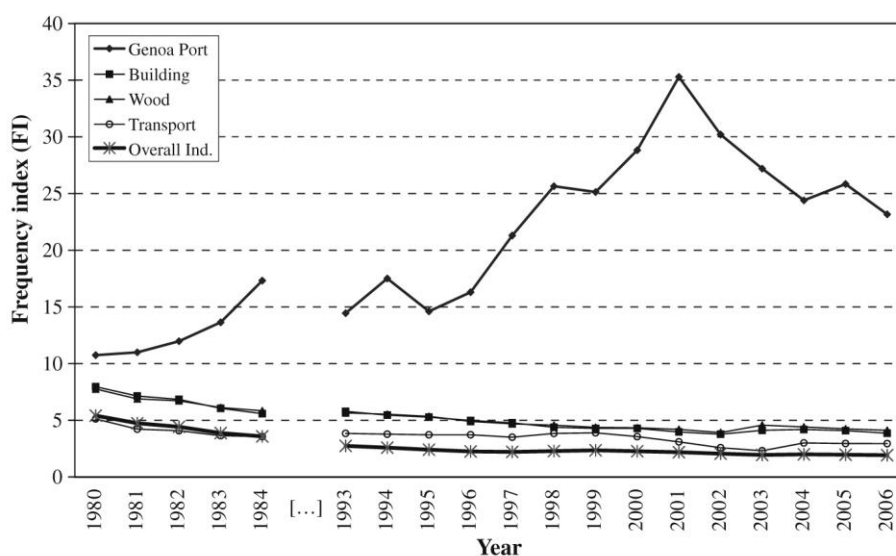
¹⁵⁴⁷ See details in ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_luglio_2011.pdf, 127-129.

¹⁵⁴⁸ ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_luglio_2011.pdf, 129.

¹⁵⁴⁹ ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_luglio_2011.pdf, 137; ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 75.

an improvement of safety conditions in port activities. The authors analysed internal accident and medical aid reports of the *compagnia* between 1980 and 2006. In this period, the number of port workers decreased dramatically, partly as a result of containerisation. However, the frequency of accidents rose in relation to both the number of employees and the number of hours worked. Nevertheless, by the end of the period under investigation, accident rates decreased as a result of experience gained in working with the new technologies. Even so, the frequency index in the dock labour industry remained substantially higher than in other particularly hazardous sectors such as construction, wood and transportation in general. The study highlighted human factors which may reduce accident rates, such as the age of workers, job experience and adaptation to new handling technologies, safety training and mentoring by "old workers" ¹⁵⁵⁰.

Figure 98. Frequency index of occupational accidents in the port of Genoa and selected other sectors, 1980-2006 (source: Fabiano, Currò, Reverberi and Pastorina ¹⁵⁵¹)



Data collected by ISFORT seem to confirm that the accident rate in the port sector is considerably higher than in other sectors. Statistics for the ports of Liguria indicate that the accident rate in ports is 124 accidents per 1,000 employees, while it only amounts to 29/1000 in other sectors. Reportedly, the incidence rate for the three ports of Liguria is more than twice as high as in the construction sector, which is widely regarded as the most dangerous one in

¹⁵⁵⁰ Fabiano, B., Currò, F., Reverberi, A.P and Pastorina, R., "Port safety and the container revolution: A statistical study on human factor and occupational accidents over the long period", *Safety Science* 2010, 980-990.

¹⁵⁵¹ Fabiano, B., Currò, F., Reverberi, A.P and Pastorina, R., "Port safety and the container revolution: A statistical study on human factor and occupational accidents over the long period", *Safety Science* 2010, (980), 988.

Italy¹⁵⁵². However, the figures were contested by Assiterminal and consistently collected information is apparently not available.

1209. Back in 1992, the results of a study on the prevalence of spondylopathies among the crane operators in the port of Venice were published. They suggested that this category of workers may be subject to an increased risk for the spine¹⁵⁵³.

9.11.6. Policy and legal issues

1210. Initially, the opening up of the market for cargo handling gave rise to difficulties and even to law suits between the formerly monopolistic *compagnie portuali*.

This was largely due to the fact that the soft transition to the new regulatory framework *de facto* perpetuated some of the restrictions that the reform aimed to eliminate. The undertakings authorised to provide cargo services were obliged to hire, as a transitional measure, the workers of the former *compagnie* which, at the same time, were now competing in the provision of cargo services – a situation described by some observers as "absurd"¹⁵⁵⁴. In 1996, the Italian Competition Authority issued a decision in a case involving the port company of Brindisi. The anticompetitive infringement was connected to the transitional provisions requiring companies providing cargo handling services to use the workforce of the *compagnie*. The Authority ascertained that the *compagnia* had refused to supply its own labour force to a competing company, BIS (Brindisi Imbarchi Sbarchi Srl), and subsequently delayed the completion of hold-cleaning operations, supplying personnel without proper qualifications and skills. The Authority found no objective justification for the refusal to supply the workers requested by BIS, and therefore considered the conduct of the *compagnia* an abuse of dominant position¹⁵⁵⁵.

¹⁵⁵² See Giurini, A., La Tegola, O. and Miranda, L., *La sicurezza sul lavoro nei porti*, in *I Working Papers di Olympus*, 2012, no. 9, http://www.puntosicuro.info/documenti/documenti/120511_WPO_sicurezza_nei_porti.pdf, 4, fn. 15; ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_lugliio_2011.pdf, 44-45.

¹⁵⁵³ Piccinni, S., Marchi, T., Lorusso, A. and Magarotto, G., "The prevalence of spondylopathies among the crane operators in the port of Venice", abstract available at <http://www.ncbi.nlm.nih.gov/pubmed/1385850>.

¹⁵⁵⁴ Vezzoso, G., "The Restructuring of the Port of Genoa - from 'Compagnia Portuali' to a port of enterprises", in Dombois, R. and Heseler, H. (Eds.), *Seaports in the context of globalization and privatization*, Bremen, Kooperation Universität-Arbeiterkammer, 2000, (75), 78.

¹⁵⁵⁵ See OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/sectors/48837794.pdf>, (149), 151-152 and 153, with further references; see especially Decision No. 4062 (A146), www.agcm.it.

In 1998, the ECJ confirmed in *Raso* that the reconstituted port workers' companies who had retained their exclusive right to supply temporary labour could not lawfully compete with cargo handling firms¹⁵⁵⁶.

Following a complaint by the Genoese Compagnia Portuale Pietro Chiesa Soc.coop.rl., the European Commission initiated a procedure against the Italian State, but not against Compagnia Unica Lavoratori Merci Varie, a competing port service provider in the port of Genoa. Pietro Chiesa later accused the Commission of inertia and applied to the Court of First Instance for the annulment of the Commission's alleged decision, but its application was dismissed¹⁵⁵⁷.

1211. Although national law has gradually moved towards a more competitive organisation of the market for port services, restrictive regulations and practices continue to exist at local level.

Also, it appears that Italian ports have not implemented the provisions of Act No. 84/1994 in an entirely homogeneous manner¹⁵⁵⁸. Each port has developed its own organisational model tailored to specific local circumstances¹⁵⁵⁹. Historical factors continue to play a decisive role, in many ports the old *compagnie portuali* remained in place, and trade union consciousness is still strong¹⁵⁶⁰.

Of course, this in itself is not indicative of restrictive practices or indeed of any problem whatsoever. Yet, ISFORT noted in 2011 that, according to terminal operators, the presence of the *compagnie portuali* remains an obstacle to full liberalisation¹⁵⁶¹.

In its 2012 survey, ISFORT reiterated that organisational patterns continue to diverge widely among Italian ports. As we have seen¹⁵⁶², for example, not all three types of operators are active in every port. Of course, this can to a large extent be explained by the considerable differences in traffic. In some cases, however, issues arise over the exact role of the different types of port operators, the parties depart from the legal division of responsibilities and apply rather unorthodox "pick and mix" practices. Some terminals such as CONATECO in Naples hardly rely on pool workers, while in other ports such as Trieste the authorised operators handle the bulk of traffic; in still other ports such as Ravenna the pool supplies almost all workers and the share of terminal workers is extremely low. But there are also ports where the

¹⁵⁵⁶ See *supra*, para 1173.

¹⁵⁵⁷ CFI 20 March 2001, Pietro Chiesa, T-59/00, ECR 2001, II-1019.

¹⁵⁵⁸ Ghio, L. and Moglia, F., "Il lavoro portuale nel porto di Genova: situazione attuale e prospettive di sviluppo", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (31), 34.

¹⁵⁵⁹ ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_luglio_2011.pdf, 57 et seq.

¹⁵⁶⁰ ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_luglio_2011.pdf, 59.

¹⁵⁶¹ ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_luglio_2011.pdf, 60.

¹⁵⁶² See *supra*, paras 1191-1192.

roles of the authorised operators and the pool overlap. Legal constructs (such as *Lettera di Committenza* in use at Leghorn) allow authorised operators to supply workers on a daily basis, whereas there are also pools which supply regular teams of workers on a fixed basis (Ravenna). In some ports such as Venice, conflicts between authorised operators and the pool are common. In Naples, the future of the pool is uncertain, while in Trieste it has already gone bankrupt. In Genoa and Ravenna, the relationship between the pool and its users seems more stable, which is largely due to the local historical, political and social context¹⁵⁶³.

As regards the application of the National Collective Agreement for Port Workers, ISFORT found that considerable numbers of workers are – legally – employed in ports under collective agreements for the transport and logistics sector or under agreements for specific manufacturing industries. Also, differences arise as a result of second level bargaining, which is widely applied in the port sector¹⁵⁶⁴. The scope of the National Collective Agreement for Port Workers may also vary between ports. In Ravenna, for example, it apparently applies to the first 20 metres of the wharf (50 m in the new part of the port), while in Trieste an imaginary yellow line, the exact position of which seems to depend on bargaining between employers and workers, excludes the warehouses¹⁵⁶⁵. The Venice Port Authority informed us that the National Agreement applies to all publicly and privately owned facilities in the port area, with the exception of industrial terminals.

Nonetheless, stakeholders judge the National Agreement positively as it has contributed to cohesion within port communities and increased the safety level. However, enforcement inspections relating to the National Agreement seem not particularly frequent¹⁵⁶⁶.

1212. In its 2012 survey of the Italian port labour regime, ISFORT points to a number of locally emerging critical issues, in addition to strengths, in ten Italian ports.

¹⁵⁶³ ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 16-17, 20 and 113.

¹⁵⁶⁴ See *supra*, para 1166.

¹⁵⁶⁵ ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_luglio_2011.pdf, 90; see esp. X., "Il Coordinamento dei portuali triestini" In 2001, a court ruled that Art. 16 of Act No. 84/1994 does not apply to mere storage activities within warehouses in the port of Trieste which are no part of the cycle of port operations (Regional Administrative Court of Friuli Venezia Giulia, 25 May 2001, Ric. n. 293/2000 R.G.R., Sent. n. 490/2001 Reg. Sent., B.F.B. Casa di Spedizioni SNC c.s. vs. Autorità portuale di Trieste).

¹⁵⁶⁶ ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 25-26.

Figure 99. Main issues in the organisation of port services and the port labour market in 10 Italian ports, 2012 (source: ISFORT¹⁵⁶⁷)

Ports	Governance	Operational model	Critical issues	Strengths
Ravenna	<ul style="list-style-type: none"> - Good balance between companies, labour and authorities - Needs of local stakeholders are reconciled 	<ul style="list-style-type: none"> - High number of terminal operators (Art. 18), limited presence of authorised port operators (Art. 16), leading role of the pool (Art. 17) - Low frequency of contracting out 	<ul style="list-style-type: none"> - High use of temporary labour which performs dock work in conditions similar to contracting out 	<ul style="list-style-type: none"> - Internal cohesion between entities - High operational integration
Trieste	<ul style="list-style-type: none"> - Unspoken conflicts because authorised port operators and pool have weak bargaining power - Absence of entities able to balance out the strength of the terminal operators - Limited regulatory role of the port authority 	<ul style="list-style-type: none"> - High number of terminal operators and authorised port operators (Art. 16 and 18), pool (Art. 17) marginal - Strong control over the system by the main terminal operators (Art. 18) - Contracting out is fairly widespread 	<ul style="list-style-type: none"> - High level of fragmentation of the operators and of the operational cycle - Excessive use of contracting out - Application of various types of contracts, including atypical ones 	<ul style="list-style-type: none"> - Presence of free port zones (<i>punti franchi</i>) - High level of professionalism in the handling of non-united cargo
Venice	<ul style="list-style-type: none"> - Climate of conflict - Business logic prevails, though restricted through regulatory action by the Port Authority 	<ul style="list-style-type: none"> - Limited central role of the pool (Art. 17), sustained high number of terminal operators (Art. 18) and authorised port operators (Art. 16) - Contracting out is fairly widespread 	<ul style="list-style-type: none"> - Opposing sides: on the one hand the pool, on the other the terminal operators and port services companies 	<ul style="list-style-type: none"> - Good organisational distribution of dock work - Moderate operational fragmentation
Gioia Tauro	<ul style="list-style-type: none"> - New port, with little history, having limited contact with and impact on its hinterland - Born from a 	<ul style="list-style-type: none"> - "Quasi-monopoly" position of the main terminal operator - No pool (Art. 17) present and port service providers 	<ul style="list-style-type: none"> - High dependence of the port on the main terminal operator - Provision of temporary workforce is concealed in 	<ul style="list-style-type: none"> - Although this is a public model, the port's employment policy is strongly influenced by the port operators

¹⁵⁶⁷ ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 66-67; compare earlier ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_lugliio_2011.pdf, 83.

	business idea, to which the governance system of the port was aligned	dependent on the terminal operator	contractual relationships	
La Spezia	- Strong private focus, tempered by incisive regulatory action by the Port Authority	- Practically a "single player" port without a temporary work pool - Contracting out is fairly widespread - Sensible and controlled use of contracting out	- Absence of a pool affects functioning of authorised port operators (Art. 16) - The port tends to revolve around the main terminal operator	- Business approach - Reason in the organisation of dock work - Prominent regulatory role of the Port Authority
Genoa	- Low integration between companies, labour and authorities - Balanced bargaining power between the main operators ensures expression of interests of the stakeholders	- Central role of the pool (Art. 17) - Low use of outsourcing	- High use of temporary labour - Limited operational integration between temporary labour and permanent labour	- Good balance of power between the employers and the pool
Bari	- Port Authority performs regulatory role - Reconciliation of overall needs of the port	- Only public docks (absence of terminal operators (Art. 18)) - Work is fairly well distributed among the pool (Art. 17), port service companies and forms of self-handling	- Competition between operators in the same segment of traffic	- Active role of Port Authority in the integration with the surrounding area and the involvement of economic actors - Efforts to increase the security level
Naples	- Conflict between the old and the new goes on - Currently, the complexity and the strength of the entities in the port ensures a balance between public and private orientation	- Limited presence of terminal operators (Art. 18) and high number of port service companies - Important role but trend towards marginalisation of the pool (Art. 17) - Medium frequency of contracting out	- Use of the pool (Art. 17) in some sectors only - Autonomous container terminal, strongly integrated with a shipping company	- Well balanced structure of the workforce (good proportion between permanent and temporary labour)
Leghorn	- General conservative attitude - Fair distribution of	- Marginal role of the pool (Art. 17 agency – voluntary consortium)	- Surplus of workers - Internal competition through price	- Prevalence of operators historically linked to the area

	bargaining power between operators ensures that stakeholders can express their interests	<ul style="list-style-type: none"> - Central role of the old pool, now authorised port operator (Art. 16), which owns shares in half of the main terminal operators - Medium frequency of contracting out 	<ul style="list-style-type: none"> reductions enabled by spurious forms of use of authorised port operators (Art. 16) - Lack of interest in rectifying "original" or illicit operational models (non-authorised self-handling, "dry" terminal operators, etc.) 	- Lively setting
Palermo	<ul style="list-style-type: none"> - General conservative attitude - Reconciliation of needs of local stakeholders ensured "bottom-up" 	<ul style="list-style-type: none"> - Only public docks (absence of terminal operators (Art. 18)) - Modest role of the pool (Art. 17) - Dock work is clearly distributed among the port service providers and full involvement of the pool (Art. 17) 	<ul style="list-style-type: none"> - High use of temporary labour - Confusion between the roles of the authorised port operators (Art. 16) and the terminal operators (Art. 18) 	- Fair operational integration

1213. Italy is no exception to the custom that sons of dockers also become dockers. Whatever the type of employment, port workers identify strongly with the port community¹⁵⁶⁸. Reportedly, this tendency persists, for example, in Ancona and, to a lesser extent, also in Venice.

1214. In its reply to our questionnaire, Assiterminal noted that in a few local ports (unspecified) rules or operational practices were adopted which are not favoured by employers. However, these unfavourable rules and practices are very uncommon and have only a limited competitive impact.

1215. In Italy, self-handling has been at the core of the debate on port labour reform since the early 1990s. In 1990 the Supreme Court of Italy ruled that it is illegal for the *compagnie* to levy a tax on each vehicle loaded onto the ro-ro deck of a ship by the vehicle's own driver. In other

¹⁵⁶⁸ Ministère de l'emploi, du travail et de la cohésion sociale, *La négociation collective en 2003*, Paris, Editions législatives, 2004, 250; recently, on Leghorn, ISFORT, *Il futuro dei porti e del lavoro*, II, 2012, *portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 112-113.

words, the exclusive right of the compagnie only applies to those services for which the port users effectively rely on port workers¹⁵⁶⁹. As we have seen¹⁵⁷⁰, the ban on self-handling was also at stake in the famous *Merci* case. In the early 2000s, a case where the Port Authority of Ancona had withheld an authorisation to practice self-handling at a quay under concession was brought before the European Commission and later before the Court of First Instance¹⁵⁷¹.

As we have explained¹⁵⁷², the current legal framework provides for the granting of special authorisations to self-handle in Italian ports. It appears that this express regulation of the matter has not eliminated all problems.

In 2010 the Grimaldi group requested an authorisation to self-handle at the San Giorgio terminal in Genoa, but reportedly its request was turned down¹⁵⁷³. An interviewed ro-ro operator informed us that, in Genoa, containers must be lashed and secured by the port workers, but this does not apply to rolling stock. The operator also said that, generally, the productivity of workers is good at Genoa. In another interview, a major terminal operator at Genoa said that, despite the legal regime of self-handling authorisations, a 'political' agreement was reached in Genoa which upholds the exclusive right of port workers to carry out all port work.

A recent Italian court decision annulled a regulatory provision of a Sardinian port, which specified that an authorisation for self-handling could only be obtained by sea carriers who call at the port occasionally. The Court decided that this provision was incompatible with the national legislation, which does not contain such a condition, and that it severely affected the right to self-handle of companies that regularly operate at the port. In another procedure, the Council of State reached a similar conclusion¹⁵⁷⁴.

In Venice, the local Port Labour Ordinance expressly envisages the possibility of lashing and unlashng being performed by terminal workers, pool workers or the ship's crew¹⁵⁷⁵. The Venice Port Authority informed us that in 50 per cent of the cases, self-handling is authorised to ro-pax and ro-ro lines for an entire season, while 40 per cent concerns self-handling authorised

¹⁵⁶⁹ Supreme Court (Corte di Cassazione) 3 May 1990, reported, *inter alia*, in R.R., "Des dockers italiens", *Droit maritime français* 1992, 398.

¹⁵⁷⁰ See *supra*, para 1171.

¹⁵⁷¹ CFI 17 June 2003, *Coe Clerici Logistics SpA*, T-52/00, *ECR* 2003, II-2123. U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) states that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) All longshore activities.

(b) Exceptions: Cargo loading, discharge, and transfer upon presentation of the following information:

(1) Documentation listing the vessel's mechanical apparatus for cargo handling,

(2) A list of crewmembers who will perform the longshore activities,

(3) An insurance policy guaranteeing recovery for damages to persons or property in relation to the longshore activities.

¹⁵⁷² See *supra*, para 1181.

¹⁵⁷³ X, "Il lavoro portuale non è temporaneo", *Informazione maritime napoli*, 19 July 2010, <http://www.informazionimaritime.it/il-lavoro-portuale-non-temporaneo-461>.

¹⁵⁷⁴ Scuras, G., "I giudici danno via libera all'autoproduzione nei terminal", *Ship2shore* 26 October 2009, 13.

¹⁵⁷⁵ See Art. 4 of Ordinanza N. 347 del 22 aprile 2011, *Organizzazione del settore del lavoro portuale nel porto di Venezia: definizione, anche ai fini della sicurezza, dei segmenti di operazioni portuali appaltabili e dei servizi specialistici, complementari e accessori al ciclo delle operazioni portuali, da rendersi ai soggetti autorizzati ai sensi degli articoli 16 e 18 della legge 84/1994*.

for scheduled calls, with a maximum of 10 vessels, and 10 per cent are authorisations for individual calls of ro-pax and ro-ro ships.

The Port Authority of Ancona reported that no self-handling is taking place.

1216. In response to our questionnaire, the Port Authority of Gioia Tauro drew attention to the prohibition on employment of temporary workers through temporary work agencies. In an interview, the Port Authority of Venice confirmed this ban. In another interview, a major container terminal operator at Genoa complained that the monopoly of the Compagnia Unica, which had been unreasonably extended up to 2019, prevents all competition and that the service level is higher in ports such as La Spezia where different temporary work providers compete.

As we have seen above¹⁵⁷⁶, only the temporary port work undertakings or agencies appointed under Article 17 of Act No. 84/1994 may hire port workers through general temporary work agencies, and they are only allowed to do so when their own workforce is insufficient to meet demand. As a result, authorised and concessionaire cargo handling companies are not permitted to call on temporary work agencies.

In the port of Leghorn, pool workers recently protested against non-compliance with Article 17 of Act No. 84/1994. Allegedly, not all port undertakings respect the monopoly of the official temporary port work agency¹⁵⁷⁷. However, responses to our questionnaire and interviews with trade union representatives suggest that, generally, the exclusive right of Article 17 undertakings is properly enforced.

Whereas temporary port work providers enjoy an exclusive right to offer their services to authorised operators and concessionaires, the Italian legislator does not seem to see fundamental objections against market access for general temporary work agencies. Indeed, temporary port work providers are allowed – even if only at times when they have insufficient workers – to rely on such general employment agencies. However, cargo handlers are not allowed to hire regular temporary agency workers directly. We are unaware of whether and, if so, how the Italian Government has reviewed this restriction in the context of Article 4 of Directive 2008/104/EC¹⁵⁷⁸. To our knowledge, the Italian transposition instrument brought no change to the existing regulation of port labour¹⁵⁷⁹.

Next, tariffs for the provision of temporary port work to third parties must be approved by the port authority¹⁵⁸⁰. As a result, the contracting parties are not free to bargain on prices. On the

¹⁵⁷⁶ See *supra*, para 1182.

¹⁵⁷⁷ X, “Noi lavoratori diciamo basta”, *Il Tirreno Livorno*, 27 March 2012, <http://iltirreno.gelocal.it/livorno/cronaca/2012/03/27/news/noi-lavoratori-diciamo-basta-1.3741147>.

¹⁵⁷⁸ On the latter provision, see *supra*, para 225 *et seq.*

¹⁵⁷⁹ See Decreto legislativo 2 marzo 2012, n. 24 Attuazione della direttiva 2008/104/CE, relativa al lavoro tramite agenzia interinale.

¹⁵⁸⁰ For an example of such a tariff, see.

other hand, the current system is said to offer terminal operators cost certainty as well as regularity¹⁵⁸¹.

Next, it must be stressed that local decision-making on the organisation of the markets for cargo handling and the provision of port labour, including the granting of authorisations and the approval of tariffs, is heavily influenced by the Port Committee (*Comitato portuale*) in which both the authorized (and concessionaire) port undertakings and the trade unions are represented (see Art. 9(1) and 9(3.g)) of Act No. 84/1994). Moreover, in many respects port authorities enjoy a wide margin of discretion¹⁵⁸², even if it is often only of a 'technical' nature.

A container terminal operator at Genoa informed us that it had been able to reach agreement with the workers on a substantial productivity component.

1217. All respondents confirmed that Italian port workers cannot be transferred temporarily between employers (with the exception, of course, of pool workers) or between ports.

However, Assiterminal stated that, upon ministerial approval, a firm licensed under Article 17 of Act No. 84/1994 is allowed to provide temporary workers in two neighbouring ports. This however happens only in exceptional cases. A trade union representative denied this information and said that the licensed temporary work providers are only allowed to operate in one port.

1218. Sergio Carbone and Francesco Munari, two leading Italian authorities on port law, expressed fears that the current legal regime of temporary port labour in Italy may, from a legal point of view, still be unacceptable. The fact that only one undertaking or agency in each port is allowed to provide temporary port labour may be incompatible with competition law and possibly with free movement rights. They write that the analogy with the ECJ's judgment in *Becu* will probably not hold because, in contrast to the facts of *Becu*, the Italian system confers an exclusive right on an undertaking¹⁵⁸³. They also doubt the legality of the provisions of Act No. 84/1994 which ensured continuity of employment in favour of the members and the employees of the former *compagnie portuali* (Art. 17(4))¹⁵⁸⁴.

¹⁵⁸¹ Marchesiello, M., "Un caso di *serendipity* ? Il contratto di lavoro portuale temporaneo alla prova nel porto di Genova", *Quaderni portuali*, 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (38), 39.

¹⁵⁸² On the latter, see Ercolani, M. and Azzola, M., "Il lavoro portuale e il mercato delle imprese", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (15), 15.

¹⁵⁸³ Carbone, S.M. and Munari, F., *La disciplina dei porti tra diritto comunitario e diritto interno*, Milan, Giuffrè, 2006, 255-257. See also Raffaelli, P.F., *La somministrazione di lavoro portuale*, doctoral thesis, Ca' Foscari University of Venice, 2010, http://dspace.unive.it/bitstream/handle/10579/925/Raffaelli_955317_tesi.pdf?sequence=1, 45-48.

¹⁵⁸⁴ Carbone, S.M. and Munari, F., *La disciplina dei porti tra diritto comunitario e diritto interno*, Milan, Giuffrè, 2006, 257.

1219. Since the introduction of the first National Collective Agreement for Port Workers in 2000, employers enjoy considerable flexibility to compose gangs and determine working hours¹⁵⁸⁵. The current National Collective Agreement for Port Workers contains special rules on flexibility of working hours, shifts and overtime (Art. 6-8). In practice, flexibility in relation to shifts and tasks is the main criterion on which port workers are selected by employers¹⁵⁸⁶. A major container terminal operator at Genoa informed us that manning levels are not a big problem today, and that the situation varies from terminal to terminal.

1220. Replying to the questionnaire, the Port Authority of Leghorn expressed concern over job insecurity and temporary unemployment. The latter issue was also mentioned by the Port Authorities of Gioia Tauro and North Sardinia. It would appear that this issue has been solved through the adoption of Act No. 92/2012 mentioned above¹⁵⁸⁷.

1221. The Venice Port Authority draws attention to the rigid rules on outsourcing and unreasonable surcharges in case of late ordering or cancellation of temporary workers.

1222. The trade unions FILT-CGIL, FIT-CISL and UILTRASPORTI state that rules on employment are insufficiently enforced, and that irregularities take place in respect of contracts for ancillary and complementary services and the granting of authorisations.

The unions also mention two sub-standard or otherwise unacceptable labour conditions, namely job insecurity and unsafe working conditions. Rules on health and safety are circumvented because they increase costs and are incompatible with market and competitive requirements.

To avoid confusion, it should be noted with regard to the former complaint that most port workers in Italy are today employed under indefinite contracts with authorised port undertakings¹⁵⁸⁸. This principle is confirmed in the National Collective Agreement for Port Workers (Art. 59). However, in ports such as Trieste the opening up of the cargo handling market resulted in a fragmentation of the operational cycle and fierce competition between a plethora of authorised operators (often cooperatives of workers) and the temporary work pool.

¹⁵⁸⁵ See Ministère de l'emploi, du travail et de la cohésion sociale, *La négociation collective en 2003*, Paris, Editions législatives, 2004, 251-252.

¹⁵⁸⁶ See ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 45.

¹⁵⁸⁷ See *supra*, para 1182.

¹⁵⁸⁸ See already International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), 97th Session, 2008, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf, 689-690.

Together with the financial crisis of 2009, this led to the failure of a number of providers and continues to threaten others. Also, liberalisation is said to have lowered rates and professional standards, while it increased safety risks.

In its 2011 and 2012 port labour surveys, ISFORT noted that no national system for the collection and analysis of occupational accidents in ports is available, that each Italian port applies its own standards and methods, which allows no useful comparison, and that some ports have no updated statistics at all¹⁵⁸⁹. To our knowledge, no statistics on occupational accidents and illnesses involving port workers are maintained at national level. In an interview, trade union representatives mentioned that the lack of sector-specific statistics is one of their chief and oldest concerns which was, for that matter, denounced during a national transportation strike on 23 April 2012. Other sources commented that this was certainly not the main focus of the strike.

As we have already explained¹⁵⁹⁰, the available data suggest that port labour counts among the most dangerous occupations in the Italian economy.

Yet, responding to our questionnaire, the Ministry of Infrastructure and Transport, Assiterminal, the Port Authorities of Brindisi, Gioia Tauro, Leghorn and North Sardinia all stated that rules on health and safety are satisfactory and that they are properly enforced. In addition, the Ancona Port Authority denied that the reform of port labour has resulted in lower quality and safety standards. However, the Port Authority of Leghorn insists that health and safety levels and enforcement of rules remain priority issues. In an interview, the manager of a major container terminal company at Genoa said that the lack of safety discipline among pool workers is a major issue.

9.11.7. Appraisals and outlook

1223. Before we address the current Italian port labour regime, we should mention that few or no stakeholders and experts expressed any opinion on the viability of ILO Convention No. 137, to which Italy is still a Party. When the ILO assessed the relevance of the Convention in 2002, the representative of the Italian Government observed that the small number of ratifications of the Convention could not at all justify its revision. Keeping in mind the Committee of Experts' conclusions concerning the scope and flexibility of the Convention, he proposed that the Office should launch a campaign to promote its ratification and application and to provide technical assistance to this end¹⁵⁹¹.

¹⁵⁸⁹ See *supra*, para 1206 and ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_lugliio_2011.pdf, 45.

¹⁵⁹⁰ See *supra*, para 1208.

¹⁵⁹¹ International Labour Conference (Ninetyeth Session, 2002), No. 28, Part One, *Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations. Report*

1224. As we have explained, the fundamentals of Italian port governance are laid down in the 1994 Act which established port authorities for the main Italian ports and liberalised cargo handling services, and which was repeatedly adjusted in order to ensure conformity with the EU freedoms and competition principles.

According to port economists Enrico Musso and Francesco Parola, Italian port reform has proven to be effective. Until the financial crisis of 2009, demand and throughput saw considerable growth and Italian ports attracted new private investments and companies¹⁵⁹².

ISFORT's 2011 port labour survey confirms that, as a result of consecutive reform measures, the organisation of labour in Italian ports underwent dramatic changes. Whilst in 1983 the 21,824 Italian port workers comprised 20,831 members of *compagnie portuali* and only 993 persons employed by other port undertakings, among the 20,000 workers that were employed in 2009 the temporary port labour undertakings only employed 3,644 members and employees of their own. In other words, today less than one fifth of port workers is employed by port labour pools¹⁵⁹³. This suggests that the providers of cargo handling services indeed preferred to employ staff of their own and that the (partial) liberalisation of port labour met a real market demand.

On the other hand, the Italian Competition Authority recently recalled that Italian ports still show a limited degree of internationalisation and that at the moment they serve mainly domestic demand¹⁵⁹⁴.

1225. As we have mentioned above¹⁵⁹⁵, it appears that Italian ports have not implemented the provisions of the Law 84/1994 in an entirely homogeneous manner and that some restrictive regulations and practices continue to exist at the local level.

1226. According to ISFORT's 2011 and 2012 surveys of the Italian port labour regime, stakeholders judge the impact of the consecutive reforms both positively and negatively.

of the Committee on the Application of Standards, Provisional Record, <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/pr-28p1.pdf>, 28, para 145.

¹⁵⁹² Musso, E. and Parola, F., *I porti: ruolo economico, organizzazione, funzioni e tipi competitività, modelli e politiche*, 2006-2007, www.enricomusso.it, <http://www.slideserve.com/iren/i-porti-ruolo-economico-organizzazione-funzioni-e-tipi-competitivit-modelli-e-politiche>.

¹⁵⁹³ ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_luglio_2011.pdf, 33.

¹⁵⁹⁴ See OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/sectors/48837794.pdf>, (149), 149.

¹⁵⁹⁵ See *supra*, para 1211.

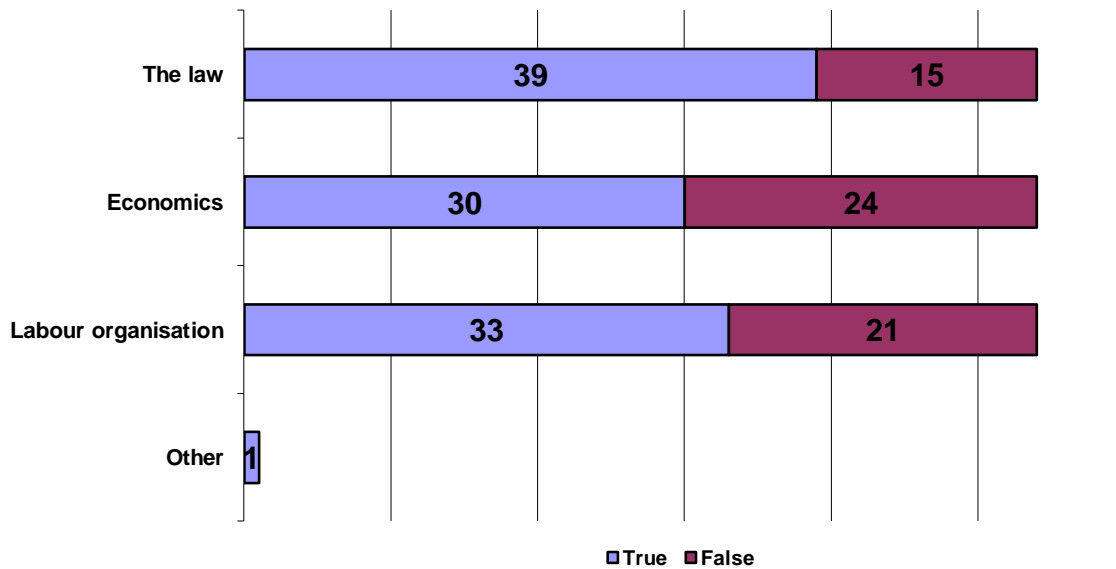
Whilst reform has opened up ports to private sector initiative and has introduced, through the supply of temporary labour, the concept of flexibility, port authorities are said to enjoy excessive autonomy. Interpretations of the new legislation can be arbitrary, if not incompatible with its intentions. Moreover, some old privileges were merely 'dressed up' or indeed replaced by new ones. While the new competitive dynamics which were expected to result from the reform of port labour were slow to emerge, the opening up of the Italian port system to competition has clearly improved its overall performance and also led to a modernisation of mechanical equipment and the production cycle. However, shipping companies still consider the port services market too closed and would prefer more freedom to choose an operator or alternatively enjoy the right to self-handle. With regard to the designation of temporary work providers, ISFORT mentions that EU-wide calls for proposals in Naples and Venice were tailored to the profile of the successors to the old *compagnie*. Finally, Italian ports are said to be handicapped by the relatively small size of the average cargo handling firm¹⁵⁹⁶.

The Institute summarised its findings in the following tables:

¹⁵⁹⁶ ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 27-29 and 71-72; see earlier ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_lugliio_2011.pdf, 86.

Figure 100. Impact of the Italian Port Reform Act No. 84/94 as judged by stakeholders, 2012 (source: ISFORT¹⁵⁹⁷)

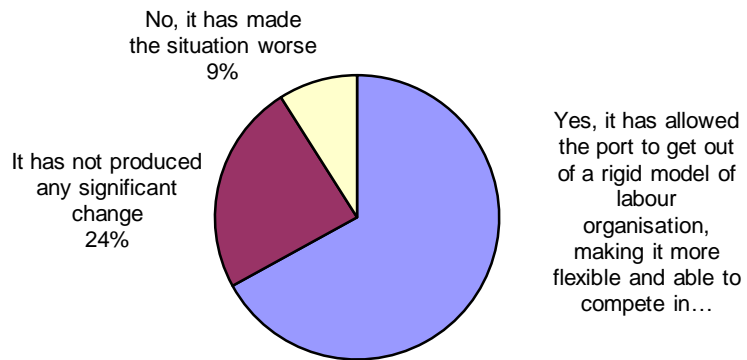
The Act 84/94 has been a success from the point of view of:



- It has been a success because:**
- Absolutely, because it has fundamentally changed the internal organisational model, with a positive influence on the performance of the port system 38 per cent of respondents
 - At least it had the merit to respond to the real need for change in the ports, but in fact it has allowed neither the implementation of new models of governance, nor an organisational renewal 30 per cent of respondents
 - Only partially, because, while determining new models of governance, it was unable to turn the internal organisation around so that it remains outmoded and cumbersome 28 per cent of respondents
- It has been a failure because:**
- The lack of implementing decrees left room for local operational interpretations by the port authorities, who have established very different models of port organisation 50 per cent of respondents (of those who consider it unsuccessful)

¹⁵⁹⁷ ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 69-70; compare earlier ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_luglio_2011.pdf, 87.

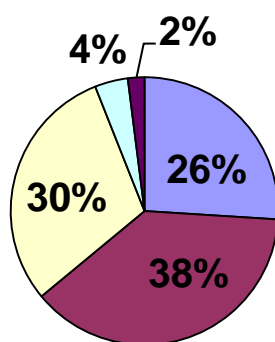
Has the reorganisation of port labour, in your opinion, contributed to a competitive revival of the Italian ports ?



Next, ISFORT asked stakeholders whether a further reform of the port labour regime is necessary. The results were as follows:

Figure 101. Opinions of stakeholders on the need for a further reform of the Italian port labour regime contained in Act No. 84/1994, 2012 (source: ISFORT¹⁵⁹⁸)

Should the Act No. 84/94 be updated with regard to the organisation of port labour ?



- It should be totally revised
- It should be revised only partially
- It should only be implemented
- There is no need for further legislative action or implementation
- Other (*)

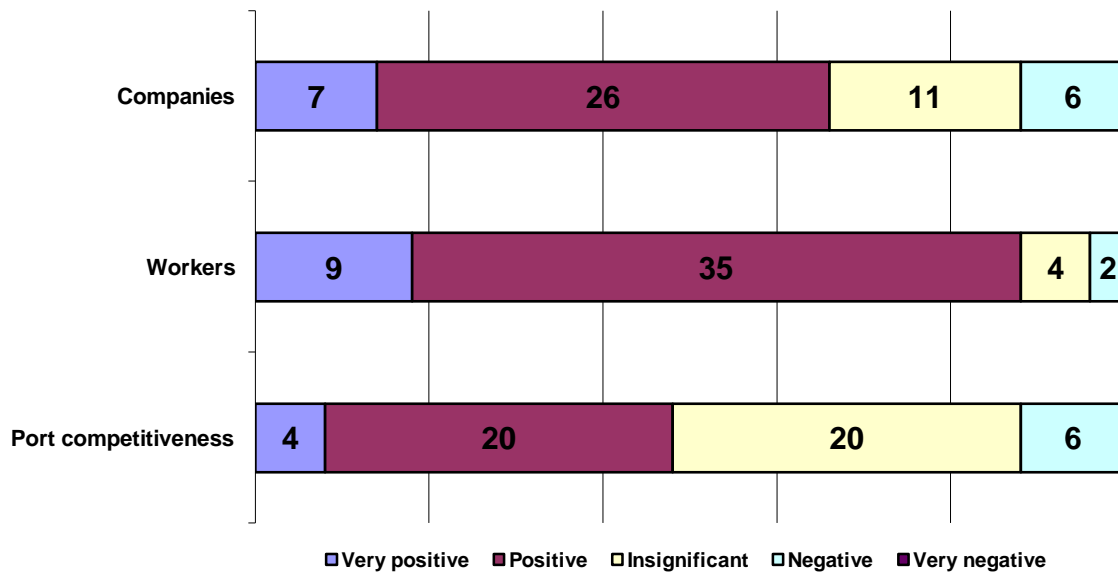
(*) Introduction of greater liberalisation of the organisational model of companies

¹⁵⁹⁸ ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_lugliio_2011.pdf, 71.

1227. Perhaps not very surprisingly, opinions also differ on the impact of nation-wide collective bargaining:

Figure 102. Impact of national collective bargaining in the Italian port sector, 2012 (source: ISFORT¹⁵⁹⁹)

Impact of the application of the national collective labour agreement for ports on:

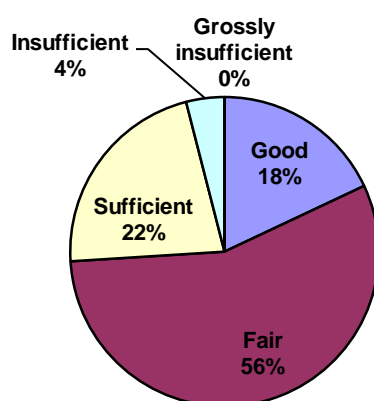


1228. Still according to ISFORT, most stakeholders judge the current training level of port workers reasonable¹⁶⁰⁰.

¹⁵⁹⁹ ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 77; compare ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_luglio_2011.pdf, 91.
¹⁶⁰⁰ ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 39.

Figure 103. Appraisal of the professional training level among Italian port workers by stakeholders, 2012 (source: ISFORT¹⁶⁰¹)

Assessment of vocational training



1229. In its own appraisal of the Italian port labour regime, ISFORT first of all acknowledges the positive role of the availability of temporary labour, because it allows cargo handling companies to rely on additional workers in peak periods. Secondly, temporary work providers guarantee a high degree of professionalism, as specialised expertise continues to be vital, especially in the non-container branch. Thirdly, even if the pool may be supplemented by temporary agency workers, the latter are less experienced, which may lower the safety level.

On the other hand, the Institute suggests that, today, the absence of competition is perhaps an anachronism and contrary to the spirit of true liberalisation which initially inspired the reform measures. Furthermore, the appointment of members of the pools and the designation of temporary work pools by port authorities lack transparency, and it may be doubted whether the designation of a pool is in all cases commensurate with the actual needs of the port and its traffic and whether it should not be regarded as a response to local lobbying. The Institute also suggests that in some cases the regulation of the market is improperly balanced, with oversized pools or, on the contrary, an excess of authorised port operators which may

¹⁶⁰¹ ISFORT, *Il futuro dei porti e del lavoro portuale*, II, 2012, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_17_luglio_2012.pdf, 39.

suffocate the pool and inflate the price of temporary work¹⁶⁰². Also, ISFORT reports that, according to its interviewees, port authorities tend to become tangled up in red tape and lobbying¹⁶⁰³.

1230. In its reply to our questionnaire, the Italian National Ministry of Infrastructure and Transport stated that today the current port labour regime is satisfactory. The Ministry also believes that the current regime has a positive impact on the competitive position of Italian ports. It identified no pressing policy issues and stated that the Italian port labour system is a model.

1231. The Port Authorities of Brindisi, Gioia Tauro, Leghorn and North Sardinia agree that the current port labour system, as well as the relationship between port employers and port workers and their respective organisations, are indeed satisfactory. The Port Authority of Leghorn highlights the positive competitive impact of minimum standards on skills of workers which determine the granting of permits by port authorities.

1232. In Venice, on the other hand, we were informed that the consecutive port reform measures taken after the ECJ judgments in *Merci* and *Raso*, have not led to a substantial liberalisation of the market for port services and that cargo handlers continue to face various unjustified restrictions on employment.

1233. In 2011, Mario Sommariva of the Port Authority of Levante (Bari) wrote that the current Italian system of port labour is well balanced and in line with other European countries, but that the system laid down by Act No. 84/1994 will have to demonstrate its ability to adapt to the dynamics of trade and the market and innovate accordingly. He does not believe that the port labour system has a negative impact on the competitive position of Italian ports¹⁶⁰⁴.

1234. According to Assiterminal, the current port labour regime is satisfactory, offers sufficient legal certainty and has a positive impact on the competitive position of Italian ports. Generally,

¹⁶⁰² ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_luglio_2011.pdf, 95-96.

¹⁶⁰³ ISFORT, *Il futuro dei porti e del lavoro portuale*, 2011, http://www.isfort.it/sito/pubblicazioni/Rapporti%20periodici/RP_15_luglio_2011.pdf, 98.

¹⁶⁰⁴ Sommariva, M., "Il lavoro portuale e la legge 84/94", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (11), 11.

the relationship with the unions is satisfactory to good, but on occasions it can be unsatisfactory.

1235. In an interview, a major container terminal operator at Genoa confirmed that since the reform, the situation has improved a lot, but that there is still a long way to go in terms of business culture and productivity, and emphasised the importance of opening up the market for competition between suppliers of temporary workers.

1236. In a paper published in 2011, Massimo Ercolani and Michele Azzola of FILT-CGIL wrote that the procedure of authorising port undertakings and granting concessions, an important aspect of the Italian port legislation, has proved to be the weakest link in the port system. They point, *inter alia*, to the large discretion with which the local regulations have dealt with concessions and authorisations. In some ports, the port authority favours forms of unfair competition which are conducive to abuses. Furthermore, they complain about administrative measures aimed at devaluing the work and weakening the role of the pool. Reform has largely been based on the false assumption that deregulation would automatically render Italian ports more competitive. This logic served the interests of individual undertakings and certainly not the general interest. The authors suggest that new, clear and precise rules be adopted which do not leave room for interpretation and discretion. Such rules should boost a healthy competition between undertakings without imposing burdens on the workforce. It should be clear that companies authorised to carry out port operations under Article 16 may use temporary workforce provided by the pool. Terminal operators should only be allowed to assign port activities to other Article 16 undertakings in cases where the use of pool workers does not allow them to cope with technical and organisational requirements. Specialised port services should be distinguished clearly from port operations. It should be possible to provide temporary port labour in a planned manner and in organised teams, for defined periods based on organisational needs. Pool workers should receive a guaranteed minimum wage when they are not hired out. Finally, the authors argue that self-handling should only be allowed in ports where it is not possible to use port workers¹⁶⁰⁵.

Responding to our questionnaire, trade unions FILT-CGIL, FIT-CISL and UILTRASPORTI denied that current port labour arrangements are satisfactory. They complain that they do not offer legal certainty and note that they have both a positive and a negative influence on the competitiveness of Italian ports. A priority issue is the granting of a structural unemployment benefit to pool workers. The respective functions of the three types of port service providers are ill defined. Interpretative divergences among port authorities result in serious legal uncertainty. The unions feel that ports should preferably be run by terminals and a pool and that the role of third service providers should be limited to ancillary and complementary

¹⁶⁰⁵ Ercolani, M. and Azzola, M., "Il lavoro portuale e il mercato delle imprese", *Quaderni portuali* 2011, <http://www.porto.genova.it/libri-pubblicazioni/quaderni-portuali-il-numero-monografico-sul-lavoro-portuale.html>, (15), 15-17.

services. Nevertheless, the unions judge the relationship with employers satisfactory. As we have explained¹⁶⁰⁶, unemployment benefit for pool workers has been introduced by Act No. 92/2012.

1237. According to the Port Authority of Brindisi, a further reform of the Italian legal framework on port labour was envisaged in the near future, but it does not see a need for any EU action. For the Port Authority of Gioia Tauro, there is a need for a harmonisation of labour rules at EU level. The Port Authority of North Sardinia stated that EU action should be aimed at restricting self-handling to specific circumstances.

1238. Assiterminal believes that guidelines concerning maximum working time (regular time and overtime, daily and weekly) could be adopted at EU level.

1239. When the first EU Port Services Directive was proposed, the Italian unions reportedly chose not to join the protest stirred up by their northern colleagues, because self-handling was already a fact in Italian ports, and because employers and unions in North Europe were suspected of protectionist objectives¹⁶⁰⁷.

Responding to our questionnaire, the unions FILT-CGIL, FIT-CISL and Uiltrasporti suggest that the profession of port worker be formally recognised and that a dialogue be initiated among all social partners concerned to create EU-wide standards to prevent downward competition on standards and social unrest.

1240. In its assessment of Italy's 2012 national reform programme and stability programme, the European Commission the European Commission stated:

*Italy does not use maritime transport to its full potential. Poor integration of ports with the inland transport network, the lack of competition in port services and excessive red tape undermine the efficiency of the Italian port system, with negative repercussions in terms of competitiveness*¹⁶⁰⁸.

¹⁶⁰⁶ See *supra*, para 1220.

¹⁶⁰⁷ See Ministère de l'emploi, du travail et de la cohésion sociale, *La négociation collective en 2003*, Paris, Editions législatives, 2004, 253.

¹⁶⁰⁸ European Commission, *Commission Staff Working Document, Assessment of the 2012 national reform programme and stability programme for Italy Accompanying the document Recommendation for a COUNCIL RECOMMENDATION on Italy's 2012 national reform programme and delivering a Council Opinion on Italy's updated stability programme for 2012-2015 (COM(2012) 318 final)*, SWD(2012) 318 final, 30 May 2012, <http://ec.europa.eu/transparency/reqdoc/rep/10102/2012/EN/10102-2012-318-EN-F-0.Pdf>, 22.

1241. In 2011 and 2012, bills were passed for the creation of a new independent Transport Authority, which will be responsible for highways, airports, ports and railways, both at national and local levels¹⁶⁰⁹. It will undertake a series of responsibilities, including (1) ensuring non-discriminatory access of all operators to the infrastructure; (2) setting the criteria to be followed by the railway infrastructure manager when setting access charges; (3) designing tendering schemes for concessions; (4) ensuring non-discriminatory participation of all operators to regional railway service tenders and (5) liberalising the mechanism for setting road haulage tariffs and conditions. To our knowledge, this initiative does not comprise a further reform of the port labour market.

1242. Also in 2012, legislative proposals for a further reform of legislation on ports were under discussion in the Senate. They seem to have only a limited impact on port labour arrangements, for example by imposing a requirement on authorised port operators to directly carry out their services. Provisions on temporary port work providers would not undergo any modification¹⁶¹⁰.

9.11.8. Developments between January 2013 and September 2014

1242A. At the time of writing, a legislative proposal providing for a major reform of Italian ports, which would comprise *inter alia* mergers of port authorities and a few minor changes to the organisation of cargo handling and labour¹⁶¹¹, had not yet been adopted¹⁶¹².

Reportedly, the Italian Ports Association (ASSOPORTI) insists on a revision of Art. 17 of Act No. 84/1994 which would stress the training competences of these providers as well as the labour-related powers of the port authorities.

¹⁶⁰⁹ See lastly Art. 36 of Decreto Legge 24 gennaio 2012, n. 1, Disposizioni urgenti per la concorrenza, lo sviluppo delle infrastrutture e la competitività.

¹⁶¹⁰ See various consecutive proposals in *Parliamentary documents*, Senate, XVI Legislatura, No. 143, No. 263 and No. 754.

¹⁶¹¹ Provisions which would undergo modification comprise Arts. 16 and 18 of Act No. 84/94, but not the central Art. 17.

¹⁶¹² See legislative documents and parliamentary proceedings on http://www.senato.it/leg/17/BGT/Schede/Ddliter/testi/40280_testi.htm.

9.11.9. Synopsis

1243.		
SYNOPSIS OF PORT LABOUR IN ITALY¹⁶¹³		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Some 13 main seaports • Landlord model • 477m tonnes • 5th in the EU for containers • 15th in the world for containers • Between 214 and 400 employers • Between 11,615 and 18,000 port workers • Trade union density: 55% 	<ul style="list-style-type: none"> • <i>Lex specialis</i> (Act of 1994), applicable in all ports • Party to ILO C137 • National CBA and company CBAs • Several, largely successful, reforms since 1994 • 3 categories of port workers <ul style="list-style-type: none"> (1) Workers employed by authorised port operators (2) Workers employed by terminal concessionaires (3) Pool workers employed by local Pool Company holding exclusive right to supply temporary labour • All workers are registered by port authority • Authorisation for self-handling possible 	<ul style="list-style-type: none"> • Differences between ports as to implementation of 1994 Act and organisation of labour market • Exclusive right of Pool Companies to supply temporary work • Fixed tariffs of Pool Companies approved by port authority • Influence of port operators and unions on decision-making by port authorities • Still some nepotism • Factual ban on self-handling (locally) • Ban on temporary agency work • Doubts over compatibility with EU law
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Training centres run by port authorities or pools • Company-based training 	<ul style="list-style-type: none"> • Law requires training and certification of all workers • Pools must provide training • Provisions in national CBA 	<ul style="list-style-type: none"> • No specific issues
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No national accident statistics • Local monitoring programmes • Scattered data suggest higher accident rates than in other industries 	<ul style="list-style-type: none"> • Specific national regulations on port safety • Party to ILO C152 • Provisions in national CBA and local MOUs 	<ul style="list-style-type: none"> • No national system for collection and analysis of accident statistics • High accident rates

¹⁶¹³ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.12. Latvia

9.12.1. Port system¹⁶¹⁴

1244. Latvia has three large multipurpose ports, namely Ventspils, Riga and Liepaja, where considerable volumes of transit traffic are handled, and seven smaller ports.

In 2012, the gross weight of seaborne goods handled in Latvian ports was about 72.7 million tonnes¹⁶¹⁵. Latvian container ports ranked 20th in the EU and 88th in the world in 2011¹⁶¹⁶.

1245. The ports of Latvia operate as landlord ports. The port authorities, acting as non-profit entities, only manage the infrastructure and are in charge of the policing of port operations. They are not involved in cargo handling operations which are entirely left to the private sector.

1246. Despite serious efforts, we were unable to collect data or opinions from Latvian port authorities, operators and users.

9.12.2. Sources of law

1247. The main legal instruments on port management in Latvia are the Ports Act of 12 July 1994¹⁶¹⁷, the Riga Freeport Act of 28 March 2000¹⁶¹⁸, the Ventspils Freeport Act of 19 December 1996¹⁶¹⁹ and the Liepaja Special Economic Zone Act of 17 February 1997¹⁶²⁰.

¹⁶¹⁴ For general information on Latvian ports, see ECOTEC, *Employment trends in all sectors related to the sea or using sea resources, Country Report – Latvia*, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/latvia_employment_trends_en.pdf, 2006, 11-14; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 99-111; for statistics, see http://data.csb.gov.lv/Menu.aspx?px_db=transp&px_language=en&rxid=71c9b143-a84a-408c-9cd4-147dbccad3ee; http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

¹⁶¹⁵ See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

¹⁶¹⁶ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

¹⁶¹⁷ Likums par ostām.

¹⁶¹⁸ Rīgas brīvostas likums.

¹⁶¹⁹ Ventspils brīvostas likums.

¹⁶²⁰ Liepājas speciālās ekonomiskās zonas likums.

The Ports Act mainly regulates the rights and duties of port authorities and contains no provisions that specifically relate to port labour. The specific Acts for Riga, Ventspils and Liepaja do not deal with port labour either.

1248. In Latvia, no port labour-specific legislation is in force. Port workers are employed on the basis of general labour laws, in particular the Labour Act of 6 July 2001¹⁶²¹.

1249. Occupational health and safety is governed by, *inter alia*, the Labour Protection Act of 20 June 2001¹⁶²² and the State Labour Inspectorate Act of 19 June 2008¹⁶²³. There are no specific rules on health and safety in port work.

Latvia has transposed Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers¹⁶²⁴.

1250. Latvia has ratified neither ILO Convention No. 137, nor ILO Conventions No. 32 or 152.

1251. In Latvia, a number of employer-specific collective bargaining agreements were concluded. These agreements are kept confidential and could not be consulted by us.

Collective agreements do not exist at every company, neither are there any port-wide or nation-wide agreements on port labour.

¹⁶²¹ Darba likums.

¹⁶²² Darba aizsardzības likums.

¹⁶²³ Valsts darba inspekcijas likums.

¹⁶²⁴ Jūrlietu pārvaldes un jūras drošības likums; Grozījumi Latvijas Administratīvo pārkāpumu kodeksā; Beramkravu kuģu drošas kraušanas noteikumi.

9.12.3. Labour market

- Regulatory set-up

1252. Leaving aside the contractual right to use port land which must be granted by the local port authority, port employers do not have to be officially licensed, nor is there a factual obligation on these employers to be a member of an employers' association.

1253. Port workers in Latvia are directly employed by cargo handling companies. Contracts are for an indefinite or a fixed term or for a specific task ("contracts for work-performance"). Occasional workers are used.

The conditions, under which contracts of employment for a specified period may be concluded, are set out in the general Labour Act (Art. 43-44). Contracts for specific tasks are regulated in the Civil Code (Art. 2212 *et seq.*).

In the collective agreements, no distinction is made between port workers in the narrow sense (who are employed at the ship/shore interface) and warehouse or logistics workers employed within the port. The agreements cover all the workers employed at the company.

1254. Port workers in Latvia are not registered. There is no pool system nor are hiring halls used.

There are no specific qualification requirements for port workers.

1255. Practically, labour laws and regulations are enforced by the Labour Inspectorate, the terminal operators and the trade unions.

- Facts and figures

1256. Reportedly, some 33 stevedoring companies operate at the port of Riga (data for 2011)¹⁶²⁵. In Ventspils and Liepaja, there are 11 and 14 stevedoring companies respectively.

1257. There are no official data on the number of port worker in Latvia. Trade union UTAF estimates that there are currently about 1,500 port workers in Latvia¹⁶²⁶. Reportedly, some 10 per cent of these workers are employed at storage and logistics activities.

1258. According to the Ministry of Transport, 540 port workers are members of a trade union (i.e., 36 percent of all workers).

The main union for port workers is the Latvian Federation of Water Transport Unions (Latvijas Ūdens transporta arodbiedrību federācija, UTAF). In April 2014, this union reports that more than 60 per cent of Latvian port workers have joined it and that it has about 740 port workers among its members, which would result in a unionisation degree of approximately 49 per cent. It also commented that the Ministry of Labour has no information on unionisation at all. The latter stated that UTAF is in fact the only union representing port workers and also referred to legal guarantees on freedom of association. However, UTAF states that a small number of port workers are represented by other unions.

In any case, the data above suggest that trade union density is higher in ports than in the Latvian economy as a whole, where the average is estimated at around 13 per cent¹⁶²⁷.

¹⁶²⁵ Kasalis, E. and Kassalis, I., "Cluster approach as one of the determinants for increasing competitiveness of Riga Freeport", *Ekonomika* 2011, Vol. 90(2), <http://www.vu.lt/leidyba//dokumentai/zurnalai/EKONOMIKA/Ekonomika%202011%2090%202/88-100.pdf>, (88), 93.

¹⁶²⁶ A 2006 report mentions the following statistics on cargo handling-related employment in Latvian ports (without making a distinction, however, between port workers and other employees):

Table 69. Number of employees engaged in cargo handling at Latvian ports, 1997-2004 (source: ECOTEC)

	1997	1998	1999	2000	2001	2002	2003	2004
Cargo handling	6,990	6,790	6,478	6,315	6,166	6,644	6,564	6,954
Storage	1,153	1,1254	1,387	1,136	1,471	1,378	1,564	1,771

(taken from ECOTEC, *Employment trends in all sectors related to the sea or using sea resources, Country Report – Latvia*, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/latvia_employment_trends_en.pdf, 2006, 13).

¹⁶²⁷ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

9.12.4. Qualifications and training

1259. There are currently no minimum requirements regarding skills and competences for port workers, neither a common training programme for port workers nor a uniform certification system for these workers. Each company can establish its own programme or certificates.

1260. The Labour Act (Art. 96) contains general rules on the right to and the financing of training.

9.12.5. Health and safety

- Regulatory set-up

1261. As we have mentioned¹⁶²⁸, Latvia has no specific rules on occupational safety and health in port work.

The Labour Protection Act lays down an elaborate general regulation of safety at work. It contains no specificities for port labour.

- Facts and figures

1262. There are no separate statistics on the number, types and causes of occupational accidents and occupational diseases in Latvian ports. UTAF provided us with statistics on occupational accidents in the fishing and aquaculture and the water transport sectors, which do not seem to focus on port labour however.

¹⁶²⁸ See *supra*, para 1249.

The Latvian Labour Inspectorate confirmed that no specific statistics on port labour are available and that, moreover, due to lack of data on the number of employees in water transport and warehousing activities, no incidence rates could be provided for these sectors. As a result, a statistical comparison with the safety level in other industries is impossible.

Table 70. Number of occupational accidents in water transport and warehousing and support for transportation activities in Latvia, 2008-2013 (source: State Labour Inspectorate)

	H50 Water transport)			H52 Warehousing and support activities for transportation		
	Total	Serious	Fatal	Total	Serious	Fatal
2008	10	3	3	58	9	0
2009	11	1	1	52	6	3
2010	13	1	0	33	5	0
2011	4	1	0	44	7	0
2012	6/803	0	0	64/278	8/35	3/13
2013	2/250	0	0	64/272	8/34	0

9.12.6. Policy and legal issues

1263. According to the trade union UTAF, service providers from other EU countries are, in the absence of establishment, not allowed to offer port services in Latvian ports. UTAF also states there is a ban on employment of non-nationals or workers employed by employers from other countries. However, we found no legal basis for these restrictions. Apparently, the matter is solely governed by general laws on immigration and employment of foreigners.

1264. As far as we could ascertain, no closed shop issues arise in Latvian ports. On the contrary, UTAF complains that most employers are reluctant to cooperate with the unions and to sign collective labour agreements.

1265. In 2004, the Latvian Ports' Council decided to oppose the proposed EU Port Services Directive because the principle of self-handling would drive stevedoring companies into

bankruptcy. The Latvian Government did not support the proposal either¹⁶²⁹. There are indications that self-handling is not allowed in Latvian ports¹⁶³⁰. UTAF commented that there is no express ban on self-handling, but that general laws on employment of foreigners may find application.

1266. UTAF mentions that it is not allowed to employ temporary agency workers in ports. Subject to laws on immigration and employment of foreigners, Latvian law does not seem to provide a clear basis for any such a prohibition however.

1267. Transfers of workers between employers and between ports are governed by general labour law provisions. UTAF states that such transfers are not allowed because the individual employment contract must specify the workplace.

1268. The Ministry of Transport mentions no problems in respect of laws and regulations applicable to port labour or their enforcement.

According to UTAF, however, rules on employment are not properly enforced. Enforcement is said to be a very complicated process.

1269. Trade union UTAF mentions the restrictive working practice of unauthorised absences, but this should not be considered an issue that affects the competitiveness of Latvian ports.

1270. According to UTAF, there are two sub-standard labour conditions in Latvian ports, namely temporary unemployment and lack of training.

¹⁶²⁹ X., "Port council against EU directive on accessibility of port services market", *Baltic Business News* 12 November 2004; X., "Latvia does not want to open its port services market to third countries", 8 December 2004, <http://www.balticbusinessnews.com/?PublicationId=c0cffb21-425f-4f45-9915-ac5cf8188675>.

¹⁶³⁰ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) still states that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) *All longshore activities.*

(b) *Exceptions: activities on board the vessel.*

Latvia was added to the list of countries restricting longshore work by crew members in 2012 (*Federal Register*, Vol. 67, No. 29, 12 February 2002, Proposed Rules, 6449). An ESPO report for 2004-2005 mentions that self-handling is not allowed for safety reasons, and that no changes were expected (European Sea Ports Organisation, *Factual Report on the European Port Sector*, Brussels, 2004-2005, 144).

1271. UTAF asserts that temporarily unemployed port workers receive no income such as unemployment benefit. The Ministry of Transport commented that, as a rule, all unemployed persons are entitled to unemployment benefit.

In 2012, an ITF coordinator added that wages of port workers in Latvian ports remain very low¹⁶³¹. The Ministry of Transport said that statistics provided by the Central Statistics Bureau show that the earnings of logistics and warehouse workers substantially exceed the minimum wage.

1272. In a 2006 report on behalf of the European Commission, the lack of relevant training for dockworkers was identified as the main problem faced by the Latvian port sector. Skills certificates were outdated and stevedoring companies trained employees internally. Labour migration and unwillingness to work in manual rather than management duties were also mentioned as serious problems for the stevedoring companies¹⁶³². According to UTAF, this is still a pressing issue today.

9.12.7. Appraisals and outlook

1273. A 2004 report on the restructuring of the Baltic transport system noted that cargo handling at Latvian ports had already been fully privatised. The report does not mention any port labour-specific issues¹⁶³³.

1274. Replying to our questionnaire, trade union UTAF stated that the current port labour regime is unsatisfactory and that it offers insufficient legal certainty. The trade union regrets that there is "no common system" and that every port operator "can do whatever he wants".

¹⁶³¹ Matutis, V., "The cheapest ports in the Eastern Baltic", 29 February 2012, <http://www.jura24.lt/en/news/port/the-cheapest-ports-in-the-eastern-baltic-411348>.

¹⁶³² ECOTEC, *Employment trends in all sectors related to the sea or using sea resources, Country Report* – Latvia, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/latvia_employment_trends_en.pdf, 2006, 14.

¹⁶³³ Ojala, L., Naula, T. and Queiroz, C. (Eds.), *Transport sector restructuring in the Baltic states toward EU accession. Proceedings of the 2nd Seminar held in Parnu on November 24-25, 2003*, March 2004, <http://Inweb90.worldbank.org/ECA/Transport.nsf/0/5FC55219E4D31FC685256E76005E27B4?OpenDocument>, 132-146.

Yet, UTAF labels the relationship with employers "satisfactory" and admits that health and safety rules are properly enforced.

UTAF argues that it is necessary for Latvia to ratify ILO Conventions Nos. 137 and 152 and to make the necessary changes in the national legislation. Furthermore, UTAF believes that a register of port workers should be established, together with a national education and training programme and a certification system for port workers. UTAF considers the Swedish and Norwegian port labour regimes models for Latvia.

1275. Still according to UTAF, common principles for education and training procedures for port workers as well as an accompanying certification system should be established at EU level.

According to the union, an EU directive should regulate the following issues:

- education and training in the port sector;
- certification of port workers;
- establishment of a register of dockworkers;
- creation of common rules concerning the work regime, health and safety and labour protection in the ports.

9.12.8. Developments between January 2013 and September 2014

1275A. We are unaware of any major developments in port labour-related matters in the period under consideration.

9.12.9. Synopsis

1276.		
SYNOPSIS OF PORT LABOUR IN LATVIA¹⁶³⁴		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 3 main ports • Landlord model • 73m tonnes • 20th in the EU for containers • 88th in the world for containers • 33 employers • Appr. 1,500 port workers • Trade union density: 60% 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • No Party to ILO C137 • Some company CBAs • All permanent and fixed-term workers employed under general labour law • No registration of workers • No hiring halls 	<ul style="list-style-type: none"> • Reluctance of employers to cooperate with unions • Ban on temporary agency work (?) • Union advocates ratification of ILO C137
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Company-based training only 	<ul style="list-style-type: none"> • No national requirements on skills and competences 	<ul style="list-style-type: none"> • Lack of training • Union advocates national training system
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No national accident statistics on port labour 	<ul style="list-style-type: none"> • No specific regulations • No Party to ILO C32 or C152 	<ul style="list-style-type: none"> • Lack of specific statistics • Union advocates ratification of ILO C152

¹⁶³⁴ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.13. Lithuania

9.13.1. Port system¹⁶³⁵

1277. Lithuania has two ports: the multipurpose port of Klaipėda, which is by far the largest port in terms of tonnage handled, and the offshore oil terminal in Būtingė which is connected to a refinery. Klaipėda handles both domestic and transit cargo.

In 2012, the gross weight of seaborne goods handled in Lithuanian ports was about 41 million tonnes¹⁶³⁶. As for container throughput, Lithuanian ports ranked 19th in the EU and 86th in the world in 2011¹⁶³⁷.

1278. The port of Klaipėda is managed by the Klaipėda State Seaport Authority, a Government Enterprise under the direct control of the Ministry of Transport. The port is organised on the basis of the landlord model. All cargo handling services are provided by private companies.

1279. For unknown reasons, Lithuanian stakeholders seemed rather reluctant to supply information and to double-check the data below, so some caution is warranted.

¹⁶³⁵ For general information on Lithuanian ports, see ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 112-122; <http://www.portofklaipeda.lt/>. See also ECOTEC and Eitutyte, D., *Employment trends in all sectors related to the sea or using sea resources. Country Report – Lithuania*, European Commission, DG Fisheries and Maritime Affairs, 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/lithuania_employment_trends_en.pdf, 7-10; for statistics, see [http://www.transp.lt/files/uploads//FIGURES%20OF%20CARRIAGE%20IN%202011_\(4\).pdf](http://www.transp.lt/files/uploads//FIGURES%20OF%20CARRIAGE%20IN%202011_(4).pdf) and http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

¹⁶³⁶ See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

¹⁶³⁷ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

9.13.2. Sources of law

1280. The main legal instrument on port management is the Klaipėda State Seaport Act No. I-1340 of 16 May 1996¹⁶³⁸. It sets out a duty on all port-based enterprises to ensure safety of work¹⁶³⁹ but contains no further rules on port labour.

Based on the Klaipėda State Seaport Act, the Regulations for Klaipėda State Seaport Operations were approved by Order No. 264 of 7 July 1997 of the Ministry of Transport and Communications¹⁶⁴⁰. These regulations also contain some provisions on health and safety, but do not address the organisation of employment.

1281. Port labour in Lithuania is governed by general labour law. The main instrument is the Labour Code (Act No. IX-926 of 4 June 2002)¹⁶⁴¹.

1282. Health and safety are governed by the Occupational Safety and Health Act (Act No. IX-1672 of 1 July 2003)¹⁶⁴².

Lithuania has transposed Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers in 2004 and 2005¹⁶⁴³.

1283. Lithuania has ratified neither ILO Convention No. 137, nor ILO Conventions No. 32 or 152.

1284. Reportedly, at some – not all – companies port labour is also governed by collective labour agreements. We were unable to consult these agreements. There is no collective agreement for the port of of Klaipėda as a whole.

¹⁶³⁸ Lietuvos Respublikos Klaipėdos Valstybinio Jūrų Uosto Įstatymas (1996 m. gegužės 16 d. Nr. I-1340).

¹⁶³⁹ See *infra*, para 1298.

¹⁶⁴⁰ Lietuvos Respublikos Susisiekimo Ministerijos Įsakymas (1997 m. liepos 7 d. Nr. 264 Dėl Klaipėdos Valstybinio Jūrų Uosto Naudojimo Taisyklių Patvirtinimo).

¹⁶⁴¹ Lietuvos Respublikos Darbo Kodeksas.

¹⁶⁴² Darbuotojų Saugos Ir Sveikatos (DSS) Įstatymas.

¹⁶⁴³ Lietuvos Respublikos Saugios laivybos įstatymo pakeitimo įstatymas Nr. X-116; Susisiekimo ministro 2004 sausio 15 d. įsakymas 3-24 Dėl Saugaus sausakrūvių laivų pakrovimo ir iškrovimo taisyklių patvirtinimo.

9.13.3. Labour market

- Regulatory set-up

1285. Following independence in 1990, the Lithuanian port system was restructured. Today, all cargo handling services have been privatised.

1286. Stevedoring companies at Klaipėda are allowed to operate in the port on the basis of land lease agreements concluded with Klaipėda State Seaport Authority. They do not need any further licence to operate and are not obliged to join a professional organisation. To operate in the Freeport, a special permit is needed however (Art. 17 of the Klaipėda State Seaport Act).

1287. Port workers in Lithuania are employed by cargo handling companies on a permanent or temporary basis. Employers may also use occasional workers.

1288. There is no pool system for port workers in Lithuania and port workers do not have to be registered. Workers are not hired at hiring halls. Employment of temporary port workers via job recruitment or employment agencies is allowed, and this regularly happens in practice¹⁶⁴⁴. No distinction is made between workers on board and workers on shore or between workers employed at the ship/shore-interface and warehouse or logistics workers employed within the port.

1289. Port workers must be 18 years old, and in some cases training and language skills (English) is required. Locally, medical fitness is also assessed.

1290. Temporarily unemployed port workers receive an income.

¹⁶⁴⁴ See also Blaziene, I., "Lithuania>: Temporary agency work and collective bargaining in the EU", 19 December 2008, <http://www.eurofound.europa.eu/eiro/studies/tn0807019s/lt0807019q.htm>, where mention is made of the regular use of temporary agency workers as logistics workers and stevedores, which are considered unskilled workers performing simple jobs.

- Facts and figures

1291. There are about 16 stevedoring and/or ship repair companies in Lithuania. We were unable to collect precise information on the share of cargo handling companies.

1292. In 2003, 2,159 people were employed in cargo handling in the port of Klaipėda¹⁶⁴⁵. Repeated requests for updated information remained unanswered.

1293. In Klaipėda, there are two port workers' unions. The Independent Dockers' Union unites workers at stevedoring company Klasco, while the union Uostininkas (Profesinė Sąjunga Uostininkas, i.e. 'Trade Union of Dockers') has members in three other stevedoring companies. In 2012, the unions informed us that about 350 port workers are members of a trade union: the Independent Dockers' Union has 174 members, whereas the union Uostininkas has 106 members¹⁶⁴⁶. Several individual terminal operators informed us that they currently employ no unionised workers. In Lithuania as a whole, trade union density stands at some 10 percent¹⁶⁴⁷. The scarce data above suggest that the rate is higher in the port sector.

9.13.4. Qualifications and training

1294. The Regulations for Klaipėda State Seaport Operations stipulate that workers shall be trained and instructed for work involving hazardous or dangerous substances (Art. 125).

¹⁶⁴⁵ ECOTEC and Eitutyte, D., *Employment trends in all sectors related to the sea or using sea resources. Country Report – Lithuania*, European Commission, DG Fisheries and Maritime Affairs, 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/lithuania_employment_trends_en.pdf, 9.

¹⁶⁴⁶ Compare the figures mentioned in Matutis, V., "The cheapest ports in the Eastern Baltic", 29 February 2012, <http://www.jura24.lt/en/news/port/the-cheapest-ports-in-the-eastern-baltic-411348>.

¹⁶⁴⁷ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

A separate Chapter on the safe loading and unloading of vessels (Chapter XII) provides, *inter alia*, that the users of the berths where cargo handling operations are carried out shall appoint adequately trained persons in charge of loading and discharge of ships, "so that requirements pertaining to the ships' safe stay and floatability are not violated" (Art. 136).

We are unaware of any further general requirements relating to skills and competences of port workers in Lithuania.

1295. Training for port workers in Lithuania is organised by official education institutions and is also provided at company level. Requests for more details remained unanswered.

1296. According to the – not entirely consistent – responses to our questionnaire, the following types of formal training are available:

- specialised training as part of a regular educational programme (secondary school);
- induction courses for new entrants;
- courses for the established port worker;
- training in safety and first aid;
- specialist courses for certain categories of port workers (compulsory for crane drivers, container equipment operators, ro-ro truck drivers, forklift drivers and reefer technicians; according to one operator, only voluntary for tallymen and signalmen);
- training aimed at the availability of multi-skilled or all-round port workers;
- retraining of injured and redundant port workers.

Also, the existence of training curricula was reported, but we could obtain no further details.

9.13.5. Health and safety

- Regulatory set-up

1297. The Occupational Safety and Health Act also applies to ports.

The Act lays down general legal provisions and requirements in order to protect workers against occupational risks and to reduce such risks.

For example, employers have a general duty to provide safe and healthy workplaces and to take preventive measures (Art. 11).

The Act contains no specific rules on port labour. General provisions of particular relevance to port terminals relate to internal vehicle traffic (Art. 17) and the handling of dangerous goods (Art. 18).

1298. The Klaipėda State Seaport Act obliges port-based enterprises that use hazardous or dangerous goods to ensure safety of the work environment (Art. 9(2)). More generally, it provides that the management of port-based enterprises is responsible for safety of work (Art. 9(3)).

1299. Specific port-related safety and health rules are contained in the Regulations for Klaipėda State Seaport Operations.

First of all, legal entities must arrange their operations in the port in such a manner that they do not pose a danger to human life or health (Art. 74).

A separate chapter on occupational safety requirements (Chapter X) recalls that all legal entities and natural persons that carry out their operations in the port must comply with the Act on Safety and Health at Work and other relevant laws and regulations (Art. 122). Next, the Regulations state that it shall only be permitted to use those work means that are in a proper technical condition and meet safety requirements. The procedure for safe operation, maintenance and control of potential dangerous technical equipment that pose danger to workers and other people, environment or property shall be established in normative legal acts and manufacturer's technical documentation of such equipment (Art. 123). If an enterprise carries out activities in an area or berth leased to another company, the head of such enterprise or his/her authorised person shall be responsible for occupational safety of employees of that enterprise. Also, traffic rules must be issued (Art. 124). Port users that produce, use or transport hazardous or dangerous substances must implement measures aimed at ensuring the safety of workers' health and environment, including their work environment (Art. 125). Port operators shall make arrangements for and be responsible for civil defence readiness at the enterprise and the warning of workers about danger. They must provide all the workers of the enterprise with personal and collective protective equipment (Art. 126).

1300. Some terminals have developed an elaborate safety management system of their own¹⁶⁴⁸.

¹⁶⁴⁸ See, for example, <http://www.klasco.lt/en/safety>.

1301. In practical terms, health and safety rules are enforced by the Public Prosecutor, the Labour Inspectorate, the Port Authority, the terminal operators and the trade unions.

- Facts and figures

1302. The Lithuanian State Labour Inspectorate provided us with the following statistics:

Table 71. Number of occupational accidents in the loading, unloading and storage sector in Lithuania, 2002-2013 (source: State Labour Inspectorate)

Year	Total number of all accidents	Total number of accidents in the loading, unloading and storage sector	Percentage of all accidents	<i>Accidents in handling in the ports and stevedoring sector</i>	Percentage of all accidents	<i>Accidents in other port work</i>	Percentage of all accidents	<i>Accidents in the shipbuilding and repair industry</i>	Percentage of all accidents
2002	2,599	282	11	20	0.76	6	0.23	38	1.48
2003	2,721	267	10	13	0.48	11	0.40	40	1.47
2004	2,705	289	11	18	0.66	5	0.18	73	2.68
2005	3,356	456	14	27	0.80	8	0.23	62	1.84
2006	3,580	521	15	11	0.30	10	0.27	68	1.89
2007	3,679	561	15	34	0.92	14	0.38	49	1.33
2008	3,328	477	14	28	0.84	16	0.48	47	1.41
2009	2,092	287	14	20	0.96	10	0.47	55	2.63
2010	2,356	357	15	22	0.93	4	0.17	30	1.27
2011	2711	416	15	14	0.51	7	0.26	26	0.96
2012	2928	436	15	11	0,38	23	0,79	21	0,72

2013	3142	477	15	11	0,35	10	0,32	20	0,64
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Table 72. Fatal and non-fatal accidents in port work in Lithuania, 2002-2013 (source: State Labour Inspectorate) (works at the port)

Year	<i>Accidents in handling in the port and stevedoring sector</i>				<i>Accidents in the shipbuilding and repair industry</i>				<i>Accidents in other port work</i>			
	Non-fatal accidents	Percentage of all non-fatal accidents	Fatal accidents	Percentage of all fatal accidents	Non-fatal accidents	Percentage of all non-fatal accidents	Fatal accidents	Percentage of all fatal accidents	Non-fatal accidents	Percentage of all non-fatal accidents	Fatal accidents	Percent of all fatal accidents
2002	20	0.79	0	0	38	1.51	0	0	6	0.23	0	0
2003	23	0.88	0	0	35	1.34	5	4.20	10	0.38	1	0.84
2004	17	0.65	1	1.05	72	2.76	1	1.05	5	0.19	0	0
2005	27	0.83	0	0	59	1.82	3	2.52	8	0.24	0	0
2006	10	0.28	1	0.92	67	1.92	1	0.92	10	0.28	0	0
2007	33	0.92	1	1	49	1.36	0	0	14	0.39	0	0
2008	26	0.80	2	2.46	47	1.44	0	0	13	0.40	3	3.7
2009	20	0.97	0	0	55	2.69	0	0	10	0.49	0	0
2010	22	0.95	0	0	30	1.30	0	0	4	0.17	0	0
2011	11	0.41	3	5.88	26	0.97	0	0	7	0.26	0	0
2012	11	0,38	0	0	21	0,72	0	0	22	0,75	1	1,69
2013	11	0,35	0	0	20	0,64	0	0	8	0,25	2	3,3

Table 73. Fatal occupational accidents in in Lithuania by economic activity, 2002-2013 (source: State Labour Inspectorate)

Economic activity	Fatal accidents at work											
	2008	Percentage of all fatal accidents	2009	Percentage of all fatal accidents	2010	Percentage of all fatal accidents	2011	Percentage of all fatal accidents	2012	Percentage of all fatal accidents	2013	Percentage of all fatal accidents
Total	81		49		50		51		59		60	
Forestry	2	2.5	2	4.0	4	8	2	3.9	4	6,8	4	6,7
Agriculture	7	8.6	1	2.0	9	18	4	7.8	2	3,4	4	6,7
Construction	21	26.0	11	22.4	6	12	13	25.4	16	27,1	16	26,6
Transport. storage and communication	23	28.4	10	20.4	11	22	14	27.4	16	27,1	12	20
Manufacturing	13	16.0	9	18.4	9	18	7	13.7	3	5,1	9	15
Other activity	15	18.5	16	32.6	11	22	10	19.6	18	30,5	15	25

Table 74. Non-fatal occupational accidents in in Lithuania by economic activity, 2002-2013 (source: State Labour Inspectorate)

Economic activity	Non-fatal accidents at work											
	2008 year	Percent of all non-fatal accidents	2009 year	Percent of all non-fatal accidents	2010 year	Percent of all non-fatal accidents	2011 year	Percent of all non-fatal accidents	2012 year	Percent of all non-fatal accidents	2013 year	Percent of all non-fatal accidents
Total number	3,247	--	2,043	--	2,306	--	2,660	--	2869	--	3082	--
Forestry	28	0.86	23	1.1	31	1.34	26	0.97	30	1,05	28	0,91
Agriculture	61	1.87	61	2.9	74	3.2	92	3.5	89	3,1	92	2,99
Construction	590	18.2	257	12.6	288	12.5	362	13.6	352	12,27	344	11,16
Transport, storage and communication	396	12.2	287	14.0	328	14.2	336	12.6	344	11,99	355	11,52
Manufacturing	972	29.9	581	28.4	621	26.9	710	26.7	792	27,61	791	25,67
Other activity	1,200	36.9	834	40.8	964	41.8	1,134	42.6	1262	43,98	1472	47,76

Table 75. Frequency rate of occupational accidents in Lithuania by economic activity, 2008-2013 (source: State Labour Inspectorate)

Economic activity	Fatal accidents at work per 100,000 employees						Non-fatal accidents at work per 100,000 employees			
	2008	2009	2010	2011	2012	2013	2008	2009	2010	2011
Total number	6.22	4.24	4.57	4.50	5,08	5,26	249.47	176.96	210.74	247.19
Forestry	22.92	26.96	52.06	22.48	42,27	50,56	320.92	310.01	403.44	317.19
Agriculture	33.15	5.26	50.15	22.74	11,14	22,46	288.92	320.60	412.35	495.19
Construction	17.52	12.70	8.05	15.94	19,25	19,40	492.34	296.79	386.59	423.19
Transport, storage and communication	23.88	11.57	13.26	15.79	16,86	12,87	411.11	332.04	395.26	362.19
Manufacturing	5.96	5.14	5.46	4.04	1,66	5,07	445.95	331.91	376.56	438.19
Other activity	1.79	2.05	1.47	1.31	2,32	1,97	143.27	106.93	129.19	162.19

Table 76. Incidence rate of occupational accidents in Lithuanian ports, 2008-2013 (source: State Labour Inspectorate¹⁶⁴⁹)

Year	<i>All accidents in works in port</i>			
	Non-fatal accidents	Incidence rate	Fatal accidents	Incidence rate
2008	86	652.9	5	37.9
2009	85	616.7	0	0
2010	56	445.8	0	0
2011	44	340.0	3	23.2
2012	54	n.a.	1	n.a.
2013	39	n.a.	2	n.a.

¹⁶⁴⁹ The incidence rate is approximate as no accurate data on the number of employed port workers are available.

9.13.6. Policy and legal issues

1303. According to one terminal operator, service providers from other EU countries are, in the absence of establishment, not allowed to offer port services in the port of Klaipėda. We are unaware of a legal rule to this effect.

1304. Respondents to our questionnaire did not mention any restriction on employment or any restrictive working practice at port terminals. Enquiries about specific arrangements, for example on manning scales and self-handling¹⁶⁵⁰, received no reply.

1305. Some replies to our questionnaire suggest that employers are not allowed to exchange workers, or that this only a theoretical possibility.

1306. All responding terminal operators and both unions confirmed that rules on employment are properly enforced.

1307. The terminal operators also state that health and safety rules and their enforcement are satisfactory. The trade unions believe that the rules are insufficient because they do not take into account the strenuous nature of the job.

1308. In 2012, an ITF coordinator asserted that wages in the port of Klaipėda are very low and that in some of the port companies, the atmosphere among fellow dockers is especially negative, because the salaries of the senior dockers are dependent on the volume of work performed by the workers.

For Uostininkas, the biggest problem is that, whereas Western port workers are specialised, Lithuanian port workers have to carry out a wide range of activities, which may lead to a loss of qualifications.

The Chairman of the Dockers Professional Union declared that not too many new workers were joining the union and that young people do not want to work as dockers, because wages are so

¹⁶⁵⁰ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) still states that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) *All longshore activities.*

low and there is insufficient work. For him, the major issues are the Government's indecision to ratify international agreements on dock work and safety conditions and the absence of a legislative framework for dock work¹⁶⁵¹.

9.13.7. Appraisals and outlook

1309. A report from 2004, prepared with a view to EU accession, noted that stevedoring sector had been privatised and mentioned no outstanding labour-related issues¹⁶⁵².

1310. All responding Lithuanian terminal operators consider the current port labour regime satisfactory and state that it provides sufficient legal certainty. The relationship with the unions is described as excellent (even in one case where the operator mentions that none of its workers is unionised). The operators think that the port labour system has a positive impact on the port's competitiveness. One respondent hails the Lithuanian system as the best possible model. No operator sees any scope for EU action in relation to port labour.

1311. The Lithuanian unions of port workers do not consider the current port labour regime satisfactory and believe that there is no legal certainty. They complain that the unions are absent in a number of stevedoring companies. Yet, they do not think that port labour has a competitive impact on the port.

The unions mention the ports of Antwerp, Rotterdam, Hamburg and Copenhagen as models.

They conclude that there should be a harmonised legal framework for all EU ports, starting with the ratification of ILO Conventions Nos. 137 and 152.

¹⁶⁵¹ Matutis, V., "The cheapest ports in the Eastern Baltic", 29 February 2012, <http://www.jura24.lt/en/news/port/the-cheapest-ports-in-the-eastern-baltic-411348>.

¹⁶⁵² Ojala, L., Naula, T. and Queiroz, C. (Eds.), *Transport sector restructuring in the Baltic states toward EU accession. Proceedings of the 2nd Seminar held in Parnu on November 24-25, 2003*, March 2004, <http://lnweb90.worldbank.org/ECA/Transport.nsf/0/5FC55219E4D31FC685256E76005E27B4?OpenDocument>, 132-146. For a critical earlier account of the privatisation of the stevedoring company Klasco, which mentions a commitment to preserve jobs and an active cooperation with the unions but also corruption issues, see Sabaliauskaite, G., *Privatization in Lithuania: General Environment and Case Studies*, 2000, <http://digitalcommons.iwu.edu>.

9.13.8. Developments between January 2013 and September 2014

1311A. We are unaware of any major developments in port labour-related matters in the period under consideration.

9.13.9. Synopsis

1312.		
SYNOPSIS OF PORT LABOUR IN LITHUANIA¹⁶⁵³		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 2 ports • Landlord model • 41m tonnes • 19th in the EU for containers • 86th in the world for containers • Appr. 16 employers • Appr. 2,159 port workers (?) • Trade union density: appr. 20% (?) 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • No Party to ILO C137 • Some company CBAs • All permanent and fixed-term workers employed under general labour law • No registration of workers • No hiring halls • No ban on temporary agency work 	<ul style="list-style-type: none"> • Reluctance of employers to cooperate with unions • Unions advocate ratification of ILO C137
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Training by official institutions (?) • Company-based training 	<ul style="list-style-type: none"> • No national requirements • Local port regulations require training for handling of dangerous goods 	<ul style="list-style-type: none"> • Insufficient specialisation of workers
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No specific national accident statistics 	<ul style="list-style-type: none"> • No Party to ILO C32 or C152 • Safety rules in local port regulations 	<ul style="list-style-type: none"> • Lack of specific accident statistics • High accident rates for 'transport, storage and communication' as a whole • Unions advocate ratification of ILO C152

¹⁶⁵³ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.14. Malta

9.14.1. Port system

1313. Malta's main seaports are the port of Valletta and Malta Freeport at the port of Marsaxlokk¹⁶⁵⁴. The port of Valletta is a multi-purpose port. Malta Freeport is a container port where 95 per cent of the throughput consists of transshipment. It also handles considerable volumes of oil. There is little competition between Valletta and Marsaxlokk.

According to Eurostat, Maltese ports handled about 5.5 million tonnes of maritime traffic in 2012¹⁶⁵⁵. However, these statistics do not seem to take into sufficient account cargo handled at Malta Freeport, where 2.75 million TEU were handled in 2013. Based on a ratio of 11 tonnes for 1 TEU, some 30.25 million tonnes may have been handled at the Freeport, resulting in 35.75 million tonnes for the country as a whole. For containers, Malta ranked 8th in the EU and 37th in the world in 2011¹⁶⁵⁶.

1314. Maltese ports are operated on the basis of a landlord model. In the port of Valletta, the port authority functions are carried out by Transport Malta, a governmental agency. Malta Freeport Cooperation fulfils the role of landlord and authority over the Freeport zone.

1315. Although several Maltese stakeholders filled out our questionnaire, responses to requests for additional information remained very limited.

¹⁶⁵⁴ For general information on the ports of Malta, see Dingli, K.F., "Port management and operation in Malta", Presentation at the Third International Annual Conference 'Practice of Maritime Business: Sharing Experience', Odessa, 2007, <http://static2.docstoccdn.com/docs/111213297/Management-Port-Operation>; ECOTEC Research & Consulting, *Employment trends in all sectors related to the sea or using sea resources, Country Report - Malta*, European Commission DG Fisheries and Maritime Affairs, 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/employment_trends_en.htm, 6-11; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 370 et seq.; Malta Maritime Authority, *Cargo Handling Terminal Management Concession. Port of Valletta, Malta. Process Document for Persons Interested in Submitting an Expression of Interest*, http://www.doi-archived.gov.mt/EN/press_releases/2005/08/pr1153a.doc; for statistics, see http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#; NEA, *Ports and their connections within the TEN-T*, 2010, http://ec.europa.eu/transport/infrastructure/studies/doc/2010_12_ports_and_their_connections_within_the_ten-t.pdf, 126.

¹⁶⁵⁵ [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

¹⁶⁵⁶ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

9.14.2. Sources of law

1316. The administration of Maltese ports is governed by the Ports and Shipping Act¹⁶⁵⁷ and a body of subsidiary legislation which includes, for example, the Tallying of Goods Regulations¹⁶⁵⁸ and the Ports (Handling of Baggage) Regulations¹⁶⁵⁹.

Transport Malta assumed the functions that were previously exercised by the Malta Maritime Authority, the Malta Transport Authority and the Director and Directorate of Civil Aviation. The powers of Transport Malta are set out in the Authority for Transport in Malta Act¹⁶⁶⁰ which *inter alia* empowers the competent Minister to regulate the performance of port labour services¹⁶⁶¹. For services provided by Transport Malta or its contractor, rates shall be payable in accordance with the Port Rates Regulations, which also mention rates for port work¹⁶⁶².

Malta Freeport, which is a customs-free zone, is managed on the basis of the Malta Freeports Act¹⁶⁶³. Under this Act, Malta Freeport has the exclusive right to grant licences to cargo handling companies operating in Freeports (see in particular Art. 10(1) and (4) of the Act).

¹⁶⁵⁷ Act XVII of 1991 to provide for the establishment of ports in Malta, for the registration and licensing of boats and ships and to regulate the use thereof within the territorial waters of Malta and to establish fees and dues and other matters ancillary to shipping (Chapter 352 of the Laws of Malta).

¹⁶⁵⁸ S.L. 499.05.

¹⁶⁵⁹ S.L. 499.42.

¹⁶⁶⁰ Act XV of 2009 to provide for the establishment of a body corporate to be known as the Authority for Transport in Malta which will assume the functions previously exercised by the Malta Maritime Authority, the Malta Transport Authority and the Director and Directorate of Civil Aviation and for the exercise by or on behalf of that Authority of functions relating to roads, to transport by air, rail, road, or sea, within ports and inland waters, and relating to merchant shipping; to provide for the transfer of certain assets to the Authority established by this Act; and to make provision with respect to matters ancillary thereto or connected therewith (Chapter 499 of the Laws of Malta).

¹⁶⁶¹ Pursuant to Article 43(3), Regulations may deal with, *inter alia*:

(t) regulating the use of warehouses, wharves, quays, docks, piers and other places in ports on or from which goods are loaded or unloaded and the conduct of persons taking part in the loading or unloading of goods on or from a ship in any port;
[...]

(x) regulating matters concerning porters, carriers and other labourers to be employed within the precincts of a port, the issue of licences for the performance of such occupation and any matter concerning the discipline of such personnel:

Provided that the service of luggage porters shall be subject to the supervision and control of the Authority:

Provided further that no responsibility shall attach to the Government or to the Authority for any loss or damage caused during the embarking, disembarking or transshipment of any luggage by any licensed luggage porter;
[...].

¹⁶⁶² Legal Notice 53 of 1969.

¹⁶⁶³ Act XXVI of 1989 to provide for the establishment of a Freeport system in Malta and to regulate its operation (Chapter 334 of the Laws of Malta).

1317. Port labour in Malta is governed by the (repeatedly amended) Port Workers Ordinance of 1962¹⁶⁶⁴ (Chapter 171 of the Laws of Malta), which is supplemented by the (repeatedly amended) Port Workers Regulations of 1 January 1993¹⁶⁶⁵. As we will explain below¹⁶⁶⁶, the Ordinance and the Regulations apply to certain categories of port workers only.

Mention should also be made of the Retiring Age of Port Workers Regulations¹⁶⁶⁷.

1318. Health and safety in port labour is mainly governed by the general Occupational Health and Safety Authority Act and its subsidiary legislation, which are both of a general nature, and also the Dock Safety Regulations under the same Act¹⁶⁶⁸.

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 2004¹⁶⁶⁹.

1319. Malta has ratified neither ILO Convention No. 137, nor ILO Convention No. 152, but it is apparently still bound by ILO Convention No. 32¹⁶⁷⁰.

1320. Port work is further governed by a number of company-specific collective agreements and Service Level Agreements.

The latter type of instrument is specific to the situation of self-employed registered port workers and is defined in the law as "an agreement concluded between port workers and employers of port workers in connection with the provision of services by port workers" (Art. 2 of the Port Workers Ordinance). The conclusion of Service Level Agreements is compulsory¹⁶⁷¹. Currently, port workers from the pool have two Service Level Agreements – one with the Malta Freeport Terminals and another with the Valletta Gateway Terminals. The same applies in respect of foremen of port workers.

¹⁶⁶⁴ Ordinance XIV of 1962 to regulate the employment of port workers and to make other provisions connected therewith (Chapter 171 of of the Laws of Malta).

¹⁶⁶⁵ Legal Notice 90 of 1993.

¹⁶⁶⁶ See *infra*, para 1334.

¹⁶⁶⁷ Legal Notice 33 of 1974.

¹⁶⁶⁸ See *infra*, para 1383 *et seq.*

¹⁶⁶⁹ Merchant Shipping Notice No. 60 of 21 April 2004 on Safe Loading and Unloading of Bulk Carriers.

¹⁶⁷⁰ This Convention had been made applicable to Malta, before the attainment of independence, by the Government of the United Kingdom of Great Britain and Northern Ireland. By letter dated 29th December 1964, the Government of Malta informed the Director General of the International Labour Organisation that it considered itself bound by the Convention as from 21st September, 1964 (see <http://justiceservices.gov.mt>).

¹⁶⁷¹ See *infra*, para 1360.

Neither the collective labour agreements, nor the Service Level Agreements are public. Transport Malta informed us that these documents are confidential. As a consequence, they could not be consulted by us¹⁶⁷².

9.14.3. Labour market

- Historical background

1321. A comprehensive overview of the evolution of port labour law in Malta is given in an excellent thesis on port reform from 2009 by lawyer Joseph Zammit¹⁶⁷³.

Before WW2, although port workers had been providing their services 'informally' for a long time, there was no form of legal framework to regulate either their existence or employment. It was an established practice that strong men would go down to the docks awaiting vessels. The agent representing a vessel would have his own foreman who in turn would choose the required number of men to conduct the cargo operation on the ship. All personnel involved in the discharge or loading of cargo from ships were referred to as 'port workers' but there were several different categories of persons performing different duties. Stevedores only worked in the ship's hold, lightermen worked on the lighters, port labourers worked on the quay, while cargo workers were engaged in warehouses, sheds or wharves. Since employment was granted on a casual / daily basis, this entailed that there existed no fixed or permanent employment nor any form of legislation regulating port workers or their employment. Handouts to the foremen in order to be called for work became an informal practice¹⁶⁷⁴.

The first legislation concerning port workers was Ordinance No. XXI of 1939¹⁶⁷⁵. It regulated the employment of stevedores and port labourers and made other provisions connected therewith. The Ordinance distinguished the legal standing of the stevedore (working on board), the port labourer (working on shore) and the foreman. The latter acted as an employer of stevedores

¹⁶⁷² The only agreement which we were able to consult is the Collective Agreement between Malta Freeport Terminals LTD and Union Haddiema Maghqudin regarding Senior Shift Leaders, Senior Planners, Duty Supervisors, Shift Leaders, Supervisors Equipment / Operators of 23 June 2005. However, this agreement does not seem to deal with port labour as defined in the present study. In Malta, collective labour agreements do not have to be registered nor must a notice be given to the Government (see Lofaro, A., Report on collective agreements in Malta to the XIVth Meeting of European Labour Court Judges, 4 September 2006, Cour de Cassation, Paris, http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@dialogue/documents/meetingdocument/wcms_159949.pdf, 5.

¹⁶⁷³ Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 131 p. For general background on the history of industrial and employment relations in Malta, see <http://dier.gov.mt/en/About-DIER/History/Pages/A-Brief-History-of-the-DIER.aspx>.

¹⁶⁷⁴ Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 14-15.

¹⁶⁷⁵ Ordinance No. XXI of 28 April 1939 "that regulates the employment of Stevedores and Port Labourers and makes other provisions regarding this".

and port labourers and needed an official, annual, licence from the Commissioner of Labourers and of Emigration (Section 3(a)). Although this Ordinance helped to improve the position of port workers, it still had its flaws. While before the enactment of this legislation there was no form of permanent employment, with its coming into force, port workers were registered for the first time. The foremen, who were also registered, could only employ persons from this pool of recognised workers. However they could still choose whomsoever they wanted¹⁶⁷⁶.

The Port Workers Ordinance of 1962 replaced that of 1939. From a critical perspective it was merely a cosmetic exercise since the archaic practices found in both the 1939 Stevedores and Port Labourers Ordinance, and the 1950 Port Workers Regulations, also found their way into the newly enacted Ordinance of 1962. This Ordinance was also supposed to cater for the then newly built Deep Water Quay which was envisaged to restructure and revolutionise port work. However, the new Ordinance did include some major innovations, such as the setting up of the Port Disputes Board. Although this Ordinance created a very efficient framework and structure of port work organisation, efficiency was still found to be lacking when compared to that of other ports, due mainly to inflexible work practices. At this stage, the situation was getting out of hand. Workers dictated their own terms and held their employers to ransom. International studies at the time indicated that the right of employers to choose their employees was conducive to efficiency, and that flexibility of workers increased productivity. Furthermore it was recognised that training of workers was imperative and closely linked to increased productivity¹⁶⁷⁷.

In 1973, a Pension and Contingencies Fund was created. The first objective was to provide for a pension fund for retiring workers, and for port workers who were either injured or found to be unable to continue their job due to health problems. The Fund was to provide for the safety gear and other contingencies of port workers. Furthermore it also provided for a bonus for each port worker. The Fund was to be raised out of contributions according to tonnage paid by the employers of port workers¹⁶⁷⁸.

In 1992, all port workers in the pool were amalgamated into one homogeneous group, a shift system was introduced to cover 24 hours of work and previous fixed gang systems were removed in order to allow for more flexible and efficient ordering systems for terminal operators. The Port Workers Ordinance was supplemented by the Port Workers Regulations of 1 January 1993¹⁶⁷⁹. The main objective of the new amendments was to remove archaic practices and to ensure flexibility. At this time there were two major innovations in Maltese ports. One was the decision of the Government of the day to set up an Authority which had to regulate and control all related port matters. Secondly traffic at Freeport was on the rise and it was felt that Freeport had to be different from the Valletta Port, both in respect of working practices and tariffs. Freeport was intended as a transshipment port. There was no way that the Freeport

¹⁶⁷⁶ Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 16.

¹⁶⁷⁷ Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 22 and 23.

¹⁶⁷⁸ Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 23 and 24.

¹⁶⁷⁹ See already *supra*, para 1317.

could compete with other ports and attract shipping companies, if it was to pay the same rates charged by the service providers for domestic cargo, for transshipment cargo. The restrictive and inflexible practices also had to be corrected for this new operation in order to ensure Freeport's success. The latter objective was not achieved however. Other problems persisted, foremost being the various complex tariffs, and the complicated roster system. Furthermore, in the agreement and subsequent legislation, complicated clauses dealing with methods of allocation of workers and ordering time, waiting time and overtime rates were retained if not increased¹⁶⁸⁰.

1322. In 2006 and 2007, the Maltese port labour system, which rested on a traditional, complex and highly regulated combination of monopolies for self-employed registered port workers, registered foremen, tallymen, delivery clerks and port cargo hauliers (*burdnara*) underwent further reform. The main steps leading to this reform are summarised below.

1323. In 1999, the Port of Valletta Strategic Development Plan prepared by TecnEcon on behalf of the Malta Maritime Authority concluded that port operations at Valletta were controlled, and to a large extent, constrained by legislation. Port workers were licensed by the Malta Maritime Authority under the terms of the Port Workers Ordinance which contained no requirement for workers to pass or attend any skills test or training. The licence was granted virtually on demand, passing from father to son. This arrangement was discontinued in 1973, but reinstated in 1990. Other legislation also controlled port tariffs and fees paid to port workers, foremen and tally clerks, their method of calculation and method of payment, pension payments, port working hours, and the organisation and ordering of labour¹⁶⁸¹.

The consultants issued a harsh judgment on these arrangements:

The method of allocating port labour has developed into an inflexible working system that creates difficulties for port users. The system is unresponsive to changes in operational requirements, and a number of questionable practices are endemic. The principal cause of this unsatisfactory situation is the fact that under current port regulations, the men are casual workers, they do not have contracts and do not receive basic pay. A situation has evolved where management of the port labour workforce is ineffective, casual employment and shared payment provides no employee loyalty or

¹⁶⁸⁰ Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 24-25.

¹⁶⁸¹ TecnEcon, *Port of Valletta strategic development plan. Executive summary*, Malta Maritime Authority, December 1999, para 13. The Executive Summary was kindly provided by Transport Malta. However, the full study was not made available to us. Transport Malta mentioned that parts of it are not available to third parties.

*incentive, and the potential for high supplementary payment undermines worker discipline*¹⁶⁸².

The overall appraisal of the situation at the port of Valletta was as follows:

*The core problem affecting the future development of Valletta Grand Harbour as a commercial port is a combination of an inappropriate and unnecessarily complicated institutional framework, an outdated and unnecessarily regulatory framework, and a political environment which seems to encourage inertia and discourage positive action. If these matters are not attended to, there is the risk that the port will become progressively more costly to use than its competitors in the region. For national trade, the implication of this is that imports and exports will become more costly. Maltese consumers will have to pay more for goods imported through Valletta, while exports via the port will become less competitive in the international market with a consequent loss of market share. In the case of potentially lucrative international transshipment trades, there is also every prospect of progressive decline as shipping lines transfer their Mediterranean transshipment services to other less costly ports in the region*¹⁶⁸³.

The Development Plan recommended that the necessary modernisation of the port's institutions and operations address, *inter alia*, the organisation of port work and working practices¹⁶⁸⁴.

1324. In 2002, the Federation of Industry (FOI) and the General Workers Union (GWU) expressed their agreement that an overhaul of the Maltese port labour regime was needed. Regarding the criticism over high costs at the port of Valletta, the FOI agreed that the charges accrued were excessive, while the GWU felt that the costs related to a ship simply berthing were not excessive, it was when the stevedores and other "insiders" took over that costs went up. The FOI stated: "EU or no EU, a major overhaul of the present situation at the ports is needed. We can't continue overcharging like we are doing now. We are losing important work just because we seem happy to continue working with an anarchic situation" and that "the sphere of cargo handling is a very delicate one – as there no competition involved, which leads to higher costs, the highest when compared to the other industrialised countries". Still according to FOI, there was a good deal of interest involved but there were no steady tariffs: "The tariffs are calculated according to one's mood. The terminal should be operated by one common parent and not by different people who all have some kind of presence at the port". FOI went on to say that costs at the ports varied because one ship would be carrying loose cargo, while another would carry different types of items. FOI also cited the fact that four *burdnara* would normally be working while the rest are at home getting paid just the same, as being unhealthy for any enterprise. FOI's spokesman said:

¹⁶⁸² TecEcon, *Port of Valletta strategic development plan. Executive summary*, Malta Maritime Authority, December 1999, para 14.

¹⁶⁸³ TecEcon, *Port of Valletta strategic development plan. Executive summary*, Malta Maritime Authority, December 1999, para 32.

¹⁶⁸⁴ TecEcon, *Port of Valletta strategic development plan. Executive summary*, Malta Maritime Authority, December 1999, para 34.

We are losing work, everything that comes into Malta becomes costly and all those concerned should start working on an organised system. Some time ago we also lost the transshipment of cars coming through Malta because the port costs were so high. Do we want to increase our work load or do we want to continue working with systems that are a hundred years old ?

GWU replied to this that the tariffs had not been changed over the past 20 years and that the only thing that has been changed at the ports resulted from a price modification in the early 1990s.

Reportedly, there was also a request to the Office of Fair Competition to issue a report on the current situation at the ports. The parties involved, which also included the unions and the FOI, which later submitted its own report, gave their views on the ports but reportedly nothing happened. The report was intended to be used as a basis for any action the Government might feel needed to be taken at the ports. As the Government knew there was a monopoly in the transport services at the port, it was important for the Government to have an exact report on the costs involved, so that it would be better placed to take any action, if this was needed.

According to a media report, the main benefactor of the monopoly situation at the ports was undoubtedly the General Workers Union. The GWU controlled the cargo handling company, which was responsible for the loading and unloading of cargo to and from ships. The *burdnara*, who are responsible for the transport of cargo to and from ships, also enjoyed a monopoly situation and licences were inherited from family to family. Those stevedores who handle bulk cargo belong to the GWU and, together with the control of the cargo handling company, this is the reason why the GWU was in a position to paralyse the country's ports. The expense for clearing and internal transport compared to the international shipping charge was very high indeed. A breakdown of the local costs included Free-in-Free out (FIOS) as well as landing charges levied by the government contractor, port labourers on ship and ashore, container charges, heavy lifts fees, transport and stuffing/unstuffing charges (road haulers), crane (from shore to trailer) and return of empty container. At the time, the Federation of Industry was pinning its hopes on the report by the Office of Fair Competition. It stated: "Everybody knows that the situation at the ports is a monopoly. The FOI has been speaking on this issue for years but nothing happens, what happens is that every elected government, being Labour or Nationalist continues to do with the monopoly". On what was reported on the GWU weekly paper about possible redundancies for cargo handling and port workers if Malta joined the European Union, GWU said that "an EU directive is stating that the unloading of ships can be carried out by the seamen of the same ship, something completely against the GWU principles"¹⁶⁸⁵.

¹⁶⁸⁵ X., "FOI and GWU agree that changes are needed at Malta's ports", *The Malta Financial & Business Times* 14 August 2002, <http://www.businessstoday.com.mt/2002/08/14/focus.html>.

In 2003, some *burdnara* complained that existing enforcement rules needed to be improved, as it would otherwise be difficult for the General Retailers and Traders Union (GRTU) to ensure that outsiders would not be allowed to haul cargo to the Freeport without a *burdnara* licence¹⁶⁸⁶.

1325. In 2003, the ship owner Sea Malta criticised the inflexibility of port workers, who forced its vessel the m/v Maltese Falcon to spend 21 hours in port on Monday because they were not available to handle cargo. Sea Malta said the ship made port at the scheduled time but because all port workers had been engaged on other ships, there was none available to work on the Sea Malta vessel. "Shortage of berthing space for a ship the size of the Maltese Falcon has further compounded the state of affairs at Laboratory Wharf," Sea Malta said. The company said the vessel had completed the weekly voyage between Tunis, Marseilles, Genoa and Malta. Due to the activity in Grand Harbour at the time, the ship was allocated a berth at around 2 p.m. but there were no gangs of port workers available to offload and load the vessel with exports. The ship owners added:

Although Sea Malta had all the necessary crew, equipment and tug masters available to effect its own direct cargo operation, the current port regulations prohibited them from carrying it out even though the port workers were unavailable. Had the port workers been flexible, they could have easily sent someone to oversee the operation being performed by Sea Malta staff and get paid as if they did it themselves.

Because of this "ridiculous situation", 53 trailers and 24 containers with a mixture of cargoes, ranging from perishables to hazardous chemicals, were stranded on board. The only concession was to allow ashore a truck with livestock. According to Sea Malta, this also meant that the ship lost the carriage of cargo usually loaded on Monday to Genoa and Tunis, with loss of revenue to the Maltese line. Efforts to find a solution proved futile. This meant a delay of 21 hours. The ship owner further commented as follows:

It is such absurd situations with substantial loss of revenue to ship owners which prompted the European Union to change port regulations to allow crew members to effect discharge operations.

He added that port workers had been intransigent and impractical and that Sea Malta strove hard to operate on a punctual timetable because several members in local industry worked on the just-in-time concept, having goods delivered to them only as they needed them at the eleventh hour. Trade union GWU said it was not the workers' fault that none were available at the time because they were engaged on other duties. It added it wanted to extend its sympathy to Sea Malta but argued that the EU's proposal to liberalise work at the ports was being opposed by many European unions¹⁶⁸⁷.

¹⁶⁸⁶ X., "GRTU achieves agreement on burdnara issues", *Times of Malta* 3 March 2003, <http://www.timesofmalta.com/articles/view/20030303/local/grtu-achieves-agreement-on-burdnara-issues.155339>.

¹⁶⁸⁷ X., "Sea Malta complains about port workers' inflexibility. Maltese Falcon delayed 21 hours in port", *Times of Malta* 26 February 2003,

1326. In the course of negotiations on Malta's accession to the EU in 2004, two issues related to port labour attracted special attention.

First of all, it was agreed that the licence issued to *burdnara* simply grants the individual or undertaking a 'security-pass' to a restricted port area and does not in itself prevent EU hauliers from operating in Malta. This meant that the existing situation with regard to the licensing of *burdnara* including their limited number remained unaltered after accession. A 2006 attempt to widen the system of granting operator licences so that all cargo handlers would have to apply for a permit met with resistance from the *burdnara* and GRTU. The *burdnara* reiterated that although licenses are limited to a set number, this does not make the business a closed shop or a monopoly¹⁶⁸⁸.

Secondly, accession talks focused on the registration of port workers. In a draft version of the National Programme for the Adoption of the *Acquis*, the Maltese Ministry of Foreign Affairs presented the issue as follows:

*[...] port work is executed within a monopolistic set up notwithstanding the fact that terminal operators use their own employees for the handling of heavy plant. Therefore such port services may not be fully in line with EU competition rules*¹⁶⁸⁹.

During negotiations in the area of free trade in services, attention focused on the right of registered port workers to pass on their exclusive permit to their descendants, by inheritance. However, inheritance rights have not been given since the early 1990s. The issue concerned those who still had this right and whether they would be able to retain it in view of EU law. On this point, Malta had originally requested a transitional period to allow for the phasing out of the inheritance scheme applicable to the port workers' pool, thereby maintaining the right of the workers to pass on their permit to their descendants (inheritance scheme). The issue was solved when it was agreed that a joint-registration system would enable those workers who still had the inheritance right to be jointly registered with their next descendant in line. When it was agreed that Malta would introduce competitive recruitment for new vacancies while preserving

<http://www.timesofmalta.com/articles/view/20030226/local/sea-malta-complains-about-port-workers-inflexibility.155803>. In 2005, Sea Malta was liquidated after a failed privatisation bid.

¹⁶⁸⁸ See Debono, M. and Farrugia, C., "Strike at port over new cargo tariffs", *Eironline* 25 September 2006, <http://www.eurofound.europa.eu/eiro/2006/07/articles/mt0607029i.htm>; Depasquale, I., "Negotiations closed on Transport", *Aggornat* November 2001, Special Edition No. 5, <http://www.meusac.gov.mt/file.aspx?f=1850>, item 2.2.1; X., "GRTU achieves agreement on burdnara issues", *Times of Malta* 3 March 2003, <http://www.timesofmalta.com/articles/view/20030303/local/grtu-achieves-agreement-on-burdnara-issues.155339>. See also Malta-EU Information Centre, *Question & Answer on Malta & the European Union*, Information booklet compiled by the Malta-EU Information Centre, 2002, 109, where it is noted that *burdnara* was the first Maltese word "to make it to the lexicon of the Brussels bureaucracy".

¹⁶⁸⁹ Ministry of Foreign Affairs, *Malta: National Programme for the Adoption of the Acquis*, 1 September 2000. The second sentence was omitted in the final draft of the National Programme (see Ministry of Foreign Affairs, *Malta: National Programme for the Adoption of the Acquis, as at January 2001*).

the legitimate expectations of existing port workers, the Maltese request for a transitional period was withdrawn. This decision and the announced introduction of a competitive recruitment for port workers' vacancies were welcomed by the Council of Ministers¹⁶⁹⁰. Interestingly, the discussions on registered port workers took place during negotiations on free movement of services¹⁶⁹¹, an indication that the Negotiating Parties were of the opinion that the freedom to provide services effectively applies to port labour¹⁶⁹².

Also with a view to EU accession, an express nationality requirement for tallymen was removed in 2004¹⁶⁹³.

1327. Still in 2004, Malta Freeport was privatised through the granting of a concession to CMA-CGM¹⁶⁹⁴.

In the same year, trade union GWU declared an industrial dispute at the Malta Freeport after the Government refused to consider the union's demand for a major pay increase. The Government deemed the proposed level of pay, which is three times the national average, to be exorbitant. While port workers were paid different rates for different jobs, Freeport management proposed to pay them a set wage. On the other hand, GWU insists they should be paid a fixed rate per container. While wage levels are beyond the scope of the present study, it is interesting to note that changing current work practices was another issue of contention between GWU and Freeport management. Freeport management argued that work practices were "archaic" and drastically reduced the organisation's competitiveness vis-à-vis similar ports on the continent. Management was pushing for more flexible shiftwork. Meanwhile, UHM was negotiating a separate collective agreement for its 500 members at the Freeport. These workers' collective agreement expired in June 2003. UHM was urging government to guarantee Freeport workers' jobs. UHM also insisted that the new agreement should enhance the personal life of Freeport workers though fixed shiftwork. However, due to the fluctuating nature of the work, Freeport management believed that such a rigid system would not be conducive to efficient work. It thus proposed that 65 per cent of the shifts be fixed and 35 per cent flexible. This, it argued, would ensure the efficiency of the port while alleviating workers from too much pressure when there is a high workload¹⁶⁹⁵.

¹⁶⁹⁰ See Depasquale, I., "Negotiations closed on Transport", *Aggornat* November 2001, Special Edition No. 5, <http://www.meusac.gov.mt/file.aspx?f=1850>, item 2.2.2; Pirotta, F., "Free trade in Services: What does it mean?", *Aggornat* Special Edition No. 2, July 2001, 3; see also Council of the European Union, "I" Item Note of 30 May 2001, 9307/01 ELARG 122.

¹⁶⁹¹ See Association between the European Community and Malta, *Agreed Minutes of the EC-Malta Association Committee of 9 July 2001*, Brussels, 10 April 2002, CE-M 602/02, 8.

¹⁶⁹² On the latter issue, see *supra*, para 202.

¹⁶⁹³ See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 40.

¹⁶⁹⁴ See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 66.

¹⁶⁹⁵ Debono, M., "Freeport workers demand higher wages", *Eironline* 5 October 2004, <http://www.eurofound.europa.eu/eiro/2004/10/inbrief/mt0410101n.htm>.

1328. In 2005, Charles V. Schembri, Executive Director for Ports of the Malta Maritime Authority gave an assurance that the Maltese ports are open to all shipping, that the Maltese legal system grants a right of establishment in Malta and that the legislation is consonant with the EU acquis and based on international best practices¹⁶⁹⁶.

However, he also mentioned the exclusivity enjoyed by most service providers for reasons of economies of scale as a critical issue, and stated that most service providers are subject to law that is "cumbersome to implement", hence the existence of numerous *ad hoc* agreements. He advocated *inter alia* a better regulation of exclusive service providers, an upgrading of the labour force at all strata through education and training, the enactment of basic port legislation, the establishment of service providers in legal entities that would conclude service contracts with terminals, authorising terminal operators to employ people of their choice and forfeiting services that are not required by terminals even if that would mean a loss of earnings¹⁶⁹⁷.

In another presentation, the Executive Director for Ports mentioned the following labour issues:

- Diverse "service providers" entities often enjoying legislative or time-honoured exclusivity
- No surplus labour
- Educated workforce, flexible, multi-disciplined and innovative
- High remunerative regime¹⁶⁹⁸
- A restructuring process is necessary
- Retention of existing job security
- Conscious that the ports require to retain their competitiveness vis-à-vis transshipment operations in view of cut-throat competition from existing and emerging neighbouring ports
- Being small is beautiful but could be problematic
- Given limited economies of scale, often one has to deal with exclusive service providers
- Ports are the "life link of the islands"
- Having just two ports engaged in international trade requires that supply of services is uninterrupted
- The imposition of reforms could lead to the closure of ports putting the economy at a standstill and jeopardise jobs
- Drastic measures could mean the loss of skilled labour, a long term learning curve for new recruits, additional expenses in training, congestions and loss of contracts¹⁶⁹⁹.

¹⁶⁹⁶ Schembri, C.V., "Malta: Appraisal of Port Reform. A Gap Analysis and Way Forward", Presentation delivered at the Euromed Training Seminar on Port Reform, Marseilles, 26-30 September 2005, <http://www.euromedtransport.org/image.php?id=1479>, 6.

¹⁶⁹⁷ Schembri, C.V., "Malta: Appraisal of Port Reform. A Gap Analysis and Way Forward", Presentation delivered at the Euromed Training Seminar on Port Reform, Marseilles, 26-30 September 2005, <http://www.euromedtransport.org/image.php?id=1479>, 9-11 and 13.

¹⁶⁹⁸ In 2004, mention was made of a level of pay which is three times the national average. See Debono, M., "Freeport workers demand higher wages", *Eironline* 5 October 2004, <http://www.euromedtransport.org/eurofound.europa.eu/eiro/2004/10/inbrief/mt0410101n.htm>.

The author went on to describe the cautious approach taken that has rendered the Maltese ports successful:

- *A long process of persuasion explaining the benefits of gradual change*
- *The notion that earnings could increase with increased volumes (transshipment) that otherwise would go to other ports*
- *Introduction of training schemes and developing a sense of belonging*
- *Gradually introduce flexibility in number of gangs, allocation of port work, interoperability between sectors, discipline*
- *Realisation that added-value cargo operations have to be and remain competitive*
- *Certain services that may not be required by a private operator have to be forfeited¹⁷⁰⁰.*

Finally, Mr Schembri outlined "The Way Forward" in the following terms:

- *Determine a practical operational regime within a "terminal operator" management model*
- *Streamline operations through assimilation of sectors*
- *Encourage various service providers to establish themselves in legal entities that could conclude service agreements with terminal operators under contract law*
- *Authorise such legal entities for determined periods subject to qualitative criteria and obligations*
- *Determine services that are no longer required, provide retraining for redeployment*
- *Determine which services are subject to SGEIs [i.e. Services of General Interest] that stand to benefit the islands if exclusivity were ascertained through a selection process¹⁷⁰¹.*

1329. In 2006, the media exposed the high cost of operations at Maltese ports, which were caused by the monopolistic market structure. The following report provides interesting background information on the situation before the 2007 reform:

A typical bill showing the costs incurred to transport a container from ship to warehouse could easily run up to Lm300.

A bill seen by MaltaToday for the handling of a 40-foot container issued in May 2006, lists the various charges owed to different agencies, monopolies and categories of

¹⁶⁹⁹ Schembri, C.V., "Case Study: Maltese Port Reform Experience towards the EU Acquis", Presentation delivered at the Euromed Training Seminar on Port Reform, Marseilles, 26-30 September 2005, <http://www.euromedtransport.org/image.php?id=1478>, 21-22.

¹⁷⁰⁰ Schembri, C.V., "Case Study: Maltese Port Reform Experience towards the EU Acquis", Presentation delivered at the Euromed Training Seminar on Port Reform, Marseilles, 26-30 September 2005, <http://www.euromedtransport.org/image.php?id=1478>, 23.

¹⁷⁰¹ Schembri, C.V., "Case Study: Maltese Port Reform Experience towards the EU Acquis", Presentation delivered at the Euromed Training Seminar on Port Reform, Marseilles, 26-30 September 2005, <http://www.euromedtransport.org/image.php?id=1478>, 24.

workers operating at the port, each taking their cut from the Lm300 an importer has to pay.

Back in 2001 a study conducted by the Malta Development Corporation had established that an importer has to pay Lm35 to port workers. This includes a levy of Lm15 on each container to finance the port workers' pension and contingency fund. Since 2001 there have not been any changes in legislation and charges remained practically unaltered.

A typical bill shows that 82 per cent of the costs are paid in charges within the port itself. Only 18 per cent of the costs are paid to cargo haulers who transport merchandise from the port to the warehouse. [...]

Shipping agents are responsible for 36 per cent of the charges in what are known as FIOS (Free in Out Stowed) fees. It is the shipping agent who then [sic] pays the various other stakeholders in the port.

These FIOS charges are incurred in moving containers from the vessel's hold to the ship's ramp. Such charges include costs related to the Port Worker Scheme as well as costs related to the shore foreman, tally clerks, overtime allocation and customs (table 2).

Yet Shipping Agents also make their own profit margin. According to the MDC's 2001 estimate shipping agents get a generous Lm20.50 on each 40 foot container.

26 per cent of costs at the Freeport and 34 per cent of the costs at Grand Harbour end up in the Cargo Handling Company's coffers.

These terminal handling costs are related to the pulling of the cargo from the vessel's ramp to stack. There are also Cargo Handling Company charges for the shifting of the containers to quay and then to stack.

Strangely enough it costs about Lm17 more to transport goods out of the Grand Harbour than to transport goods from the Freeport due to double charging.

At the Grand Harbour, importers have to pay a Lm10 charge on heavy lifts. But since Cargo Handling does not possess any such lift, they also have to pay an additional Lm12 to Salvu Meli Ltd for the unloading of containers on trucks.

Protagonists at the port

The main players at the port are the Malta Maritime Authority, shipping agents, port workers, the Cargo Handling Company and cargo haulers.

The Malta Maritime Authority which acts as a regulator of this sector also imposes its own charges on berthing and pilotage. It also administers the port workers pension fund.

The 300 strong port workers are the only persons in Malta licensed to unload merchandise from ships at the port.

They are effectively self-employed workers whose cut from the costs are enshrined in the Port Workers Regulations.

Malta is not unique in this respect as in many European ports stevedores enjoy similar monopolies. Safety reasons are often cited as justification for keeping this monopoly.

Yet advances in shipping and port handling such as pumping cement in silos have not reduced costs in Malta but only relieved port workers of part of their work.

Their work now mainly consists of lashing containers to stabilise them while they are being lifted - a difficult and potentially risky job which comes with a handsome reward that sees most port workers earning between Lm15,000 and Lm18,000 annually.

Port workers are engaged by Cargo Handling Company Ltd, a company formerly owned by the General Workers Union. The GWU's union monopoly on cargo handling was officially ended after the government issued a call for tenders for this service.

The GWU's bid to retain its hold in the port by teaming up with the Hili Group failed as the union was not among the two companies short-listed for the contract. The two short-listed consortia are La Valletta Terminal Co (Malta) Ltd, which is made up of Salv Bezzina & Sons Ltd, Salvu Meli & Sons Ltd and Joseph Paris and TF Shipping Agencies Ltd which consists of Tumas Group Company Ltd, Portek Ports (Mauritius) Ltd and Portek International Ltd.

This was a hard blow for the GWU's finances and strategic strength in the country.

But according to industry sources, the new company, which will be taking over in June will not be able to lower charges if other port charges are not reformed.

A small number of shore and ship foremen-numbering less than 30 also take their cut from any container entering Malta. Ship foremen get a Lm5.40 cut on each container while shore foremen get Lm1.90.

Cargo Haulers, known as burdnara are also granted a licence which effectively gives them a security pass to a restricted port area to load their trucks with merchandise. While some industrialists lament of cartels in this sector, haulers insist that there is stiff competition in this sector which drives prices down.

Business leaders react

The Malta Employers Association, the GRTU and the Federation of Industry are all united in calling for a radical reform of work practices at the port.

According to GRTU Director General Vince Farrugia the port structure is laden with monopolies.

"These monopolies are not consonant with European structures," Farrugia told MaltaToday. Farrugia insists that the GRTU has always spearheaded the drive to reform out dated practices at the port.

Farrugia would not single out port workers as the sole culprits. He even adds the Malta Maritime Authority itself to the list of monopolists in the port.

"Since it replaced the Department for ports the MMA has increased costs."

Farrugia absolves cargo haulers, who are represented by the GRTU from any charge of monopolistic practices.

"Competition exists between cargo haulers. Although they possess a licence, importers are free to load merchandise on their own trucks. They are not forced to rent the services of a hauler as is the case with port workers and others at the port," insists Farrugia.

FOI Director General Wilfred Kenely considers removing archaic and inefficient work practices at the port as a pressing need for the country. He also considers exorbitant port charges as an unnecessary hurdle to Malta's export oriented industry.

“At present, the local port ranks as one of the most expensive operations when compared to other ports in Europe, adding additional pressures on our already fragile competitiveness,” says Kenely.

According to Kenely, the global market place has become so sensitive to price movements that firms exporting goods from Malta stand to lose markets if they only attempt to pass on our ports’ inefficiencies to their overseas clients.

As regards the port workers’ monopoly, Kenely points out that the current legislation dates back to the post war era and does not reflect today’s reality in terms of the cost of services against the actual operation.

“The FOI looks forward to having a more professional approach by allowing the new operator to conduct its business on more modern market-driven operation.”

The Malta Employers Association also concurs that outdated port monopolies and work practices are stifling competitiveness.

“The interests of the few should not prevail over those of the many,” insists Director General Joe Farrugia.

Competitiveness at risk

The claim that port charges are eroding Malta’s competitiveness is supported by an international cost comparison of handling imports from ship to port gate. [...]

The Malta Freeport emerges as more expensive than European ports like Marseille, Barcelona, Rotterdam and Antwerp. For 20-foot containers, port charges in Malta are three times higher than those in Antwerp and twice higher than those in Rotterdam. Costs in Marseille and Barcelona are 50 per cent lower. When it comes to 40-foot containers Malta is five times more expensive than those in Antwerp and more than three times as much those in Rotterdam. Costs are also more than double those in Barcelona and Marseille¹⁷⁰².

1330. Also in 2006, another newspaper article reported on practices at a major grain terminal in the port of Valletta:

“It’s nothing but daylight robbery,” Charles Demicoli, the chairman of the Kordin Grain Terminal says about the charges for port handling services. “The worst thing is that at Kordin, where we don’t use any of the workers to offload our grain, we have the machinery to put it straight into the silo, and yet we still have to pay them.”

Port reform is on the agenda, but what changes can be expected are yet to be known. People like Demicoli want radical change. The exorbitant charges paid to the dynasty of port workers, which own a monopoly of the service on the island, are among the changes many businessmen and importers want to see in the coming reforms.

What is ironic is that the workers, who are in fact “self-employed”, are by law paid a national insurance and pension fund contribution by anybody who has to employ their

¹⁷⁰² See Debono, J., “The costly business of using a Maltese port”, *Malta Today* 14 May 2006, <http://mt-archive.dev.alert.com.mt/2006/05/14/t6.html>.

services. "When we unload grain off a ship, we can only employ the port workers there," Demicoli says, "and then we get to pay the charges, an administration fee to the Malta Maritime Authority, including the rate of national insurance and a contribution to their pension fund."

These include those fees which go to what is called the 'pensions and contingency fund' which was set up in 1973. Nowadays it amounts to some Lm10 million, while port workers are also guaranteed their pensions by the state.

That means a levy of 32c5 each time for each tonne of cargo that is loaded or unloaded. An anomaly means that the fee is being charged twice, 65c, for unloading from the ship to the quay, and then loading the cargo onto the rail from where it will be collected. The 65c goes to the pension fund.

What's more: it is the government's Malta Maritime Authority that actually collects the pension fund "contribution" it redistributes to workers who are self-employed. A lot of 'hands' tend to be involved in the process of port handling in Malta: there are foremen for both on board ships and those on the ground, tally clerks physically check the freight being loaded off the vessel when today most freight arrives in containers that are never checked. And of course, port workers – there are always seven port workers on hand even if you don't need as many workers. This is the rigid reality of port services in Malta.

What many ask of the reforms is how much of the charges currently in force will become reasonable, and of course, whether the anomalies will be removed. A spokesperson for Competitiveness and Communications Minister Censu Galea says that at this stage of discussions there is an agreement between the parties that no information is to be divulged on the ongoing discussions.

Costs are considerable for employing the port workers, whose licences are inherited by their children from generation to the other. Foremen, for example, are paid a tariff to supervise the work irrespectively of whether their services are employed by the ship's agent. That means shore foremen will be paid 2c5 for each tonne of cargo, whether or not their service is required or not.

Several agents refuse to pay for the service when it is not even made use of. Others claim they have used 'other methods' in order to have as many as they require on demand.

Port reform is a big deal for the 300 or so workers who are entering into negotiations with the government on the issue. All of them General Workers Union members, they have already clashed with the union since taking on the services of the GWU's former legal counsel George Abela, kicked out of the union after openly declaring he would no longer file court cases he did not believe in¹⁷⁰³.

The same operator reiterated his criticism in a second media report published shortly afterwards:

Case in point is the reigning port chaos, where a multitude of hands have been siphoning off all sorts of fees from importers making a travesty of the word

¹⁷⁰³ Vella, M., "Port workers get 65c per cargo tonne for their pension fund", *Business Today* 3 May 2006, <http://www.businesstoday.com.mt/2006/05/03/focus.html>.

'competitiveness' – which without any hint of irony happens to be the official name of the ministry in charge of this racket.

"It's nothing but daylight robbery," Demicoli said a couple of weeks ago about the port workers' empire which is supposedly in for some drastic reforms.

He was speaking as chairman of Kordin Grain Terminal, the state-owned depository of imported grain and cereals which is billed thousands of Liri for every cargo reaching our shores by port workers and cargo handlers for literally doing nothing.

This is because the grain company has special machinery that unloads the cargo off the ship and transfers it to its silos, and yet it still has to pay the full fees as if cargo handlers were physically unloading the grain in sacks and carrying it to the stores.

Daylight robbery indeed: Kordin Grain Terminal pays Lm1,695 for a 15,000 tonne freight meant for transshipment. If the same cargo is meant for local consumption, then fees soar up to a staggering Lm17,000.

"They're supposed to be a gang of eight workers, but they're never the full complement," Demicoli says. "They're maybe two or three, and all they do is to sweep the ship's hold so that our Bobcat picks up the remaining grain. We're basically paying them for nothing.

"I once wrote to Minister Censu Galea, just to get him to know about the situation. I told him I don't need them and that I can work without them. If I was told I could do without them I wouldn't use them. In fact when we had that famous 'Issa Daqshekk' strike a couple of years ago we still went ahead with our work without any port workers. I had received a phone call from the director of ports who told me that I was breaking the law. I told him I knew and I intended to go on breaking it. About 30 minutes later I received a phone call telling me to go ahead."

Demicoli does not disclose who phoned him the second time, but now Minister Censu Galea wants to break the racket, or at least make fees more decent.

"I don't know how it is being carried out," Demicoli says about the impending port reform. "I know there were some meetings between very important stakeholders but as usually happens in this country nobody says a thing. I would say port workers are essential for the country but there should be competition and they should only be used when they are needed. Otherwise inflation will keep going up with these kind of prices [sic].

I import grain myself at Federated Mills. It is costing me thousands more to import, for nothing, because Kordin Grain Terminal's costs ultimately go on to the clients."

It is one of those mammoth tasks for Galea, dismantling a labyrinthine dynasty that has crippled Malta's business for ages, but Demicoli believes the minister can manage it.

"There needs to be either competition or a regulator," he says. "If you're going to operate as a monopoly you need a regulator. There's a regulator for everything how can you not have a regulator for this crucial sector?"¹⁷⁰⁴

¹⁷⁰⁴ Schembri, K., "Fading blue", Malta Today 14 May 2006, <http://mt-archive.dev.alert.com.mt/2006/05/14/interview.html>.

1331. In the 30 years prior to 1 July 2006, cargo handling services at Valletta were provided on the basis of exclusivity by Cargo Handling Company Ltd. which was wholly owned by the General Workers Union (GWU). In 2006, it lost its position, however, after the Government issued a call for tenders. GWU's bid to continue its activities failed¹⁷⁰⁵ and a concession to manage and operate terminals at the port was granted to Valletta Gateway Terminals (VGT), a joint venture of a Maltese and a Singaporean company, which obtained the right to handle cargo all the way from the hold to the gate, which was a change from practices of the past. The previously operating Cargo Handling Company did not unload certain categories of cargo from the ships, essentially because it did not have the capacity or equipment to do so. As a result, this business was subcontracted to the hauliers – the *burdnara*. VGT, however, is handling this itself¹⁷⁰⁶. The latter is now responsible for the handling of containers, trailers, breakbulk, vehicles and other cargoes at the port of Valletta.

1332. In the same period, the Ministry of Finance, Economy & Investment (MFEI) published *The Industry Strategy for Malta 2007-2010* which, together with the National Strategic Plan for Research and Innovation 2007-2010, provided a framework for guiding innovation and research policies and measures.

The Industry Strategy comprised a chapter on the reform of the transportation and logistics services chain (Chapter 06.7.2), which highlights the high transportation costs of raw materials to Malta and the exportation of the final product. In this regard, the Government announced various initiatives including the overhauling of "archaic operational labour practices".

In this respect, the Industry Strategy stated:

[...] it is recognised that significant changes to labour practices are particularly required in the provision of services given by port workers, foremen of port workers, and tally clerks so as to increase efficiency and cost-effectiveness within our ports. One important initiative in this regard is the introduction of a Certificate of Competence issued by the Malta Maritime Authority for a specific category of port work after obtaining a Certificate of Completion of training from a recognised training institution, such as the MCAST. Terminal operators will henceforth be obliged to engage only individuals in possession of a Certificate of Competence in order to provide port work. It is also intended to provide clearer definitions of work which may be considered to fall

¹⁷⁰⁵ Reportedly, GWU's loss of the contract resulted in the loss of a major source of revenue for the union (see Debono, M. and Farrugia, C., "Union dispute in the wake of port restructuring", *Eironline* 30 October 2006, <http://www.eurofound.europa.eu/eiro/2006/09/articles/mt0609039i.htm>). One high ranking employee with the Cargo Handling Company who had overall control of the company's operations and who had joined another consortium that expressed its interest to obtain the new concession, was unfairly dismissed by his employer (see Johnston, W., "Ex-GWU subsidiary employee awarded €8,000 for unfair dismissal", *Times of Malta* 2 February 2010, <http://www.timesofmalta.com/articles/view/20100202/local/ex-gwu-subsiadiary-employee-awarded-euro-8-000-for-unfair-dismissal.292309>).

¹⁷⁰⁶ X., "Seeking Efficiency -The Malta Economic Update interview to Mr Peter Darley", 5 July 2006, http://www.vgt.com.mt/News/tabid/803/ModId/1851/CategoryId/0/CatalogID/1084/MainView/ViewOne/View/0/Paging/2/cat_fk/0/language/en-GB/Default.aspx.

under the regulation of prescribed port services. The ultimate objective of these port reform discussions are to bring about a culture change in the present archaic work practices in the ports, to ensure that services are paid only where they are rendered, to achieve value for money and to make Malta's ports more competitive, particularly with respect to rival Mediterranean ports. It is also worth noting that the former delivery clerks group has been assimilated with the staff of previous cargo handling terminal operator in the Port of Valletta and who are now all employed by the new terminal operator in the Grand Harbour following the award of the cargo handling concession tender in June 2006.

Further initiatives in this regard include the setting up of a consultative committee where industry players, port users, terminal operators, exclusive services providers and the Malta Maritime Authority as regulator would have a forum for discussion aimed at continually improving and updating port labour legislation and practices. It is also intended to set up an independent appeals board in order to provide remedies against decisions taken by the regulator. In addition, discussions are also under way with the port workers on the necessary reforms regarding the Pensions and Contingency Fund which is currently administered by a Government-appointed committee¹⁷⁰⁷.

1333. In June 2007, after four years of negotiations, a port reform agreement was signed between the Malta Dockers' Union (MDU), the Malta Maritime Authority (MMA) (now Transport Malta) and the Ministry for Competitiveness and Communications. Reportedly, main innovations included a net decrease in port expenses regulated by law which consisted of amounts paid to port operators and sums paid to port workers, an introduction of minimum levels of service in order to secure efficiency and a faster service provided by licensed port workers, an agreement between port workers and port operators regarding discipline procedures and cautionary warnings, a reform in the regulation of port workers' licences to ensure that the number of workers who have a licence truly reflects the demand for their service in port operations, and a change in the manner of how the Fund for Contingency and Pensions is managed¹⁷⁰⁸.

The text of the agreement, which only applies to registered port workers, was not made public. In this regard, Transport Malta informed us that the agreement contains confidential financial information on individual persons. Some information on the content of the agreement is however included in Port Circular No. 03/07 of 2 July 2007 issued by the Malta Maritime

¹⁷⁰⁷ X., *Enabling Industry to Achieve High Value-added and Productivity Growth. Industry Strategy for Malta: 2007-2010*, <http://www.doi-archived.gov.mt/en/archive/Budget2007/engl.pdf>, 60-61.

¹⁷⁰⁸ On the Agreement, see Attard Gialanze, S., "Positive reactions from industry on port workers agreement", *Business Today* 4 July 2007, <http://www.businesstoday.com.mt/2007/07/04/focus.html>; Farrugia, C. and Debono, M., "New collective agreement for port workers signed", *Eironline* 20 August 2007, <http://www.eurofound.europa.eu/eiro/2007/07/articles/mt0707039i.htm>; Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 71-79; see also Debono, M. and S. Rizzo, "Malta: Industrial relations developments in Europe 2007", *Eironline* 23 September 2008, <http://www.eurofound.europa.eu/eiro/studies/tn0803029s/mt0803029q.htm>. The 2007 agreement is also referred to as a "collective agreement": see for example Farrugia, C. and Debono, M., "New collective agreement for port workers signed", *Eironline* 20 August 2007, <http://www.eurofound.europa.eu/eiro/2007/07/articles/mt0707039i.htm>.

Authority (now Transport Malta) to the employers of port workers. According to this Circular, the objective of the reform agreement was to implement a number of recommendations put forward by industry players and stakeholders to further enhance the provision of services in ports in Malta within an efficient, cost-effective and competitive environment and to further ameliorate the conditions of work of port workers. The agreement required the amendment of the Port Workers Ordinance and the Port Workers Regulations and affected the constitution of a number of boards and committees. The principle that port work may only be carried out by licensed port workers remained unaltered. The port workers continued to form one homogeneous section and, in conformity with legislation, to be involved in the loading, unloading and shifting of cargoes from ship to shore, storage facilities and open stack and vice versa and in the provision of other ancillary services. The agreement further stipulated that the working hours for the provision of port work shall be 24 hours, 7 days a week and in accordance with existing legislation. Port work was to be organised on the basis of 4 shifts. Orders for the provision of labour continued to be made to the Office of Port Workers of the Ports Directorate by employers of port workers / terminal operators. The order in which port workers are supplied now became, save as otherwise provided, the working priority of the ships as submitted by the employers of port workers / terminal operators. Terminal operators were allowed to employ personnel of their choice to carry out specific port work if the number of port workers in the pool was not sufficient. The 2007 port reform also introduced the concept of Service Level Agreements as an instrument that could bring the organisation of port work in line with the demands of the industry. As regards tariffs of port workers, the agreement stated that tariffs for the handling of domestic cargo would continue to be regulated by the Malta Maritime Authority (Transport Malta) while the tariff for transshipment cargo would be freely negotiated between the port workers and the terminal operator. The agreement provided a basis for a significant reduction of existing tariffs and was said to reduce operation costs at Maltese ports by 20 per cent. The overall reduction in tariffs included:

- 20 per cent for trailers imported through Valletta and containers imported through Valletta and the Malta Freeport;
- 28 per cent for cars;
- 29 per cent for wheat;
- 50 per cent for cement and aggregate;
- 100 per cent for bitumen, accompanied cars and coaches¹⁷⁰⁹.

Finally, the administrative surcharge on the hiring of pool workers was abolished, as well as the differentiation between tariffs for Government silos and other silos, and the agreement set a new tariff for contributions to the Pensions and Contingency Fund (P&CF)¹⁷¹⁰.

It would appear that most of the innovations agreed upon in 2007 were indeed implemented through the adoption of amendments to the relevant laws and regulations.

¹⁷⁰⁹ According to Regulation 3 of the Port Workers Regulations, as amended in 2007, the Ordinance does not apply to bitumen in bulk, accompanied motor vehicles and accompanied vehicles of a cargo capacity of 10 tons or less, which would appear to explain the 100 per cent reduction.

¹⁷¹⁰ In a newspaper interview MDU president Joe Saliba stated that following the reform "port workers would be getting some Lm 7.4 million [17,24 million EUR] from the Pensions and Contingency Fund" (Fenech, N., "Dock-side reformers", *Times of Malta* 15 September 2007, <http://www.timesofmalta.com/articles/view/20070915/local/dock-side-reformers.5038>).

In 2008, a similar reform agreement was reached with the foremen¹⁷¹¹. Yet other agreements covered the tally clerks¹⁷¹² and the delivery clerks¹⁷¹³.

- *Regulatory set-up*

1334. Today, in legal terms a distinction must be made between no fewer than 9 different categories of port workers.

First of all, a number of workers are registered general port workers, who form a pool and who are employed under the specific and quite detailed rules contained in the Port Workers Ordinance and the Port Workers Regulations. The registered port workers of Malta are self-employed and receive fixed fees for work performed, which are calculated on the basis of the tonnage or units handled (piecework fees). Transport Malta does not employ port workers but is responsible for the administration of the registered port workers including the allocation of port workers to terminal operators in terms of established roster, to charge the relative fees to terminals, to pay port workers for the work carried out and to finance the pool's administration. The port workers in the pool are only utilised for manual labour (handling of general cargo, lashing, unlashng, trimming, driving of cars).

Secondly, the Maltese port labour legislation identifies as separate categories foremen, 'prospective' port workers, 'eligible' port workers and 'auxiliary' port workers.

A next category, which today represents a majority of port workers in Malta, comprises non-registered workers who are directly employed by the terminal operators under general labour law conditions. These workers mainly perform specialised functions, such as the operation of forklift trucks, gantry cranes and wet and dry bulk handling equipment.

In addition, specific Regulations govern the work of tallymen and baggage handling operators.

Finally, Maltese law gives a specific status to *burdnara* or Cargo Clearance and Forwarding Agents. Their tasks include a number of activities that are closely related to port labour as defined for the purposes of the present study. The *burdnara* are independent contractors but may employ workers of their own under general labour law conditions¹⁷¹⁴.

¹⁷¹¹ See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 79-82.

¹⁷¹² See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 82-85.

¹⁷¹³ See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 85-86.

¹⁷¹⁴ See further *infra*, para 1370. *Burdnara* have also been considered workers engaged in "economically dependent work" (Grech, L. and Debono, M., "Malta: Self-employed workers", 24 February 2009, <http://www.eurofound.europa.eu/comparative/tn0801018s/mt0801019q.htm>).

1335. Below, we shall first of all summarize the specific regime of port workers *sensu stricto*.

The Port Workers Ordinance defines a port worker as (1) a person employed in a port in the provision of services of a temporary nature involving the handling of cargo in the process of loading or unloading cargo on or from a ship, from or to any place on shore; (2) a person so employed or authorised by the Authority or so employed by an employer of port workers to handle cargo in a warehouse; and (3) a person employed in the handling of cargo, as the Minister may from time to time prescribe, from a transit shed or stack or open quay to vehicle or in the consolidation, groupage or dismantling of goods in or from a unit load in a port (Art. 2).

The cargoes referred to in relation to the handling thereof from transit shed or stack on open quay to vehicle (*i.e.* item (3) in the previous paragraph) are:

- (1) cereals, canary seed, sugar, seed potatoes, salt, in bags;
- (2) frozen meat;
- (3) timber;
- (4) liquid gas cylinders;
- (5) bitumen and asphalt in drums;
- (6) any substances in bags or in drums for use in the oil industry;
- (7) in an enclosed port area -
- (8) the packing and unpacking of containers; and
- (9) the consolidation of unit loads for loading on board a ship (Reg. 21 of the Port Workers Regulations).

1336. A port within the meaning of the Port Workers Ordinance means a port for the purposes of the Authority for Transport in Malta Act, and includes a warehouse and any such inland depot and any such other area where goods are handled to form or to dismantle unitised cargo as may be declared by order of the Minister (Art. 2 of the Port Workers Ordinance).

The Authority for Transport in Malta Act defines a port as "the place declared to be a port by or under any law, and may include a yachting centre provided it is so declared under this Act or any other law" (Art. 2 of the Authority for Transport in Malta Act).

Under the Ports and Shipping Act (Art. 3(1), the competent Minister may, after consultation with Transport Malta, by order, *inter alia*, declare any place together with any land area in Malta to be a port, or a yachting centre, within the meaning of the Act, and establish the limits of any place declared to be a port, or yachting centre. However, the same Act declares the following places to be ports:

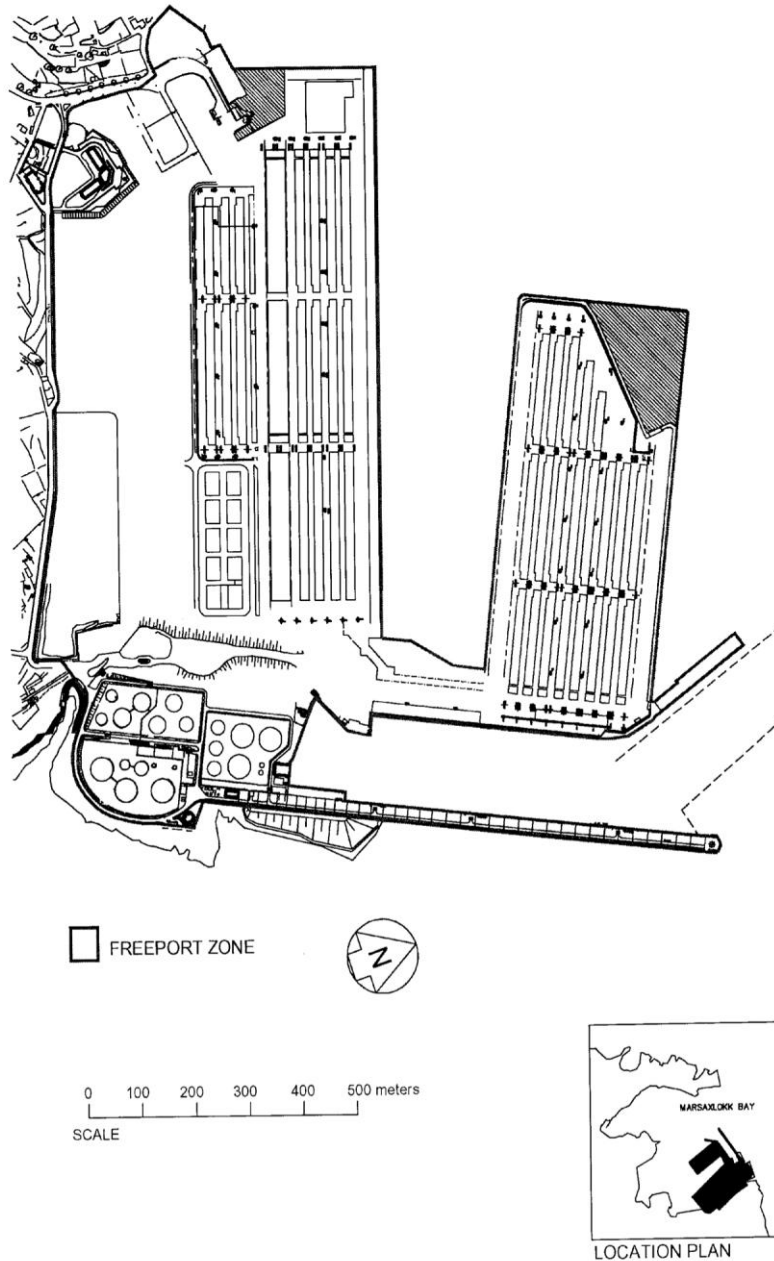
- (1) the Grand Harbour of Valletta (with the exclusion of certain areas);
- (2) Marsamxett Harbour;

- (3) Marsaxlokk Harbour;
- (4) Saint Paul's Bay;
- (5) The landing places at -
 - (a) Ramla-il-Bir;
 - (b) Iċ-Ċirkewwa
- (6) Mgarr, Gozo (Art. 3(2) and the Schedule of the Ports and Shipping Act).

Practically, port labour rules are implemented in those ports where there is loading, unloading or transshipment, predominantly in the Grand Harbour and the Freeport terminal.

A delimitation of the Freeport of Marsaxlokk is provided in the Schedule to the Malta Freeports Act.

Figure 104. The Freeport Zone at the port of Marsaxlokk as defined in the Schedule to the Malta Freeports Act.



1337. An employer of port workers is defined in the law as a person authorised or licensed to provide services including the loading, unloading, transhipment, storage and the movement of general cargoes and other materials in a port, including a terminal operator (Art. 2 of the Port Workers Ordinance).

1338. The Port Workers Ordinance empowers the Minister to exclude certain types of port work from its scope (Art. 20 of the Port Workers Ordinance).

On that basis, the Port Workers Ordinance was declared inapplicable to the handling of:

- (1) cargo transported between the Islands of Malta and Gozo and Comino;
- (2) coke or coal in bulk other than bagged coke or coal;
- (3) oils or wines in bulk;
- (4) cattle, horses or other animals;
- (5) fish from fishing vessels;
- (6) bitumen in bulk;
- (7) accompanied motor vehicles;
- (8) accompanied commercial vehicles of a cargo capacity of 10 tons or less (Reg. 3 of the Port Workers Regulations).

1339. As we have mentioned¹⁷¹⁵, no registered port workers must be used for the operation of equipment such as forklift trucks, cranes, gantry cranes and specific equipment for bulk handling and for supervision activities. This work can be performed by workers directly employed by a terminal operator. Malta Freeport Terminal, for example, only uses registered port workers for driving tug masters and for unlashings operations. For all other operations, including the handling of gantry cranes, it uses its own personnel¹⁷¹⁶.

1340. The essence of the Maltese port labour regime is laid down in Article 3 of the Port Workers Ordinance which contains three complementary rules.

First of all, no person shall act as a port worker unless he is registered as such with Transport Malta, for which purpose this authority shall keep a register (Art. 3(1) of the Port Workers Ordinance).

Secondly, no person shall employ another person as port worker except in accordance with its provisions. However, in respect of port work involving the handling of cargo in a warehouse, or from or to any place on shore, other than the handling of cargo in the process of loading or unloading of cargo on or from a ship, the Minister may authorise Transport Malta or a contractor to employ persons who are not registered (Art. 3(3)).

¹⁷¹⁵ See *supra*, para 1334.

¹⁷¹⁶ ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 372; see also Schembri, C.V., "Malta: Appraisal of Port Reform. A Gap Analysis and Way Forward", Presentation delivered at the Euromed Training Seminar on Port Reform, Marseilles, 26-30 September 2005, <http://www.euromedtransport.org/image.php?id=1479>, 5.

Thirdly, no port worker shall cause or allow a person to act as a port worker in his stead (Art. 3(4) of the Port Workers Ordinance).

1341. A registration as a port worker is valid for a period of one year (from 1 January until 31 December), but it may be renewed at the end of each period (Art. 3(2) of the Port Workers Ordinance).

1342. The port workers are registered in a Port Workers Register (Reg. 10 of the Port Workers Regulations).

The complement of port workers is established by the Port Workers Board by notice published in the official Gazette. The complement is reviewed bi-annually. If in the intervening period of two years the number of port workers required by employers of port workers is insufficient, the Board shall review the complement to ensure that the number is adequate to meet the requirements of all employers of port workers (Reg. 12(2) of the Port Workers Regulations).

In its determination of the required complement, the Board shall take into consideration the volume of port work, the availability of cargo handling equipment and the introduction of new port operations systems (Reg. 12(3) of the Port Workers Regulations).

The relevant legislation does not use the term pool but the Port Workers Regulations stipulate that all port workers on the port workers register form "one homogeneous section" and shall perform such duties consisting of all work from hold to truck, stacking ground or warehouse or vice-versa (Reg. 12(1) of the Port Workers Regulations).

In greater particular, the Sixth Schedule Port Workers Regulations confirms that all port workers appearing on the Port Workers Register shall form "one homogeneous section" and shall perform port work consisting of or involving:

- (1) the loading, unloading and shifting of cargoes from ship to shore, storage facilities and open stack and vice versa;
- (2) the handling of unitised cargo on a ship, on a quay and in a warehouse, including the lashing, unlash, slinging, unslinging, hooking and unhooking, of cargo in unit loads from ship to quay or stacking ground or warehouse and vice-versa, provided that port work on shore is performed only when it constitutes a continuous operation while cargo is in the custody of Transport Malta or the employer of port workers and, or [*sic*] terminal operator, as the case may be;
- (3) operations under ship's tackle including slinging and unslinging, stowing and stacking on lighters, trailers or other equipment or on quay at ship's side; operations from lighters to quay, from lighters, or quay to stack in warehouse or on quay or stacking ground or on truck or vice versa, including the identification and sorting of

goods to bill of lading shipping marks, the stacking or stowing to such marks as directed by the employer and the provision of drivers for mechanical handling equipment other than for lift trucks and cranes;

(4) shed work when the workers are employed for this work by the Authority or by the employer of port workers as the case may be, provided that they may be required to work on a quay and/or in a warehouse with complete flexibility and without being tied down to specific jobs;

(5) bagging and tying;

(6) the duties applicable to winchman, driver, heavy plant driver, and signalman (Par. 1 of the Sixth Schedule to the Port Workers Regulations).

As registration is only mandatory for port workers performing tasks defined in the relevant laws and regulations, Transport Malta considers the Maltese registration scheme to be (partly) a register within the meaning of ILO Convention No. 137 (which Malta has not ratified). As we have already mentioned¹⁷¹⁷, the workers directly employed by the terminal operators do not have to be registered.

1343. No person shall be eligible to be registered as a port worker unless he or she:

(1) is over the age of 18 and under the age of 45 years;

(2) is examined by a medical board appointed by the Minister and is found to be physically fit for port work;

(3) satisfies the Port Workers Board¹⁷¹⁸ that he or she is in possession of the qualifications, skills and abilities, as may be determined by Transport Malta, to be able to carry out the duties of a port worker;

(4) satisfies the Port Workers Board that he or she is a fit and proper person to be a port worker; and

(5) has never been convicted or has never been declared guilty, of theft or fraud or a criminal offence which, in the opinion of Transport Malta, is deemed to be detrimental to the provision of port work (Reg. 11(3) of the Port Workers Regulations).

In addition, Transport Malta mentions the requirement to possess a driver's licence.

1344. Transport Malta cancels the registration of a person in the Port Workers Register if:

(1) he attains the age of 63 or such lower age as may be prescribed; or

(2) in the opinion of the Port Workers Board, he is no longer a fit and proper person to be a port worker for any cause whatsoever; or

(3) in the opinion of the Port Workers Board, he has absented himself from port work without reasonable cause for such number of days and within such period as may be

¹⁷¹⁷ See *supra*, para 1339.

¹⁷¹⁸ On the Port Workers Board, see *infra*, para 1362.

determined in the approved conditions of employment (Art. 14 of the Port Workers Ordinance).

1345. Upon registration in the Port Workers Register, Transport Malta issues a certificate of registration and a personal identity card to the port worker (Reg. 18(1) of the Port Workers Regulations).

1346. The Port Workers Ordinance sets out a number of basic obligations incumbent on registered port workers. Firstly, every port worker shall, on registration, "be conclusively deemed to have accepted to abide by the conditions of employment" and by further determinations made under the Ordinance. Secondly, every port worker has to report for work at such time and such places as he may be required by the employer or the Authority on the employer's behalf. Thirdly, every port worker shall abide by all such laws and regulations as may apply to the place or to the type of work on which he is engaged. Fourthly, every port worker shall notify the Authority of his absence from work on any day on which he absents himself from work due to injury or sickness and shall forward to the Authority a medical certificate issued by a medical doctor. Fifthly, a port worker shall, saving cases of incapacity through injury or sickness, be at all times available for port work and may not engage in any work or employment which may interfere with this obligation. Finally, in order to ensure safety, increase in efficiency and develop flexibility, it shall be the duty of port workers to undergo periodic training programmes as is considered necessary (Art. 4 of the Port Workers Ordinance).

Registered port workers due for work have to remain available near the offices of Transport Malta until they are allocated work or released. (Art. 10(1) of the Sixth Schedule to the Port Workers Regulations).

Port workers shall work with the tools and equipment provided by their employer (Reg. 8(1) of the Port Workers Regulations).

The terminal operators and other employers of port workers shall provide appropriate insurance cover to hold the port workers not liable for damage to property and third parties provided that such damage is not a result of gross negligence on the part of the port workers (Reg. 21A(7) of the Port Workers Regulations).

1347. The Port Workers Regulations provide for the establishment of a specific register for prospective port workers, called the Prospective Port Workers Register (Reg. 9(1) of the Port Workers Regulations).

The Port Workers Board shall register on the Prospective Port Workers Register any person who requests to be so registered and who satisfies the requirements of the Port Workers Regulations with regard to his eligibility to be so registered (Reg. 9(2) of the Port Workers Register).

Registration in the Prospective Port Workers Register shall lapse if it is not renewed in person at the Authority in the month of January of each year (Reg. 13(5) of the Port Workers Regulations).

1348. Transport Malta indeed maintains another register of those persons who are eligible to become prospective port workers in terms of the Port Workers Regulations. Persons registered on the latter register have to renew their registration, in person, during January of every year (Reg. 9(3) of the Port Workers Regulations).

1349. Vacancies in the complement of port workers occurring through the death or retirement of a port worker shall be filled by the recruitment of port workers from the Prospective Port Workers Register and, if no prospective port workers are available in the said register, existing vacancies shall then be filled through a public call for applications (Reg. 11(1) and Reg. 15(2) of the Port Workers Regulations).

1350. The Maltese rules on port labour set out various priority rights for relatives of registered port workers¹⁷¹⁹.

First of all, eligibility to fill vacancies from the Prospective Port Workers Register shall be limited to the son or daughter, or to the elder from among the sons or daughters, of a port worker who was registered as such on 17 September 1990, and who retires or who is medically boarded out under the provisions of the Port Workers Regulations or who dies, provided that such son or daughter satisfies the Port Workers Board that:

- (1) he or she is a person eligible to fill a vacancy¹⁷²⁰;
- (2) if he or she is an adopted son or daughter, was not over the age of 6 years when adopted;
- (3) he or she has applied to Transport Malta for port work prior to the date on which the vacancy occurs and has renewed in person such registration during the month of January of each successive year¹⁷²¹;

¹⁷¹⁹ See also Regs. 41 and 42 of the Port Workers Regulations on retirement and pension rights which we shall however not discuss in the present study.

¹⁷²⁰ See *supra*, para 1343.

¹⁷²¹ See also Regulation 13(5).

provided further that in the absence of a son or daughter of a retired or deceased port worker who was a port worker in the general cargo stevedores or port labourers section on 10 June 1975, eligibility to fill a vacancy is limited to the brother or sister or to the elder from among the brothers or sisters of such port worker, provided such brother or sister satisfies the Board that he or she is a person eligible to fill a vacancy (see further Reg. 13(1) of the Port Workers Regulations).

The order in which vacancies shall be filled shall be determined by the chronological order of the retirement or medical boarding out or death, but any person being the son or daughter or brother or sister of a port worker who was so registered as on 10 June 1975, and who is registered in the Prospective Port Workers Register and who is still so registered on the day immediately prior to his or her 45th birthday shall on that day be registered in the Port Workers Register, without affecting the rights of other persons registered in the Prospective Port Workers Register (see further Reg. 13(4) of the Port Workers Regulations).

1351. The Port Workers Regulations further provide for the registration in the Prospective Port Workers of the minor son or daughter of a registered port worker who dies while so registered or who retires from port work on reaching retirement age, provided:

- (1) if such son or daughter is over the age of 16 and under the age of 18 years, such son or daughter applies for registration within 1 month from the death or retirement of his or her father, as the case may be, and thereafter renews such registration;
- (2) if such son or daughter is under the age of 16 years on the death or retirement of his or her father, as the case may be, such son or daughter applies for registration within 1 month of attaining the age of 16 years, and thereafter renews such registration;
- (3) the registration of such son or daughter in the Prospective Port Workers Register shall not entitle him or her to compete for the filling of vacancies until such time as he or she reaches 18 years of age and he or she shall, for the purpose of the order in which vacancies are filled, be placed after the person then appearing last on that Register (Reg. 13(6) of the Port Workers Regulations).

A son or a daughter of a port worker who dies as a result of injuries sustained while performing port work or of a port worker between the age of 45 and 55 who is certified to be medically unfit for port work and whose licence is cancelled for this reason, shall be registered in the Port Workers Register, provided that this son or daughter is a person eligible to be so registered (Reg. 16 of the Port Workers Regulations).

A port worker who is over 50 years of age may apply to the Port Workers Board to have his registration cancelled in favour of his son or daughter, and if the port worker was licensed on 10 June 1975, in favour of his son or daughter or brother or sister, provided:

- (a) that the port worker forfeits all rights to a pension or gratuity; and
- (b) the son or daughter is a person eligible to be a port worker (Reg. 17 of the Port Workers Regulations).

However, the Port Workers Regulations also provide that no port worker who is registered in the Port Workers Register shall, on death or retirement or on being medically boarded out, be replaced by a son or daughter or brother or sister as the case may be, provided that:

(1) port workers who prior to 10 June 1975 were licensed to work in the general cargo stevedores or in the lightermen or in the port labourers section, shall continue to be replaced by a son or daughter or a brother or sister, subject to the provisions of these regulations;

(2) port workers who were so licensed as on 23 October 1992, shall be replaced by a son or daughter subject to the provisions of these regulations (Reg. 14 of the Port Workers Regulations).

1352. When Transport Malta determines that a vacancy shall be filled the Board shall, upon the production of such documents and certificates as it may require, register as a port worker in the Port Workers Register a person (1) who is registered on the Prospective Port Workers Register; and (2) who satisfies the requirements of the Port Workers Regulations with regard to his or her eligibility to be so registered, provided that:

(1) if no prospective port workers are available to fill the existing vacancies from the list of persons whose names appear in the Prospective Port Workers Register, the Authority shall refer to the Board the person whose name appears on the register of persons eligible to become a prospective port worker upon the retirement or death of the eldest registered port worker and the date of registration of such person as a port worker shall be anticipated accordingly;

(2) such person satisfies the requirements of the Port Workers Regulations with regard to his or her eligibility to be so registered (Reg. 15(1) of the Port Workers Regulations).

1353. The Port Workers Register also contains a section indicating the names of persons, other than prospective port workers, eligible to become port workers (Reg. 10).

1354. When the complement of registered port workers is insufficient to meet the requirements of employers, the latter may employ prospective port workers and eligible port workers for the provision of services of a temporary nature involving transport of cargoes within a port area. In the event that the number of prospective and eligible port workers is insufficient, employers of port workers may employ auxiliary port workers, provided that an agreement to that effect exists in the Service Level Agreement between the representatives of port workers and any respective employer of port workers (Reg. 15A(1) of the Port Workers Regulations).

Auxiliary port workers must be in possession of a pertinent training qualification in the provision of port work, obtained from a training institution recognised by Transport Malta (Reg. 15A(2) and Reg. 15B(1) of the Port Workers Regulations). The Malta College for Arts, Sciences

and Technology (MCAST) has been recognised under this provision. Transport Malta keeps a specific register of persons in possession of a training qualification (Reg. 15B(2)).

The payments due to auxiliary port workers are borne by the registered port workers and shall not be over and above the official tariffs (Reg. 15A(3) of the Port Workers Regulations).

1355. Transport Malta has the overall control of all port work, including the supply of port workers for port work (Art. 8(g) of the Authority for Transport in Malta Act; Reg. 4 of the Port Workers Regulations).

The supply of registered port workers for particular port work or to particular employers takes place through Transport Malta (Art. 9(1) of the Port Workers Ordinance).

Further, Transport Malta has the following tasks:

- (1) except where otherwise provided in a Service Level Agreement, supply port workers to any port work authorised by Transport Malta in such numbers, order and priority as may be determined by Transport Malta;
- (2) ascertain the amount of fees due by employers of port workers in accordance with the tariff made under the Port Workers Ordinance¹⁷²², collect such fees from the person responsible for their payment and pay to the port workers such fees as shall be due to them;
- (3) collect from employers of port workers and from port workers any contributions due for the purposes of the Social Security Act;
- (4) maintain and supply records of employment and earnings;
- (5) record attendances and absences of port workers;
- (6) furnish returns and statistics in connection with the employment of port workers;
- (7) ascertain and collect an administrative surcharge;
- (8) carry out such other functions as may be prescribed (Art. 9(2) of the Port Workers Ordinance).

Orders for labour are to be made to the Authority in all cases (Par. 2 of the Sixth Schedule to the Port Workers Regulations).

The order in which port workers shall be supplied to employers of port workers and, or terminal operators shall, save as otherwise provided, be the working priority of the ship as submitted by the employers of port workers and, or terminal operators (Par. 3 of the Sixth Schedule to the Port Workers Regulations). The Port Workers Regulations further specify *inter alia* when and how orders must be made (Par. 4) and cancelled (Par. 12) and entitles Transport Malta to take into account priority of mail (Par. 6(1)).

The number of port workers inclusive of drivers, winchmen and/or signalmen, where applicable, to be allocated for an operation and the approximate time necessary to complete the operation,

¹⁷²² On these tariffs, see *infra* para 1359.

shall be determined jointly by two representatives of Transport Malta and a representative of the port workers. The decision reached shall be final, provided that:

- (1) the employer of port workers may, while the operation is in progress, request a revision of the decision;
- (2) if a dispute arises, the matter shall be brought for the consideration of the Port Workers Board, without the stopping of port work, unless in case of evident danger (Par. 6(2) of the Sixth Schedule to the Port Workers Regulations).

Transport Malta shall supply port workers in the order in which they appear on the roster. All port workers, engaged on a shift basis, shall be allocated to a particular ship or operation at the same time and in the order in which they are registered on the roster. Port workers who are requested to perform part of a shift shall be considered as if they have worked a whole shift (Par. 7 of the Sixth Schedule to the Port Workers Regulations).

When port workers have been allocated to a ship or to an operation, no increase or decrease in the number of port workers shall be allowed, save as provided for in the Schedule (Par. 8 of the Sixth Schedule to the Port Workers Regulations).

Next, the Port Workers Regulations provide that the number of port workers allocated port work on Deep Water Quays "shall be deemed to include at least one driver for mechanical handling equipment other than forklift trucks and cranes" (Par. 14 of the Sixth Schedule) and that leakages on board ship shall be gathered and packed or bagged by port workers (Par. 15).

Finally, the use of one or more signallers is compulsory under the Dock Safety Regulations (Reg. 43)¹⁷²³.

In Malta, pool workers are not hired in hiring halls.

1356. Pursuant to the Port Workers Ordinance, Transport Malta, after consultation with the Port Workers Board and with the approval of the competent Minister shall levy an administrative surcharge on employers of port workers calculated as a percentage of the gross wages of these workers (Art. 9(3)). Port Circular No. 03/07 of 2 July 2007¹⁷²⁴ mentions, however, that the administrative surcharge is abolished. Nevertheless, the employer still has to pay a contribution to the Pension and Contingency Fund of 0.63 EUR per ton of cargo loaded or unloaded. A number of goods, including locally manufactured goods, or locally produced agricultural goods, loaded on a ship for export, as well as transshipment cargo, bulk cereals and accompanied commercial vehicles of a cargo capacity of more than 10 tons are exempt however (see the Seventh Schedule to the Port Workers Regulations).

¹⁷²³ On these Regulations, see *infra*, para 1385.

¹⁷²⁴ On this Circular, see *supra*, para 1333.

1357. Since 1992¹⁷²⁵, all registered port workers have been amalgamated into one homogenous group and perform all work from hold to truck, stacking ground or warehouse or vice-versa (Reg. 12(1)). The same year, a shift system was introduced to cover 24 hours a day 7 days a week (Fifth Schedule to the Port Workers Regulations).

1358. As we have mentioned before¹⁷²⁶, the registered port workers are self-employed.

Responsibility for the payment of fees due for the employment of port workers shall be vested in the person by whom or on whose behalf such port workers are employed (Art. 6(1) of the Port Workers Ordinance).

With regard to tariffs, a distinction is made between, on the one hand, import and export cargo and, on the other hand, transshipment cargo. In respect of import and export cargoes and related services, the tariffs may not exceed the maximum established under the Port Workers Regulations. Tariffs for transshipment operations and related services are freely negotiated between the employer of port workers and the representatives of port workers (see Reg. 21A(5) of the Port Workers Regulations).

Employers of port workers shall effect payment for port work to Transport Malta in accordance with the tariffs of fees and rates set out in the Second Schedule to the Port Workers Regulations, and in accordance with the contribution set out in the Seventh Schedule (Reg. 25(1) of the Port Workers Regulations). The tariff of the handling of transshipment cargo and related services shall be established following negotiations between the employers of port workers and port workers. The agreement reached shall be communicated to Transport Malta, provided that when both parties fail to reach an agreement, either of the parties may refer the dispute to Transport Malta which shall determine the tariff based on:

- (1) the service to be provided;
- (2) the latest tariff negotiated between the parties;
- (3) any published tariff;
- (4) the cost of labour; and
- (5) the volume of cargo and nature of services involved;

provided further that either party may appeal the decision taken by Transport Malta, in respect of the establishment of a transshipment tariff, to the Port Work Appeals Board (Reg. 25(2) of the Port Workers Regulations).

Transport Malta shall, on receipt of payment of bills by employers of port workers, deposit in a port workers' wages account the monies due to port workers in accordance with the tariffs of fees and notes set out in the Second Schedule to the Port Workers Regulations (Reg. 26 of the Port Workers Regulations).

As they are self-employed, pool workers receive no unemployment benefit.

¹⁷²⁵ See already *supra*, para 1321.

¹⁷²⁶ See *supra*, para 1334.

1359. The table below shows fees payable to port workers for the handling of general cargo.

Table 77. Fees payable to port workers for the handling of general cargo in Maltese ports (source: Part I of the Second Schedule to the Port Workers Regulations)

	Nature of cargo	Total payable by employers of port workers in respect of the whole operation
a.	Cement - in big bags or on pallets - per ton	2.70 EUR*
	Cement - in 50kg bags - per ton	4.94 EUR*
b.	Soda, sulphur and coal - in bags - per ton	2.80 EUR*
c.	Onions, carobs, oats, pollard, cotton seed, oil cake, barley, bran, coke and malt - in bags - per ton	3.47 EUR*
d.	Potatoes - per ton	2.63 EUR*
e.	Iron joists, beams, girders, rails, metal rods including angle iron and sheets, ingots - per ton	2.91 EUR*
f.	Refrigerated cargo: fruit in cases or cartons - per ton	3.73 EUR*
	Refrigerated cargo: other cargo - per ton	3.31 EUR*
g.	Fruit in cases or cartons (not refrigerated) - per ton	2.47 EUR*
h.	Scrap metal (other than aluminium) - loose per ton	3.24 EUR*
i.	Scrap aluminium – loose per ton	5.75 EUR*
j.	Motor and aviation spirit in cans or drums, and explosives including ammunition and pyrotechnics - per ton	2.12 EUR*
k.	Chairs, loose or in bundles - each	0.09 EUR
	Willows, canes <i>et similia</i> , in bundles - per bundle	0.09 EUR
	Empty drums of a capacity of 40 gallons and over - each	0.09 EUR
l.	Empty wine and beer casks - each	0.65 EUR
m.	All other cargo other than cargo in bulk - per ton	2.45 EUR*
<p>* Where denoted by an asterisk, tariff figures are subject to an additional overall payment of 5 per cent.</p> <p>The fees shown above include all remuneration due for the carrying of cargo necessary for the performance of the whole operation.</p>		

The third table provides an overview of fees payable to port workers for the handling of unitised cargo¹⁷²⁷.

¹⁷²⁷ Art. 2 of the Port Workers Ordinance contains the following definition:

"unit load" or "unitised cargo" means -

(a) *a quantity of cargo unitised to form a single load in or on -*

(i) roll on/roll off units which may be on wheels integral to the transport unit or which may be towed or pushed or otherwise moved by other mechanical equipment;

(ii) vehicles or trailers rolled on or off a ship;

(iii) Lancashire flats, that is, platforms, with or without ends, on which the goods are stacked;

(iv) freight containers being articles of equipment having an overall volume of not less than 8 cubic metres either rigid or collapsible, suitable for repeated use in the carriage of goods in bulk or package form and capable of transfer to or from one or more forms of transport;

(b) *liquid in bulk in containers with a minimum capacity of 2273 litres integrated in vehicles to form bowsers;*

(c) *vehicles and empty trailers of all kinds rolled on or off a ship;*

(d) *any other goods on wheels rolled on or off a ship;*

(e) *cargo on expendable or returnable pallets, provided such cargo is handled between ship and shore or vice-versa entirely by mechanical means through points of access to or from a ship other than conventional hatchways;*

(f) *empty containers;*

(g) *empty road transport vehicles and bowsers rolled off a ship to load cargo for eventual shipment as unitised cargo or rolled on a ship after having brought into Malta unitised cargo by means of the roll on/roll off method;*

(h) *seacraft or floating objects which are loaded on or a port:*

but does not include -

(i) unit loads of any description handled between ship and shore or vice-versa by conventional means, other than containers lifted on or off a ship; or

(ii) heavy indivisible loads, except when carried on a vehicle or trailer which is rolled on or off a ship.

Table 78. Fees payable to port workers for the handling of unitised cargo in Maltese ports (source: Part II of the Second Schedule to the Port Workers Regulations)

	Nature of work	Rate
(a)	Unloading or loading of unitised cargo	1.28 EUR/ton
(b)	Shifting of unitised cargo	0.58 EUR/ton for each operation
(c)	Loading or unloading of empty containers	12.46 EUR/unit
(d)	Loading or unloading of empty trailers	1.16 EUR/unit
(e)	Loading or unloading of empty containers on trailers	13.28 EUR/unit
(f)	Road transport vehicles and bowser (excluding ship's equipment used to tow, push carry or move unitised cargo) rolled on or off a RORO ship to load or unload cargo	5.82 EUR/unit in addition to the fees in respect of cargo carried
(g)	Folding or collapsible containers loaded or unloaded interlocked into one another	1.28 EUR/ton of 1000 kilogrammes
(h)	Loading and unloading of accompanied commercial vehicles with a cargo capacity of over 10 tons:	
	Chassis cab trucks or trailers of 20 ft	26.00 EUR/unit
	Articulated trucks or trailers of 40 ft	58.00 EUR/unit
	Articulated trucks or trailers of over 40 ft	74.00 EUR/unit
	Empty accompanied commercial vehicles	12.46 EUR/unit
	Port workers shall be paid these fees if they have provided port work during the loading and unloading of the specified cargo	

Further tables of fees apply to the handling of bulk cargo (Part III of the Second Schedule to the Port Workers Regulations) and for the handling of goods from shed or stack to transport (Part IV of the Second Schedule to the Port Workers Regulations).

Furthermore, specific provisions entitle port workers employed as a winchman, heavy plant driver or signaller for any one operation, to a fee of €9.32 per hour, subject to a minimum period of 4 hours (Par. 1 of Part V of the Second Schedule to the Port Workers Regulations). Port workers employed to perform the following port work in enclosed port areas, with regard to the handling of unitised cargo, that is -

- (a) the packing and unpacking of containers;
- (b) the loading and unloading of trailers;
- (c) the dismantling of other unit loads on quay or in warehouse or stacking ground;
- (d) the sorting of cargo so handled according to main bill of lading marks and the stacking of such cargo on quay or in warehouse; and
- (e) the consolidation of unit loads for loading on board a ship;

shall be paid a fee of €9.32 per hour, subject to a minimum period of work of 4 hours (*ibid.*, Par. 2).

Further provisions deal with, *inter alia*, the case where the actual weight landed exceeds the weight shown in the bill of lading (see Par. 7.1 *et seq.* of the Third Schedule to the Port Workers Regulations).

1360. The representatives of registered port workers and employers of port workers must enter into a Service Level Agreement in connection with the provision of services by port workers (Reg. 21A(1) of the Port Workers Regulations).

A Service Level Agreement may include, amongst other provisions, the following:

- (1) a description of the services to be provided, including the resources to be made available, the number of workers and the service levels / targets to be met by the parties to the agreement;
- (2) the services that are required to be provided by the port workers;
- (3) dispute resolution;
- (4) the hours of work, including shift systems allocation;
- (5) the ordering procedure when filing requests for the provision of port workers;
- (6) disciplinary procedure including, but not limited to, the non-attainment of agreed minimum service levels (see Reg. 21A(3) of the Port Workers Regulations).

The Port Workers Regulations reiterate that workers allocated to employers of port workers under a Service Level Agreement have to be fit and able to perform the work to which they are assigned (Reg. 21A(2)).

In order to ensure consistency between the various service level agreements, especially with regard to disciplinary procedures and dispute resolution, these agreements are communicated to Transport Malta (Reg. 21A(6)). Yet, Transport Malta considers these agreements confidential¹⁷²⁸.

1361. The hours of work, leave and public holidays are regulated in the Fifth Schedule to the Port Workers Regulations (Art. 29 of the Port Workers Regulations).

The working hours for the provision of port work in ports shall be 24 hours, 7 days a week (Par. 1 of the Fifth Schedule to the Port Workers Regulations). The Port Workers Regulations set out working hours, shift patterns and extra fees for work during night shifts, on Sundays and on holidays (Par. 2 and 3 of the Fifth Schedule). These conditions of work may however be varied through the Service Level Agreement that every employer of port worker or terminal operator and the representatives of port workers shall enter into (Par. 4).

¹⁷²⁸ See *supra*, para 1320.

1362. The Port Workers Ordinance establishes a Port Workers Board (Art. 10(1)).

This Board consists of a Chairman appointed by the Minister, two members nominated by the employers of port workers, two members nominated by the port workers and a secretary with no voting powers appointed by the Minister (Art. 10(2)).

The Port Workers Board has the following functions:

- (1) the discipline of port workers other than disciplinary measures foreseen in the relative Service Level Agreements¹⁷²⁹;
- (2) the review of the complement of port workers required by employers of port workers to satisfy the demands of industry¹⁷³⁰;
- (3) the selection of persons eligible to fill a vacancy for a port worker in accordance with regulations issued under the Ordinance;
- (4) to determine:
 - (i) the conditions of employment of port workers including tariffs related thereto;
 - (ii) the system under which port workers shall be supplied to employers of port workers for any port work;
 - (iii) the organisation of port workers¹⁷³¹;
- (5) to advise Transport Malta on matters relating to labour in the port;
- (6) to make recommendations to Transport Malta concerning the deregistration from the Port Workers Register of persons working at a port;
- (7) to perform such other functions as may be prescribed (Art. 11(1)).

The conclusions of the Board relative to matters under items (4) and (5) above shall be by agreement between the representatives of employers of port workers and of the port workers on the Board (Art. 11(3)). All other decisions shall be taken by majority vote (Art. 11(5)).

Any conclusion of the Board relating to any tariff or to the conditions of employment of port workers or to the supply of port workers and any other matter which in the opinion of the Chairman of the Board involves principles of importance, shall be submitted to the Minister for approval and when approved by him shall be published by order in the Gazette and shall be binding on all employers of port workers and on port workers from the date of publication as may be appointed by the Minister, provided (1) that the Minister may delegate the powers

¹⁷²⁹ Serious offences are dealt with by the Port Workers Board whereas a procedure for minor offences may be included in the service level agreements. Art. 11(2) of the Port Workers Ordinance stipulates that in the event that a person is convicted of theft committed during or in connection with port work or contravenes or fails to comply with the provisions of the Ordinance, or grossly misbehaves or misconducts himself in the course of or in connection with his port work, then the Board may (1) suspend him from work for a period not exceeding three months; or (2) give him a fortnight's notice of cancellation of his registration; or (3) cancel his registration forthwith. In an older case, the Board cancelled the registration of a port worker who committed theft of monies pertaining to the port workers' scheme. The First Hall of the Civil Court held that it may not substitute the discretion of the Board in such matter (Civil Court First Hall, 10 June 1987, Joseph Farrugia vs. Emanuel Cilia Debono).

¹⁷³⁰ See already *supra*, para 1342.

¹⁷³¹ However, the Board does not exercise the latter functions where employers of port workers and port workers have agreed on different arrangements.

conferred upon him to a public officer or to an officer in the Authority and (2) that the Minister may recall for his own determination on any matter that may be pending before the Board (Art. 11(6) of the Port Workers Ordinance).

The Port Workers Board also decides on a number of specific disputes which may arise between port workers and their employers (see Art. 12 of the Port Workers Ordinance).

1363. The Port Workers Ordinance also establishes a Port Work Appeals Board (Art. 7(1)) with the following functions:

- (1) to hear appeals by employers of port workers or port workers for a review of any decision or directive taken by Transport Malta with regard to the tariffs for transshipment operations;
- (2) to decide upon any dispute as may be referred to it by the Minister regarding transshipment tariffs (Art. 8(1)).

In arriving at a decision on an appeal, the Port Work Appeals Board must seek to balance the application of the following principles:

- (1) tariffs charged are based on sound economic and commercial facts, including consideration of the interests of consumers and industry in general and other parties involved in port activity, including, where applicable, the rate of inflation since the charges were last revised, and any other relevant unexpected economic circumstances;
- (2) tariffs are reasonably related to costs, including depreciation and a return on capital employed;
- (3) port operators, or other persons involved in port activity, are to be encouraged to invest in port facilities to meet demand;
- (4) tariffs are comparable to those levied at other ports competing with Malta;
- (5) the achievement of service standards especially those applicable internationally (Art. 8(4)).

1364. The Port Workers Ordinance establishes criminal fines on any person who contravenes or fails to comply with its provisions¹⁷³².

Where any employer disputes any bill for port work or fails to pay any such bill, Transport Malta shall, unless the matter is settled, refrain from supplying port workers to an employer failing to pay any bill for port work if, after giving the employer an opportunity of making representations, it so instructs (Art. 20(2) of the Port Workers Regulations).

¹⁷³² More in particular the Article mentions infringements of Art. 3(1) or (4), Art. 5(1), Art 6 and Art 9(1) or (2) (and also of requests made under Art. 9(5)(a) which does however not exist).

The Port Disputes Board may award compensation to port workers if the roster in which the latter are organised was wilfully or negligently disrupted by an employer of port workers, or by a person acting on behalf of such employer (see Reg. 22 of the Port Workers Regulations).

1365. The Port Workers Regulations contain detailed provisions on the establishment and management of a specific Pension and Contingency Fund to which employers are obliged to contribute (Art. 31 *et seq.*)¹⁷³³.

1366. As we have mentioned before¹⁷³⁴, Maltese port labour law identifies foremen as a specific category of port workers.

A foreman is defined as "any person who, on his own behalf or on behalf of another person, employs port workers" (Art. 2 of the Port Workers Ordinance). However, the specific rules on foremen do not apply to contractors (Art. 5(6) of the Port Workers Ordinance).

The Port Workers Ordinance stipulates that no person shall act as foreman (1) if he is a port worker; (2) unless he is licensed as such by the Authority (Art. 5(1)).

The licence may be subject to specific conditions and shall expire on the 31st of December in each year but may be renewed from year to year, provided that the licence shall automatically expire if the foreman is convicted of theft committed during or in connection with port work (Art. 5(2)).

If any foreman contravenes or fails to comply with the provisions of this Ordinance, or grossly misbehaves or misconducts himself in the course of or in connection with his work, then Transport Malta may (1) reprimand him; (2) suspend his licence for such period as the Authority may deem appropriate; or (3) cancel his licence (Art. 5(3)).

Transport Malta may, in its discretion and subject to the provisions of the Ordinance, issue a licence to any person to act as a foreman of port workers (Reg. 6(1) of the Port Workers Regulations).

The Authority shall not issue a licence unless it is satisfied that the person applying for a licence:

- (1) is over the age of 25 years;
- (2) has had adequate experience of cargo handling operations;
- (3) is a fit and proper person to be licensed;

¹⁷³³ See already *supra*, paras 1321, 1329, 1330, 1332, 1333 and 1356. The Minister may authorise the payment out of the Fund of a cost of living increase or bonus or of any other increase in the wages of port workers (see Reg. 47(1) of the Port Workers Regulations).

¹⁷³⁴ See *supra*, para 1334.

(4) is below the statutory pension age; and
(5) in the case of a person who did not hold a licence on 30 December 2007, is in possession of a valid certificate of competence in the provision of foremen duties issued by a training institution approved by Transport Malta (Reg. 6(2) of the Port Workers Regulations)¹⁷³⁵.

The complement of foremen is established by Transport Malta, taking into consideration the requirements of employers of port workers (Reg. 6(4) of the Port Workers Regulations).

Foremen shall be paid in accordance with the tariffs of fees and the rates thereto set in the First Schedule to the Port Workers Regulations, provided that fees and rates for transshipment cargo may be as negotiated between foremen and employers of port workers. In the case of a dispute between the foremen and the employers of port workers about the fees payable to foremen, Transport Malta shall determine fair and reasonable transshipment fees and rates which shall be binding on both parties (Reg. 24 of the Port Workers Regulations).

The table below shows the fees which are payable to foremen of port workers engaged in the supervision of the handling of cargo.

¹⁷³⁵ See also *infra*, para 1378.

Table 79. Fees payable to foremen of port workers engaged in the supervision of the handling of cargo in Maltese ports (source: First Schedule to the Port Workers Regulations)

Item	Description	Fee
1.0	To foremen engaged in the supervision of the handling of unitised cargo:	
1.1	Loading of unitised cargo	
1.1.1	Locally manufactured goods, per ton	0.29,9 EUR
1.1.2	Other unitised cargo, per ton	0.32,9 EUR
1.2	Unloading of unitised cargo, per ton	0.36,9 EUR
1.3	Loading and unloading of empty containers and trailers, per unit	2.00,0 EUR
2.0	To foremen engaged in the supervision of the handling of general cargo, per ton	0.39,9 EUR
3.0	To foremen engaged in the supervision of the handling of the following bulk cargo:	
3.1	Wheat, per ton	0.12,0 EUR
3.2	Barley, maize and corn, per ton	0.16,0 EUR
3.3	Soya and alfalfa, per ton	0.35,0 EUR
3.4	Pellets and seeds, per ton	0.35,0 EUR
3.5	Cement, per ton	0.23,9 EUR
3.6	Other bulk cargo, per ton	0.39,9 EUR
4.0	Handling of accompanied commercial vehicles with a cargo capacity of more than 10 tons:	
4.1	Chassis cab trucks or trailers of 20ft, per unit	5.80,5 EUR
4.2	Articulated trucks or trailers of 40ft, per unit	11.58,5 EUR
4.3	Articulated trucks or trailers of over 40ft, per unit	17.03,0 EUR
4.4	Empty accompanied commercial vehicles, per unit	2.00,0 EUR
5.0	Shifting of cargo:	
5.1	Shifting of cargo, per ton	0.15,0
5.2	Shifting and restowing of cargo, per ton	0.30,0

1367. The foremen and the employers of port workers are obliged to enter into a Service Level Agreement which may, amongst other matters, include the following:

- (1) a description of the services to be provided, including the resources to be made available and the service performance levels to be met by the parties to the agreement;
- (2) the services that are required to be provided by foremen;
- (3) the mechanisms for dispute resolution in case of disagreement between the parties;
- (4) the hours of work, including shift systems allocation;
- (5) the ordering procedure;

(6) the disciplinary procedures that may be taken including, but not limited to, the non-attainment of agreed minimum service performance¹⁷³⁶ (see Reg. 7(1) of the Port Workers Regulations).

1368. The Tallying of Goods Regulations provide that the terminal operator is responsible to ensure that no goods are discharged from or loaded on a ship unless such goods are tallied by him or under his instructions in accordance with the provisions of these regulations. However, compulsory tally does not apply to:

- (1) ship stores, equipment, fittings and furniture discharged from or loaded on to a ship on which such stores, equipment, fittings or furniture have been or may be used;
- (2) goods carried between the islands of Malta, Gozo and Comino;
- (3) goods carried in bulk;
- (4) live animals;
- (5) fish discharged from or loaded on fishing vessels; or
- (6) any other type of goods which the Minister may exempt from tallying (Reg. 3).

The Comptroller of Customs or the Authority may require any terminal operator taking or causing to be taken a tally of goods under the provisions of these regulations to produce signed copies of tally sheets (see Reg. 4).

Infringements are criminally sanctioned (Reg. 6-7)

1369. The Ports (Handling of Baggage) Regulations provides that unless a person is authorised by the Transport Malta to act as a baggage handling operator such person shall not be allowed to take charge of passengers' baggage or to board ships or enter port enclosed areas for the purpose of handling passengers' baggage (Reg. 3(1)). The word "person" includes a person or a body or association of persons, whether such body or association is corporated or unincorporated (Reg. 2).

A baggage handling operator shall carry out his duties either as prescribed by the Ports (Handling of Baggage) Regulations or in terms of procedures established by an operator of passenger facilities and approved by the Authority. An operator must use "the greatest care" in the handling of baggage and "the utmost respect" towards passengers; he shall have no fixed hours for his work and shall be available to render service at any time of the day and night, not engage in any business or trading activity whatsoever when doing duty as baggage handling either within the port enclosed areas or on the quays, or on any ship; he shall wear a uniform as may be fixed by an operator of passengers facilities or by Transport Malta, not smoke during work, and not ask for tips (Reg. 4). The tariff for baggage handling services provided by an operator of passenger facilities is fixed by the Regulation, but an operator of passenger

¹⁷³⁶ More serious offences are dealt with by the Port Workers Board.

facilities may enter into special agreements in respect of baggage handling services and charge lower rates (Reg. 5).

1370. Yet another regulated profession in the Maltese ports is this of the *burdnar*.

The Cargo Clearance and Forwarding Agents' (*Burdnara*) Employees Wages Council Wage Regulation Order of 19 April 1976¹⁷³⁷, which sets the minimum wage for employees of a *burdnar*, defines the *burdnar* as any person whose business is or includes all or any of the following:

- (a) the clearing through the Customs Department of documents relating to cargo;
- (b) the withdrawal of cargo from any customs shed, bonded store, warehouse, verandah, quay or other place of deposit and the transport of such cargo therefrom to a place of consignment;
- (c) the withdrawal of cargo from any factory, warehouse or other premises and the transport of such cargo therefrom to a quay or other place of deposit for shipment (Art. 1).

The *burdnar* – in practice, a company, not an individual – is licensed by the Customs Department as a Cargo Clearing and Forwarding Agent and is licensed to transport goods to and from the port customs area. The number of licences for these road hauliers is limited (*numerus clausus*) and the licensees possess a special port security pass which allows them and only them to transport cargo. Reportedly, the groupage depot at Hal Far is the main livelihood of the smaller *burdnara*. *Burdnara* can be members of the General Retailers and Traders Union (GRTU). Regarding work on a commission basis, the latter organisation acts as a trade union. Reportedly, *burdnar* licences are inherited. In 2008, there were still 111 *burdnara* active in Maltese ports (upon accession to the EU, there were 133 licences, 2 of which have since been revoked)¹⁷³⁸. We were unable to obtain updated data for 2012.

1371. The Maltese Mutual Recognition of Qualifications Act of 2002¹⁷³⁹ applies to the regulated professions and the regulated professional activities listed in the Schedule to the Act (Art. 2), which include 'port worker' and 'foreman of port worker'.

¹⁷³⁷ Legal Notice 45 of 1976.

¹⁷³⁸ See Depasquale, I., "Negotiations closed on Transport", *Aggornat* November 2001, Special Edition No. 5, <http://www.meusac.gov.mt/file.aspx?f=1850>, item 2.2.1; X., "FOI and GWU agree that changes are needed at Malta's ports", *The Malta Financial and Business Times* 14 August 2002, <http://www.businesstoday.com.mt/2002/08/14/focus.html>; X., "GRTU achieves agreement on burdnara issues", *Times of Malta* 3 March 2003, <http://www.timesofmalta.com/articles/view/20030303/local/grtu-achieves-agreement-on-burdnara-issues.155339>; *Parliamentary Documents*, Oral Question by Mr Vincent Galea to Minister Tonio Fenech of 29 May 2008, No. XI 652, www.pq.gov.mt.

¹⁷³⁹ Act XVIII of 2002 Relating to the Mutual Recognition of Qualifications (Chapter 451 of the Laws of Malta).

Table 80. Excerpt from the Schedule to the Maltese Mutual Recognition of Qualifications Act

Regulated Profession / Professional Activity	Designated Authority	Legislation
Port Worker Foreman of port worker	Port Workers Board	Port Workers Ordinance, Cap. 171

According to the Act, no applicant from another EU Member State¹⁷⁴⁰ is entitled to practise a regulated profession or a regulated professional activity unless he fulfils the conditions for the taking up or pursuit of that profession or activity in accordance with the provisions of the Act or of any enactment listed in the Schedule (Art. 3).

The designated authority – apparently, the Port Workers Board in the case of port work – shall consider any request submitted by an applicant as soon as it is reasonably practicable, and shall notify the applicant of its decision together with the reasons upon which it is based within four months of receipt of all the relevant documents (Art. 4).

The Act also provides for the establishment of a Malta Qualifications Recognition Information Centre (Art. 6) and of a Mutual Recognition of Qualifications Appeals Board (Art. 7).

1372. Regulations issued by individual terminals may expressly refer to official requirements on contractors and workers to be registered or licensed.

For example, Valletta Gateway Terminals' 'Occupational & Environmental Health and Safety – Contractor's Obligations and Duties'¹⁷⁴¹ state that the contractor must ensure that where a portion of the work may only lawfully be carried out by persons holding a particular certificate or licence, that the portion will only be carried out by persons holding that certificate or licence, and that he also must make available at the working area for inspection by the operator any such certificates or licences required, whether before or after commencement of work on the Site (Art. 6.0).

1373. Rules on the organisation of port labour are enforced by the public prosecutor, the national employment agencies and Transport Malta. According to the latter, enforcement is adequate.

¹⁷⁴⁰ The Act states "Agreement State".

¹⁷⁴¹ http://www.vgt.com.mt/Portals/27/docs/HS_Contractors%20Obligations.pdf.

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1374. According to Transport Malta, there are today 8 terminal operators who use port workers both from the pool and their own employees (figures for 2012).

Valletta Gateway Terminals (VGT) is responsible for the handling of containers, trailers, break bulk, vehicles and other cargoes at the port of Valletta. Valletta Cruise Port, a private consortium of local enterprises and several international companies, operates the passenger handling facilities¹⁷⁴².

Today, Malta Freeport Terminals is the single operator of the container terminals and warehousing facilities in the Freeport zone¹⁷⁴³.

1375. According to Transport Malta, there are currently 379 licensed port workers, 21 foremen and about 700 workers who are directly employed by terminal operators (figures for 2012).

The table below shows the evolution of the number of port workers and foremen.

¹⁷⁴² See <http://www.transport.gov.mt/ports-marinas/ports-in-malta/port-of-valletta/cargo-and-passenger-handling>.

¹⁷⁴³ In 2004, a concession to operate and develop Malta Freeport Terminals was granted to CMA CGM. In February 2008, the Government of Malta granted CMA CGM an extension of the concession for Malta Freeport Terminals from 30 years to a total of 65 years. In November 2011, CMA CGM transferred half of its shares in Malta Freeport Terminals to the Yildirim Group of Turkey (see <http://www.maltafreeport.com.mt/freeport/content.aspx?id=125391>).

Table 81. Number of registered port workers and foremen in Maltese ports, 1996-2012 (source: Parliamentary Questions and Answers¹⁷⁴⁴ and Transport Malta)

Year	Number of registered port workers	Number of registered foremen
1996	398	29
1997	392	29
1998	391	29
1999	388	29
2000	381	28
2001	376	33
2002	373	33
2003	373	33
2004	373	33
2005	371	33
2006	359	29
2007	353	29
2008	367	24
2009	369	19
2010	369	20
2011	367	20
2012	379	21

1376. Transport Malta states that all port workers are members of a union, either the Malta Dockers Union (MDU), the General Workers' Union (GWU) or Union Haddiema Maghqudin (UHM, aka Malta Workers' Union or Union of United Workers). The General Workers' Union (GWU) is affiliated to the European Transport Workers' Federation (ETF), whereas the Malta Dockers' Union (MDU) is a member of the International Dockworkers Council (IDC)¹⁷⁴⁵.

The MDU was founded in 2006 when over 300 registered port workers resigned from GWU to establish a new union. The new situation gave rise to a fierce dispute between GWU and MDU over their respective representativeness. In 2009, the Malta Maritime Authority (now Transport Malta) stated that its records showed that MDU represents the majority of port workers. A verification process conducted by the Department of Industrial and Employment Relations (DIER) in the same year confirmed that the majority of licensed port workers indeed back MDU. The ambiguity with regard to trade union representation may stem from the fact that port

¹⁷⁴⁴ *Parliamentary Documents*, Oral Questions by Mr Jason Azzopardi to Minister Ċensu Galea of 14 September 2005, Nos. X 14075 and X 14077, www.pq.gov.mt.

¹⁷⁴⁵ See also X., "MDU gets international support in fight with GWU", *Times of Malta* 2 April 2009, <http://www.timesofmalta.com/articles/view/20090402/local/mdu-gets-international-support-in-fight-with-gwu.251329>.

workers can be registered simultaneously in two trade unions¹⁷⁴⁶. MDU was also joined by the tally clerks, but not by the delivery clerks.

Union Haddiema Maghqudin represents a considerable share of the workers directly employed by Malta Freeport Terminals¹⁷⁴⁷.

9.14.4. Qualifications and training

1377. The Occupational Health and Safety Authority Act obliges all employers to provide such information, instruction, training and supervision as is required to ensure occupational health and safety (Art. 6(3)).

As we have mentioned above¹⁷⁴⁸, the Port Workers Ordinance stipulates that in order to ensure safety, increase efficiency and develop flexibility, port workers are under a duty to undergo periodic training programmes, as is considered necessary (Art. 4(6)).

1378. The Port Workers Regulations stipulate that possession of a training certificate training is a prerequisite to obtain a licence as a foreman (Reg. 6(2))¹⁷⁴⁹, to be employed as an auxiliary port worker or to fill any vacancy (see Reg. 15A(2) and 15B(1)).

¹⁷⁴⁶ See Debono, M. and Farrugia, C., "Union dispute in the wake of port restructuring", *Eironline* 30 October 2006, <http://www.eurofound.europa.eu/eiro/2006/09/articles/mt0609039i.htm>; Borg, A., "Dispute escalates over port workers' union representation", *Eironline* 1 July 2009, <http://www.eurofound.europa.eu/eiro/2009/04/articles/mt0904039i.htm> and X., "Editorial. A spring of industrial discontent", *Times of Malta* 20 April 2009, <http://www.timesofmalta.com/articles/view/20090420/editorial/editorial.253591>; Rizzo, S., "Malta: EIRO Annual Review - 2009", *Eironline* 11 January 2011, <http://www.eurofound.europa.eu/eiro/studies/tn1004019s/mt1004019q.htm>; Rizzo, S., "Trade union strategies to recruit new groups of workers - Malta", *Eironline* 17 May 2010, <http://www.eurofound.europa.eu/eiro/studies/tn0901028s/mt0901029q.htm>; Schembri, K., "Port reforms will substantially reduce costs, Galea announces", *Business Today* 6 June 2007, 1, <http://www.businesstoday.com.mt/2007/06/06/focus.html>; Xuereb, M., "MDU accuses GWU of harassing port workers", *Times of Malta* 30 April 2009, <http://www.timesofmalta.com/articles/view/20090430/local/mdu-accuses-gwu-of-harassing-port-workers.254907>; X., "MDU gets international support in fight with GWU", *Times of Malta* 2 April 2009, <http://www.timesofmalta.com/articles/view/20090402/local/mdu-gets-international-support-in-fight-with-gwu.251329>; X., "Dispute escalates over port workers' union representation", http://www.labourlawnetwork.eu/national_labour_law/legislative_developments/prm/109/v_detail/id_726/category_24/size_1/index.html. See also ETF's letter to Prime Minister L. Gonzi of 10 April 2009 on <http://sitestudio.altanova.com.mt/library/images/gwu/news%20pics/support%20letter%20general%20workers%20union.pdf>.

¹⁷⁴⁷ In 2004, 500 Freeport workers were reported to be members of UHM (see Debono, M., "Freeport workers demand higher wages", *Eironline* 5 October 2004, <http://www.eurofound.europa.eu/eiro/2004/10/inbrief/mt0410101n.htm>).

¹⁷⁴⁸ See *supra*, para 1346.

¹⁷⁴⁹ See already *supra*, para 1366.

1379. The registered port workers' Pension and Contingency Fund finances a special Training Fund for port workers. This training, "without which one can't become a port worker"¹⁷⁵⁰, is provided by the MDU and the Malta College of Arts, Science and Technology (MCAST). More in particular, MCAST offers a Port Work Induction Course (52 contact hours spread over 3 weeks)¹⁷⁵¹.

1380. Replying to our questionnaire, Transport Malta confirmed that in Malta, compulsory induction courses for new entrants and specialist courses for certain categories of port workers such as crane drivers, container equipment operators, forklift drivers and signalmen are offered. However, no curricula for training of port workers exist.

Transport Malta points out that in 2007, a Certificate of Competence was introduced. Transport Malta issues this certificate to persons who want to be registered as a port worker. Candidates have to follow a theoretical course which contains an introduction to the different types of port work as well as to health and safety topics.

1381. Workers directly employed by the terminal operators receive job-specific training at the terminal. Malta Freeport Terminals for example has its own Freeport Training Centre, which is responsible for training of all Freeport personnel and operates in close collaboration with the Port of Rotterdam College for Transport and Shipping¹⁷⁵².

Malta Freeport Terminals states that the training programmes are instrumental in developing a multi-skilled workforce capable of operating flexibly across different work functions; this ensures that all employees perform to job requirements and further prepares them for an enlarged job scope and greater responsibilities. Training programmes are also organised for the trainers¹⁷⁵³.

Malta Freeport Terminals' Safety and Environmental Rules and Regulations for Users of the Terminal¹⁷⁵⁴ state that workers engaged by Contractors to carry out work at the Terminal are to attend Health and Safety Familiarization training before work commences on site. Training sessions are delivered by Safety Department trainers at the Freeport premises. It is the Contractor's responsibility to make arrangements for this training. Contractors are responsible

¹⁷⁵⁰ See Fenech, N., "Dock-side reformers", *Times of Malta* 15 September 2007, <http://www.timesofmalta.com/articles/view/20070915/local/dock-side-reformers.5038>.

¹⁷⁵¹ See http://www.mcast.edu.mt/courses_parttime.asp.

¹⁷⁵² Emmanuel Mallia & Associates (Advocates), *The Malta Freeport*, <http://www.emaadvocates.com/mallia/OnlineLibrary/THE%20MALTA%20FREEPORT.pdf> (link found broken upon updating), 9.

¹⁷⁵³ See <http://www.maltafreeport.com.mt/freeport/content.aspx?id=111340>.

¹⁷⁵⁴ <http://www.maltafreeport.com.mt/freeport/content.aspx?id=324340>.

to assess the risks prior to starting a job and for ensuring all of their employees are aware of all work activities, operations, safety regulations and where safety equipment and/or personal protective clothing is required. A copy of the risk assessment is to be provided to the Malta Freeport Department that contracted out the work. Work on site cannot commence without the permission of the relevant Freeport Official who ordered the work (Art. 7.1 a), b) and c)).

1382. Valletta Gateway Terminals' 'Occupational & Environmental Health and Safety – Contractor's Obligations and Duties'¹⁷⁵⁵ states *inter alia* that all crane drivers should be medically fit to operate lifting plant and equipment (Art. 5.3) and that the contractor must ensure that the Contractor's Staff will have all appropriate skills and training before undertaking work on VGT terminals (Art. 6.0). Where the Contractor provides its own cranes/trucks or other lifting facilities, the Contractor must provide all crane operators and or drivers and other personnel necessary to carry out the task, and those operators / drivers must be qualified, authorised and accredited to undertake the lifting work /driving in accordance with applicable law (Art. 7.1).

9.14.5. Health and safety

- Regulatory set-up

1383. First of all, work in ports and on board ships in Maltese ports is governed by the general Occupational Health and Safety Authority Act, 2001¹⁷⁵⁶ which sets out general duties on employers to ensure the health and safety of all persons who may be affected by the work being carried out and to comply with general principles of prevention (see in particular Art. 6). Conversely, it shall be the duty of every worker to safeguard personal health and safety and that of other people who could be affected by reason of the work which is carried out (Art. 7(1)).

1384. Other relevant laws and regulations of a general nature include, *inter alia*:
- the Factories (Hoists and Lifts) Regulations, 1964¹⁷⁵⁷;

¹⁷⁵⁵ http://www.vgt.com.mt/Portals/27/docs/HS_Contractors%20Obligations.pdf.

¹⁷⁵⁶ Act XXVIII of 2000 to provide for the establishment of an Authority to be known as the Occupational Health and Safety Authority, an Occupational Health and Safety Appeals Board, and for the exercise by or on behalf of that Authority of regulatory functions regarding resources relating to Occupational Health and Safety and to make provision with respect to matters connected therewith or ancillary thereto.

¹⁷⁵⁷ Legal Notice 47 of 1964.

- the Factories (Health, Safety and Welfare) Regulations, 1986¹⁷⁵⁸;
- the Work Equipment (Minimum Safety and Health Requirements) Regulations, 2002¹⁷⁵⁹.

1385. Health and safety in ports is further governed by the Dock Safety Regulations, 1953¹⁷⁶⁰ which were adopted under the (since repealed) Factories Ordinance.

These Regulations set out duties of persons having the general management and control of a dock, wharf or quay and regulates *inter alia* approaches over dock, wharf or quay, access to ships and the testing and examination of lifting machinery.

Although the Occupational Health and Safety Authority Act envisages the adoption of Codes of Practice (Section 9(2)(e)), no such Codes have been issued so far for port labour.

1386. According to the Port Workers Regulations, port workers are not required to handle manually the following goods:

- (a) cement the temperature of which at any time exceeds 51.7°C;
- (b) caustic soda in bags of any type in loose form;
- (c) any package the weight of which exceeds 55 kilograms (Reg. 5).

1387. In its reply to the questionnaire, Transport Malta reported that it enforces the rules on health and safety together with the Labour Ministry and the terminal operators.

1388. Malta Freeport Terminals' own Safety and Environmental Rules and Regulations for Users of the Terminal¹⁷⁶¹ are complementary to the requirements and standards set in the relevant local occupational health and safety regulations (Art. 1.0). These Rules and Regulations contain provisions on, *inter alia*, the requirement to obtain an entry pass issued by the Freeport Authority, personal protection equipment, traffic rules and regulations, the entry and certification of equipment belonging to third parties and the training of workers engaged by contractors.

Valletta Gateway Terminals has issued a similar document entitled 'Occupational & Environmental Health and Safety – Contractor's Obligations and Duties'¹⁷⁶².

¹⁷⁵⁸ Legal Notice 52 of 1986.

¹⁷⁵⁹ Legal Notice 282 of 2004.

¹⁷⁶⁰ Government Notice 497 of 1953.

¹⁷⁶¹ <http://www.maltafreeport.com.mt/freeport/content.aspx?id=324340>.

¹⁷⁶² http://www.vgt.com.mt/Portals/27/docs/HS_Contractors%20Obligations.pdf.

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1389. According to Transport Malta, no statistics on the number, type and causes of occupational accidents and occupational diseases involving port workers are maintained. All cases are reported to the National Occupational Health and Safety Authority (OHSA) who, however, only maintain statistics at an aggregate level and are consequently unable to provide specific figures on port work. The National Statistics Office was not able to provide us with relevant data either.

1390. Valletta Gateway Terminals has its own Accident / Incident Report Form¹⁷⁶³ as well as an Accident Notification Form¹⁷⁶⁴. However, the company was unable to provide statistical data.

1391. Malta Freeport Terminals' Safety and Environmental Rules and Regulations for Users of the Terminal¹⁷⁶⁵ stipulate that all accidents, close calls or unsafe situations should be promptly reported to the nearest Freeport Official or to the Security Office who will respond immediately to any accident (Art. 3.2).

Malta Freeport informed us that in 2011, no fatalities occurred and that its injury rate is in line with the ICHCA 2011 Container Terminal Accident benchmark scheme figure for Europe which was 2.7 accidents causing an injured person to be absent from work for more than 1 day for every 100,000 TEUs handled. The company also provide the following figures on types of accidents:

¹⁷⁶³ See <http://www.vgt.com.mt/Portals/27/docs/Accident%20Report.xls>

¹⁷⁶⁴ See <http://www.vgt.com.mt/Portals/27/docs/ACCIDENT%20NOTIFICATION%20FORM.doc>.

¹⁷⁶⁵ <http://www.maltafreeport.com.mt/freeport/content.aspx?id=324340>.

Table 82. Types of occupational accidents with and without injury at Malta Freeport, 2011 (source: Malta Freeport)

Type of accident	Percentage of total accidents
Other accidental injury	23
Injured during lashing	16
Accident during hoisting/lowering (RTG & QC)	14
Tugmaster /trailer hit container in yard	12
Collision RTG -Tugmaster	11
Deckman injured on board vessel	8
Injured during maintenance	7
Collision Tug-Tug	5
Injured ascending/descending equipment	4

9.14.6. Policy and legal issues

- Express duty upon Government to implement EU obligations

1392. Before we outline a number of possible issues, we should point out that the Authority for Transport in Malta Act provides that the Government shall endeavour, through Transport Malta, to standardise practices in the transport sector in Malta in line with international norms and with those of the European Union in particular (Art. 4(2)(h) of the Authority for Transport in Malta Act). Transport Malta is entrusted with the task of implementing "any European Community obligation relating to any matter falling within its functions" (Art. 6(1)(l)).

- Restrictions on employment

1393. It may first be questioned whether the current legal regime genuinely allows for a free, competitive and fully competence-based recruitment of port workers.

First of all, 100 per cent of pool workers are unionised (the national average union density is around 51 per cent¹⁷⁶⁶). Even if Transport Malta did not mention any legal or factual obligation

¹⁷⁶⁶ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

to join a union, it would appear that the closed shop issue deserves further investigation. A major shipping agent at Valetta confirmed that the unions are very strong.

Next, a number of sons and daughters continue to enjoy priority rights. At the very least, the relevant legal provisions are not always easy to interpret¹⁷⁶⁷. As we have explained, the priority for relatives was criticised in the 1999 Development Plan for the Port of Valetta¹⁷⁶⁸ and in the run-up to EU accession in 2004¹⁷⁶⁹.

Clearly, the legal regime continues to uphold the inheritance scheme, creating a “dynasty of port workers”¹⁷⁷⁰. It goes without saying that this system of kin-based recruitment restricts free entrance to the labour market for non-relatives of port workers, who can only be registered if no prospective port workers or persons eligible to become a prospective port worker are available. As a result, a discrimination issue seems to arise.

1394. In relation to the inheritance scheme, a gender discrimination issue has moreover arisen.

In the 2001 *cause célèbre* of *Victoria Cassar v. Malta Maritime Authority* – which we already highlighted in the general chapter on European law above¹⁷⁷¹ – the Maltese Constitutional Court ruled that the port labour regime did not measure up to the requirements of human rights and violated the principle of non-discrimination. At the time, the Port Workers Regulations stipulated that when a port worker retired, his son, or his eldest son if he had more than one son or, in the absence of sons, his brother or his eldest brother, were eligible to be registered to fill the vacancy left by him. Ms Victoria Cassar was the eldest of the children of a retired port worker, but the Port Workers Board refused to register her as a port worker since eligibility to fill the vacancy was limited to sons and brothers thereby excluding daughters. The defendant argued before the First Hall of the Civil Court that this discrimination was objectively justifiable in view of the nature of the work in the port area – its hazardous and strenuous nature. Both the First Hall of the Civil Court and the Constitutional Court, however, found that the provision of the Port Workers Regulations which excluded *a priori* the daughters of retired port workers from filling the vacancy left by their father was in breach of both the Maltese Constitution (Art. 45 on the protection from discrimination on the grounds of, among others, gender) as well as the European Convention on Human Rights (Art. 14 on non-discrimination read in conjunction with Art. 3 on the prohibition on degrading treatment). The Constitutional Court declared the provisions of the relevant Regulations, in so far as they discriminated on the basis of gender, to be null and void, and further ordered the Port Workers Board to register Victoria Cassar as a port worker with retroactive effect. In coming to this conclusion, the Constitutional Court referred to, among others, the European Social Charter and to the Equal Rights Amendment of the Constitution of the United States. At an earlier stage of the

¹⁷⁶⁷ See *supra*, para 1350.

¹⁷⁶⁸ See *supra*, para 1323.

¹⁷⁶⁹ See *supra*, para 1326.

¹⁷⁷⁰ See Vella, M., “Port workers get 65c per cargo tonne for their pension fund”, *Business Today* 3 May 2006, <http://www.businesstoday.com.mt/2006/05/03/focus.html>.

¹⁷⁷¹ See *supra*, para 230.

proceedings, reference was also made to various other legal instruments such as the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Treaty of Rome, the Equal Pay Directive 75/117, the Equal Treatment Directive 76/207 and the Pregnancy Directive 92/85¹⁷⁷².

In 2002, the UN Committee on the Elimination of Discrimination against Women found that discriminatory practices continued to exist under the 1993 Port Workers Regulations. At the time of the report, it was envisaged that all legislation which continued to be discriminatory would be abolished by the end of 2002¹⁷⁷³, and this is also what happened¹⁷⁷⁴.

Reportedly, by February 2003, Cassar's name had not yet been included in the Port Workers Register and the Port Workers Regulations had not been amended¹⁷⁷⁵, but in 2007 the competent Minister assured Parliament that rights of the handful of registered women were duly protected and would not be affected by the 2007 Act implementing the port labour reform scheme¹⁷⁷⁶. The case also attracted the attention of an Expert Network on Social Matters and Equal Treatment of the European Commission¹⁷⁷⁷.

Changes in the Port Workers Regulations were indeed made and the majority of its provisions now refer to both port workers' sons and daughters as well as brothers and sisters. However, one provision continues to refer to port workers' sons only and reads:

A port worker, who, being forty-five years of age or over on his last birthday, has his registration cancelled on being certified to be medically unfit for port work by a medical board appointed by the Minister shall, if he has a son eligible to replace him in accordance with these regulations, receive a pension as follows:

- (a) during such time as such son is not registered in the Port Workers Register - full pension;*
- (b) from the date on which such son is registered in the Port Workers Register until the port worker reaches retiring age - such part of the full pension as the Minister may, on the advice of the Committee, from time to time determine; and*
- (c) on reaching retiring age - full pension (Reg. 41(1)) of the Port Workers Regulations, emphasis added).*

¹⁷⁷² Qorti Kostituzzjonali, 2 November 2001, No. 5, Rikors Kost. No. 706/99 RCP, Victoria Cassar vc. Awtorita Marittima ta' Malta, www.justiceservices.gov.mt; X., *Questionnaire for the XIVth Congress of the Conference of European Constitutional Courts. "Problems of Legislative Omission in Constitutional Jurisprudence. Response of Malta*, 13 June 2008.

¹⁷⁷³ United Nations. Committee on the Elimination of Discrimination against Women, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. Malta*, CEDAW/C/MLT/1-3, 18 December 2002, 27.

¹⁷⁷⁴ See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 26-28.

¹⁷⁷⁵ Soler C. and Balzan, R., "Legal (un)certainly in Malta", *The Sunday Times* 2 February 2003, <http://www.timesofmalta.com/articles/view/20030202/local/legal-un-certainty-in-malta.157586>.

¹⁷⁷⁶ *Parliamentary Documents*, Debates, 16 July 2007, 432.

¹⁷⁷⁷ See Xuereb, P., "Malta", in European Commission / Commission's Network of legal experts in the fields of employment, social affairs and equality between men and women, *Report on Pregnancy, Maternity, Parental and Paternity Rights*, 2007, 88.

1395. Another discrimination issue seems to arise in respect of the legal impossibility for workers over 45 years of age to obtain registration as a port worker¹⁷⁷⁸. Zammit's thesis, which recalls the prohibitions on age discrimination set out in the Charter of Fundamental Rights and Directive 2000/78/EC¹⁷⁷⁹, only confirms our observation.

1396. In response to the port labour questionnaire, Transport Malta raised the issue of exclusive rights for certain categories of workers, even it immediately added that this does not have negative competitive effects.

Upon closer scrutiny, various provisions of the currently applicable laws and regulations appear to seriously restrict the freedom of employers to hire and choose workers and to decide on the duration of their employment.

The 2007 reform agreement and the Port Regulations state that a large number of port workers will be paid per hour but always at a minimum equivalent to 4 hours¹⁷⁸⁰.

As we have explained above, the Port Workers Regulations provide that the number of port workers inclusive of drivers, winchmen and/or signalmen, where applicable, to be allocated for an operation and the approximate time necessary to complete the operation, shall be determined jointly by two representatives of Transport Malta and a representative of the port workers. Their decision shall be final, provided that the employer of port workers may, while the operation is in progress, request a revision of the decision, and that, if a dispute arises, the matter shall be brought for the consideration of the Port Workers Board, without the stopping of port work, except in the case of evident danger¹⁷⁸¹.

Next, the workers are allocated in the order in which they appear on the roster, and port workers who are requested to perform part of a shift shall be considered as if they have worked a whole shift¹⁷⁸².

Furthermore, when port workers have been allocated to a ship or to an operation, no increase or decrease in the number of port workers shall be allowed, save as provided for in the Schedule to the Port Workers Regulations¹⁷⁸³.

Also, the number of port workers allocated port work on Deep Water Quays "shall be deemed to include at least one driver for mechanical handling equipment other than forklift trucks and

¹⁷⁷⁸ See *supra*, para 1343.

¹⁷⁷⁹ See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 119-121.

¹⁷⁸⁰ Port Circular No. 03/07 of 2 July 2007, 4; see also *supra*, paras 1333 and 1359.

¹⁷⁸¹ See *supra*, para 1355.

¹⁷⁸² See *supra*, para 1355.

¹⁷⁸³ See *supra*, para 1355.

cranes", and leakages on board ship must be gathered and packed or bagged by port workers¹⁷⁸⁴.

The use of one or more signallers is imposed by the Dock Safety Regulations¹⁷⁸⁵.

The Port Rates Regulations mention cases where the use of port cranes is obligatory (see, for example, Par. 2 of Part II of the First Schedule to the Port Rates Regulations; Par. 2 of Part I of the Seventh Schedule).

For many years, a particular bone of contention has been the legal obligation to use tallymen. As we have seen, the Tallying of Goods Regulation still impose compulsory tally¹⁷⁸⁶. Following reform measures, the tallymen are now employed by Transport Malta, which was supposed to act exclusively as a regulatory body, but is again involved in cargo handling operations, and subcontracts its tally clerks to VGT. The service of tallymen is said to have little added value and outdated, tally clerks often have "nothing to tally", while VGT has been accused of making "a mockery" of tallying by employing students to perform the service¹⁷⁸⁷.

1397. In 2008, a Maltese Court did not rule out that a foreman's licence did constitute some form of "possession" within the meaning of Article 1 of the First Additional Protocol to the European Convention on Human Rights. It held that the revocation of licences under the reform measures of 2008 had not maintained the balance between public interest and the rights of the foremen¹⁷⁸⁸.

1398. In 2009, GWU filed a judicial letter against the Maritime Authority (now Transport Malta) demanding that it should not subcontract work to unlicensed people. The Union said it had been insisting on the need for more port workers for months but the Authority replied that when more people were required, it would get terminal operator employees to do the work. Quite remarkably, the union argued that this "was against European guidelines because port services had not been liberalised"¹⁷⁸⁹.

¹⁷⁸⁴ See *supra*, para 1355.

¹⁷⁸⁵ See *supra*, para 1355.

¹⁷⁸⁶ See *supra*, para 1368.

¹⁷⁸⁷ See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 82-85, 106-109 and 123-124.

¹⁷⁸⁸ First Hall of the Civil Court, 25 September 2008, *Vicor Spiteri vs. Avukat Generali*, No. 1/2008, discussed in Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 97-106.

¹⁷⁸⁹ X., "GWU files judicial letter over port work", *Times of Malta* 23 July 2009, <http://www.timesofmalta.com/articles/view/20090723/local/gwu-files-judicial-letter-over-port-work.266339>.

1399. Responding to our questionnaire, Transport Malta mentions a prohibition on self-handling. Even if it added that this restriction has no major impact on the competitive position of the Maltese ports, issues over self-handling regularly arise in the ro-ro sector.

In May 2010, for example, a dispute arose after Viset Malta plc (now Valletta Cruise Port plc) had notified agents and operators that all commercial vehicles on the Malta-Sicily ferry service berthing at its terminals would become subject to a terminal operator fee as well as fees in respect of port workers and their foremen. The port workers' and foremen's overtime and shift allowance was included in the fee and would not be charged extra to the receiver. Shipping line Virtù Ferries had been operating a catamaran service between Malta and Sicily for many years and had been berthing at several berths in Valletta. Its passenger ferries also carried accompanied commercial vehicles that were driven by their owners without the need to involve third parties. In 2001, the quays were passed on to Viset to operate as both a ferry and cruise liner passenger terminal. Virtù Ferries said that since 1998 they had never been charged any fees by Viset in terms of commercial vehicles (RoRo) using the terminals. Fees in respect of port workers and their foremen were imposed by Transport Malta. Virtù Ferries said that apart from being illegal, the new fees would negatively affect their business. Virtù Ferries noted that the fees in question were already being contested in court in a case it had filed against the Transport Ministry and the Malta Maritime Authority (now Transport Malta). The Court issued a provisional order stopping Viset Malta from imposing the new set of fees on commercial vehicles using the passenger terminal¹⁷⁹⁰. Reportedly, the matter is now the subject of an agreement with the workers. A shipping agent commented that, where self-handling by crew members is tolerated, the port workers must still be paid due to customs of the past¹⁷⁹¹.

1400. Although this is not explicitly stated in the port labour legislation, Transport Malta informed us that it is not possible to employ temporary port workers via job recruitment or employment agencies. The Maltese Temporary Agency Workers Regulations¹⁷⁹², which were adopted on 5 December 2011 in order to give effect to the provisions of Directive 2008/104/EC, do not contain specific provisions on port labour. As the Regulations apply, *inter alia*, to public undertakings engaged in economic activities, whether or not they are operating for gain, which perform the same functions as temporary work agencies, whether as a main or as an ancillary function (Reg. 3(1)(b)), one is inclined to conclude that they also cover the activities of

¹⁷⁹⁰ X., "Terminal operator fees for commercial vehicles at Viset", *The Sunday Times* 9 May 2010, <http://www.timesofmalta.com/articles/view/20100509/business/terminal-operator-fees-for-commercial-vehicles-at-viset.306395>; X., "Judge stops new port fees temporarily", *Times of Malta* 15 May 2010, <http://www.timesofmalta.com/articles/view/20100515/local/judge-stops-new-port-fees-temporarily.307338>.

¹⁷⁹¹ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) still states that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

- (a) All longshore activities.
- (b) Exceptions:
 - (1) Opening and closing of hatches, and
 - (2) Rigging of ship's gear.

¹⁷⁹² Legal Notice 461 of 2010.

Transport Malta in its capacity as a provider of port workforce¹⁷⁹³. A shipping agent said that relying on agency work would be difficult as experience and training are needed.

1401. Transport Malta also informed us that although port workers may be transferred temporarily between employers, this does not happen in practice. However, port workers forming part of the pool may work in any port, therefore it occurs frequently.

1402. In an interview, a major shipping agent at Valletta said that the *burdnara* enjoy a "ridiculous" monopoly. He commented that this monopoly is wrong and that something must be done about it, although, due to vested interests and the relatively small scale of the problem, there is little political pressure.

1403. Finally, issues may arise in respect of piecework tariffs which are solely based on the tonnage handled, regardless of the work actually performed by the workers. Even if the 2007 reform scheme reduced or even abolished a number of tariffs, users are still confronted with lump sum fees which are, to a large extent, Government imposed. The impact of the tariff system is aggravated by the fact that, as a rule, Transport Malta and the unions decide on the number of workers who are needed and, consequently, entitled to a fee. Furthermore, employers are obliged to contribute to the Pension and Contingency Fund of the port workers, with a number of exceptions however, which may perhaps give rise to further discrimination issues.

- Restrictive working practices

1404. Until recently, reports abounded that working practices in Maltese ports are highly restrictive.

During a Parliamentary debate on the efficiency of ports in 2007, Competitiveness Minister Censu Galea declared before the Maltese Parliament that port workers "who thought that they

¹⁷⁹³ We pass over the issue whether the Temporary Agency Workers Regulations would apply to the supply of self-employed workers. The terminology of the specific laws and regulations on port labour systematically uses the word 'employment'.

could continue following current systems, such as not calling for work because of the village feast or to go hunting, should think again"¹⁷⁹⁴.

Replying to our questionnaire, Transport Malta mentioned the restrictive working practice of unjustified interruptions of work and breaks. The Authority however immediately added that the occasional stoppages are rather minimal and do not affect the real image of the port.

An interviewed shipping agent also drew attention to the rule which allows pool workers to go home as soon as they have completed their task (even if it took them only one hour), which would not apply if they were employed by a terminal operator who of course would move them to another job.

1405. The Port Workers Regulations stipulate that port workers are not obliged to work on five specific public holidays (Para 5 of the Fifth Schedule). However, Transport Malta may on these days authorise port work in emergency situations or, after consultation with the employers and the port workers representatives, for any other port work.

When on 1 May 2011, which is a public holiday, Virtù Ferries wished to load and unload a ship, the Malta Dockers' Union requested the Civil Court to issue an injunction prohibiting the ferry company from loading and unloading large trucks carrying over 10 tonnes. The union argued that, according to Port Workers Regulations, workers could not work on five specific public holidays, including May 1, unless special permission was obtained from Transport Malta. The law states that only licensed port workers can carry out loading and unloading when the merchandise exceeds 10 tonnes. It lays down specific tariffs to be paid to workers, ranging from 23 EUR to 74 EUR per truck, to be shared among them. According to the Regulations, which reflect a practice followed for many years, no loading and unloading can be carried out in the port on Good Friday, May 1, August 15, Christmas Day, New Year's Day, and the afternoons of Christmas and New Year's Eve. Virtù Ferries said the port workers were not necessarily needed to render a service on Sunday. However, the Court upheld the union's request and explained that not doing so would create a precedent that ultimately went against the Regulations¹⁷⁹⁵.

¹⁷⁹⁴ X., "More port reforms on the way", *Times of Malta* 18 July 2007, <http://www.timesofmalta.com/articles/view/20070718/local/more-port-reforms-on-the-way.10919>; see more in *Parliamentary Documents*, Debates, 17 July 2007, 492.

¹⁷⁹⁵ Calleja, C., "Court orders May 1 kept as day of rest for port workers", *Times of Malta* 30 April 2011, <http://www.timesofmalta.com/articles/view/20110430/local/Court-orders-May-1-kept-as-day-of-rest-for-port-workers.362929>. The Court reasoned as follows:

In the case in question, it results that the applicant is demanding that the respondent be restrained from loading or unloading in Maltese ports, any commercial vehicles which have a capacity of more than ten tonnes of merchandise, or that merchandise specified by law. The applicant also cites the Regulations relating to port workers, Legal Notice 90/1993 as amended by Legal Notice 226/2007 stating that licensed port workers are to manage the loading or unloading of merchandise from the Catamaran named Jean de la Vallete or any other sea vessel on 1st May 2011 at 8.00am till the following 2nd May at 8.00am. The applicants submitted that on the basis of the Regulations, it is necessary for certain types of work, for the port workers are present. Usually, this work is done by port workers for 360 days a year, excluding Good Friday, 1st of May, 15th August, the afternoon of 24th

1406. On 3 January 2012, Transport Malta issued a notice to ship owners and operators, ship agents, shippers and terminal operators entitled *Unofficial Payments to Port Workers*. The document reads:

As reiterated on a number of previous occasions, port users – particularly ship agents, ship owners and shippers – should refrain from negotiating with port workers. This practice is illegal.

Port users are reminded that whenever they become aware of a risk in handling of cargo onboard vessels, they are to immediately inform the Terminal Operator and the Authority before the actual cargo handling operation. If this is not possible and the problem arises after port workers have been allocated to the vessel, port users are being instructed to refer the matter to the Port Workers Board as established by the Port Workers Regulations (SL171.02)¹⁷⁹⁶.

- *Discrimination on the basis of the origin of goods and between import / export and transshipment*

1407. The Malta Freeports Act expressly provides that in issuing licences for operations in a Freeport, the Malta Freeports Corporation shall ensure that a Freeport shall be open to all

December, Christmas day, 31st December and 1st January. This results from the Fifth Schedule of the Regulations relating to port workers.

The respondent claimed that it is not necessary for port workers to be present in order to carry out the services. The Court cannot agree with this argument because in order to avoid danger, it is necessary that the work is carried out properly and if port workers are meant to do the work, then the work cannot be carried out otherwise, at the risk of endangering passengers. The respondent stressed the importance that the right must emerge prima facie and that the damage be irremediable. The element of prima facie certainly results because it emerges from the law. The respondent held that the damage would not be irremediable while the applicant referred to the creation of a situation where a precedent will be formed and every operator could work even though the law says otherwise. In the opinion of the court, the damage is irremediable because it will create a precedent which goes against the dictates of the law. A solution could be found either by amending the law or, if it so deems, the Authority for Transport in Malta authorises every work in the port to be carried out in the circumstances provided by law after carrying out the due consultation requested by the said law.

For these reasons, the court accepts the request for the issue of the warrant of prohibitory injunction and orders the issue of a warrant of prohibitory injunction.

(Civil Court, First Hall, 29 April 2011, Malta Dockers' Union (Reg. Number 287) vs. Virtu Ferries Limited (C 11553), translation kindly provided by Maureen Portelli of Camilleri Preziosi law office, Valletta). On other, more fundamental legal proceedings initiated by Virtu Ferries, where the incompatibility of the obligation to use registered port workers with free movement of goods and the prohibition on abuse of a dominant position was raised, see Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 88-92. We are unaware of the outcome of this case.

¹⁷⁹⁶ Transport Malta, *Port Notice No 03/12. Unofficial Payments to Port Workers*, 3 January 2012, <http://www.transport.gov.mt/admin/uploads/media-library/files/Port%20Notice%2003-12.pdf>.

goods, irrespective of their nature, quantity and country of origin, consignment or destination; nor shall there be any limit of time during which goods may be retained in a Freeport (Art. 12(1) of the Malta Freeports Act).

Yet, several provisions of Maltese port laws and regulation seem to overtly discriminate on the basis of the origin or the destination of goods and lay down reduced port rates for locally manufactured goods (see, for example, Par. 1 of Part II of the First Schedule to the Port Rates Regulations; Part II of the Fifth Schedule; Par. 1 of Part II of the Seventh Schedule).

- Qualification and training issues

1408. Replying to our questionnaire, Transport Malta mentions that Maltese port workers lack training. The absence of any requirement for workers to pass or attend any skills test or training was already highlighted in the Development Plan for the port of Valletta of 1999¹⁷⁹⁷. In an interview, a major ship agent at Valletta confirmed that available training programmes focus on health and safety aspects, not on how to become a docker.

- Health and safety issues

1409. In its reply to our questionnaire, Transport Malta mentioned that most of the present health and safety rules are outdated and do not cater for modern cargo handling operations. Furthermore, Transport Malta reports that the rules on health and safety are not properly enforced and that more qualified enforcement personnel is required.

1410. Even if official statistics on accidents in ports are lacking – which may be considered a serious issue in its own right – media reports provide anecdotal evidence suggesting that in Malta, too, port labour can be considered a relatively dangerous profession.

In March 2012, for example, Malta Freeport Terminal was ordered to pay two port workers compensation of over 111,000.00 EUR after a Court ruled that they were injured while unloading a container because of the lack of a safe working process. The accident occurred in 2009 when the men were unlashng merchandise that was being unloaded by a gantry crane. According to the two men, the gantry crane operator could not see them as he was some 10

¹⁷⁹⁷ See *supra*, para 1323.

storeys above the level of the quay. However, there was no radio operator to direct the crane operation from ground level. The accident happened when the crane lifted before the container had been fully unlashd. As a result, the container slipped and hit the two men as they jumped to get out of the way. Both were injured. The Court noted that an internal report by the Freeport had concluded that the accident had occurred as a result of unsafe working practices. The Freeport was therefore held solely responsible for the injuries the two men had suffered¹⁷⁹⁸.

In another judgment from 2012, Malta Freeport Terminal was ordered to pay the heirs of a port worker 80,000.00 EUR. The port worker had died in 1998 after he fell the height of two containers while he was working in the hold of a vessel. In its judgment, the Court concluded that Malta Freeport had failed to provide the port worker with a safe system of work. Although the port worker had been instructed to work at a certain height within the ship's hold, he had not been provided with a safety rope, nor had he been instructed to use a rope. It further resulted that there were patches of oil where the worker was working and this had added to the chances of him slipping and falling from a height. The evidence showed that the worker had slipped on the oil which was on the containers. The Court decided that the Freeport Terminal was responsible despite the fact that the registered worker was not its employee. However, the Court also noted that the worker had been provided with a helmet but had failed to use it. As a result, he was found to carry responsibility for one-fifth of the accident¹⁷⁹⁹.

1411. An interviewed shipping agent said that health and safety discipline among port workers is lax and rare, and that enforcement of applicable regulations remains a very difficult issue.

1412. Malta is still a Party to the outdated ILO Convention No. 32.

¹⁷⁹⁸ Qorti Civili Prim' Awla, 20 March 2012, No. 1332/2010, Emmanuel Borg and Emmanuel Dingli vs. Malta Freeport Terminals c.s., www.justiceservices.gov.mt; X., "Workers win €111,000 compensation for Freeport accident", *Times of Malta* 21 March 2012, <http://www.timesofmalta.com/articles/view/20120321/local/workers-win-111-000-compensation-for-freeport-accident.412120>.

¹⁷⁹⁹ Qorti Civili Prim' Awla, 7 February 2012, No. 425/2004, Maria Assunta Zerafa c.s. vs. Freeport Terminal (Malta), www.justiceservices.gov.mt; X., "Freeport ordered to pay victim's heirs €80,000", *Times of Malta* 7 February 2012, <http://www.timesofmalta.com/articles/view/20120207/local/freeport-ordered-to-pay-victim-s-heirs.405759>.

9.14.7. Appraisals and outlook

1413. All interested parties hailed the 2007 reform agreement as a major breakthrough¹⁸⁰⁰.

First of all, the 2007 agreement on the reform of port labour was welcomed by the Chamber of Industry. Its President said that he was very satisfied with the agreement indicating that there was at last some movement to change work practices that had been ossified for years and to adhere to the fundamental principle that fees need to reflect today's competitive realities and actual services rendered¹⁸⁰¹.

The Malta Employers' Association said that the 2007 revision in port workers' tariffs was a positive step towards improving Malta's competitiveness¹⁸⁰².

The Grimaldi Group based in Naples, owners of shipping line Malta Motorways of the Sea, were also satisfied with the signing of the port reform. The Chair of the Grimaldi Group, Emanuele Grimaldi, was pleased that the agreement was amicably reached, to the satisfaction of all stakeholders¹⁸⁰³.

MDU's president Joe Saliba welcomed the 2007 agreement because workers would still be earning the same amount despite some tariff reductions and because, moreover, 72 new jobs had been created and more were expected to become available shortly. On allegations of payments being made to port workers for services not effectively rendered, a media report noted what follows:

Some people think port workers are being paid for work they no longer do. How does he react to this?

"Port workers' tariffs were and are still regulated by law and both tariffs and the law were hardly ever changed. Yet, practices did change. Cement used to be imported in 50 kilogramme sacks, then on pallets, then in jumbo bags and now it is pumped directly into trucks. Yet, our tariff still depended on weight and volume. This has all changed now.

"There have been great reductions in our tariffs in the case of cement and grain. We used to get paid 13c per ton of grain handled and another 65c went into the pensions fund. This part of the tariff has been removed and, had this not happened, it would have made the current increase in grain prices worse. For cement, we now charge Lm1 whereas before we charged Lm2.14. Yet, we have not seen a substantial reduction in prices on the market, so someone must still be pocketing what we gave up.

¹⁸⁰⁰ Compare, in addition to the appraisals reported below, the report on stakeholders' opinions in Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 88 *et seq.*

¹⁸⁰¹ Attard Gialanze, S., "Positive reactions from industry on port workers agreement", *Business Today* 4 July 2007, <http://www.businesstoday.com.mt/2007/07/04/focus.html>.

¹⁸⁰² Malta Employers' Association, *Proposals for National Budget 2008*, July 2007, <http://www.maltaemployers.com/Portals/22/Budget%20proposals%20for%20year%202008.pdf>, 5.

¹⁸⁰³ Farrugia, C. and Debono, M., "New collective agreement for port workers signed", *Eironline* 20 August 2007, <http://www.eurofound.europa.eu/eiro/2007/07/articles/mt0707039i.htm>.

*"Fees for containers have been slashed too. The fee for handling a 20-foot container has gone down by Lm17. One can argue that this is not much and consumers will hardly feel the difference because on merchandise worth, say, Lm10,000, a cut of Lm17 won't make much difference"*¹⁸⁰⁴.

Reportedly, the port workers accepted the changes in their conditions of work to help the newly formed union MDU pass its first crucial test¹⁸⁰⁵.

The International Dockworkers' Council (IDC) presented the 2007 reform agreement as a model for other countries¹⁸⁰⁶.

Interestingly, the current President of the Republic of Malta, Dr George Abela, who is the son of a registered port worker, acted for 25 years as GWU's legal consultant and represented port workers during the talks leading to the 2007 reform agreement¹⁸⁰⁷. According to information on the President's home page, the 2007 reform "has been hailed by the European Commission as a model in social dialogue to be followed by other member states"¹⁸⁰⁸.

In this respect, it is perhaps difficult to understand why agreements, which must by law be transmitted to the Maltese authorities, impact on the position of prospective service providers and are presented as a model for the whole EU, are not made public.

1414. Responding to our questionnaire, Transport Malta stated that the current port labour regime offers sufficient legal certainty, but that even then it must be considered unsatisfactory as no skills and qualifications required from new entrants to port work have been established and as the health and safety legislation must be adapted to modern cargo techniques.

¹⁸⁰⁴ Fenech, N., "Dock-side reformers", *Times of Malta* 15 September 2007, <http://www.timesofmalta.com/articles/view/20070915/local/dock-side-reformers.5038>.

¹⁸⁰⁵ Debono, M. and S. Rizzo, "Malta: Industrial relations developments in Europe 2007", *Eironline* 23 September 2008, <http://www.eurofound.europa.eu/eiro/studies/tn0803029s/mt0803029g.htm>.

¹⁸⁰⁶ Zammit, R., "Dockers' agreement held as model", *Times of Malta* 14 January 2008, <http://www.timesofmalta.com/articles/view/20080114/local/dockers-agreement-held-as-model.191775>.

¹⁸⁰⁷ Reportedly, George Abela was dismissed from the GWU prior to the 2007 reforms, after he openly declared that he would no longer file court cases he did not believe in (see Debono, M. and Farrugia, C., "Union dispute in the wake of port restructuring", *Eironline* 30 October 2006, <http://www.eurofound.europa.eu/eiro/2006/09/articles/mt0609039i.htm>; Vella, M., "Port workers get 65c per cargo tonne for their pension fund", *Business Today* 3 May 2006, <http://www.businesstoday.com.mt/2006/05/03/focus.html>; X., "We cannot forget past 'problems' with George Abela", *Times of Malta* 19 April 2009, <http://www.timesofmalta.com/articles/view/20090419/local/we-cannot-forget-past-problems-with-george-abela-zarb.253430>.

¹⁸⁰⁸ See Biography of H.E. Dr. George Abela on http://president.gov.mt/biography_dr_george_abela?l=1 (link found broken upon updating). This information is confirmed in Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 124.

1415. Further, Transport Malta considers the current relationship between port employers and port workers and their respective organisations good. During the last ten years, the number of work stoppages has been minimal and the privatisation of port terminals has taken place without any industrial disputes. Moreover, throughputs in the ports have increased continuously.

1416. Still according to Transport Malta, the current port labour regime has a positive impact on the competitive position of the Maltese ports. Terminal operators are allowed to employ port workers of their choice for the handling of cargo handling equipment and to enter into Service Level Agreements with the registered port workers. This regime is said to provide for flexibility in port work and to satisfy the needs of terminal operators.

1417. In his 2009 Masters thesis, Joseph Zammit presented his personal appraisal of the recent reform scheme. Recalling that most of the service providers operated in a monopolistic status – meaning that there was no form of competition for the provision of service in Maltese ports – he concluded that the aim of the Government, which was in line with the European Union stand of eliminating monopolies in the ports by opening this sector to competition, was not achieved, even if this does not mean that the result was a total failure¹⁸⁰⁹.

On the issue of complicated tariffs and archaic working practices, Zammit's authoritative judgment is as follows:

One of the main flaws of the port workers' reform was basically the fact that it centred on the reduction of port costs, ignoring another similarly important aspect that required attention, since it was one of the main complaints of the port users before the reform. Reference is being made to the archaic port work practices which hindered efficiency in the port. In this regard, the Port Workers Regulations (Cap 171.02) had not been amended in such a way as to remove these outdated practices. Although the introduction of the service level agreements might assist in reducing related problems, since they may include provisions for the service provided by the port workers, their duties, the hours of work and the ordering procedure, the regulations themselves still contain complicated procedures on how one can order workers for work during night time, on weekends and public holidays.¹⁹⁶ It is about time that someone in authority understands the fact that ships do delay due to bad weather or delays in the previous port and as such it is not always easy to give an accurate time of arrival. Since the reform, there have been occasions when ships were left idle on a Sunday for a whole day, because the order for workers was not made by Saturday noon. This practice is unacceptable by today's shipping standards. One would have assumed that this problem would have been eliminated in the reform. This could have been achieved by the

¹⁸⁰⁹ Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 112.

introduction of a stand by crew of workers on a roster basis. In cases where workers do perform work they get paid the normal rate whereas on the occasions where they are not called for duty they only receive a nominal fee for being on standby. One other radical solution would be to introduce a shift system at Grand Harbour in the same way as that used at Freeport, in which a number of workers would be present at all times during the shifts to work on the vessels in the port. This would present a bigger problem to negotiate with port workers since it involves the total overhaul of the port workers' system of payment. The port workers have always been paid on the basis of a rate per ton (piecework) since they have been regulated, but it may be the case that the time has come to offer a fair and just wage system irrespective of the nature of the work done. As proposed both in the Hyder report, the consultative committee workshops and even by some of the port users in various media reports, the government may have to offer some form of compensation to the workers in order to make up for the possible loss of income and the new working conditions. The presently licensed workers would still remain in employment albeit with different conditions. Compensation would be higher for those opting to leave. This is not a new concept. It has been used by previous Governments when there was the need to reduce the number of workers (see chapter 1). Today there is a different need, that of making the port more efficient, and this could only be reached by eliminating old practices. Furthermore, sometimes it is better to cut a clean slate and start afresh rather than to try and patch what was originally built on faulty foundations.

The same can be said of tariffs. Port users always complained that the tariffs for port workers were complicated and included charges which they could not understand. By looking at the third schedule of the Regulations,¹⁹⁷ one can immediately see that there are tariffs which are still very complicated and which concern cargoes that are no longer loaded or discharged in our ports. Some examples include tariffs for export and imports, transshipment, different rates for different packaging of goods, shifting, loading or discharging of goods. Some examples of tariffs for cargoes no longer handled in our port are those concerning soda, coke, sulphur, coal, carobs and coal in bags, chairs loose or in bundles, aviation spirit in cans or drums, ammunition, empty wine and beer casks and willows and canes either loose or in bundles. These tariffs are remnants of past times, sometimes dating back to the war. One would have expected that in such a lengthy reform these would be removed. When there is a specific tariff for each and every cargo imported or exported in Malta, it is bound to create complications and mistakes. One easy solution to eliminate such complications would have been to conduct an exercise based on the volumes of each cargo imported or exported in the last three years, and then work out an average tariff encompassing all the general cargo. This means that if the cargo is deemed as general cargo it would be charged one tariff on a per ton basis. This is already being applied in the case of trailers and containers where a fixed rate per unit was agreed upon irrespective of the real weight in any particular container.

One other related problem concerns locally manufactured goods exported from Malta. Previous Governments in the sixties introduced reductions in the rates for exports in order to assist local industry. In today's scenario, with Malta being a member State in the European Union one has to question whether this procedure can be continued since

it may be deemed to fall under "state Aid", a concept which runs contrary to EU Law. There is also the question of discrimination since there is a different treatment between cargoes originating from Malta and others which originate from other member states. This may also be in conflict with laws relating to unfair competition. To avoid further complications both as regards difference of tariffs and also in order to avoid a potential conflict with EU Law it would have been better had the negotiating team agreed on one rate applicable for both imports and exports.

With regards to port costs, it is true that certain tariffs have been reduced for certain cargoes such as cement and gravel. Moreover in the case of another commodity, namely tar, port workers are no longer involved in its loading or discharging operation and the tariff concerning such commodity has now been repealed. The above commodities are used for construction of roads and buildings and given the fact that the construction business is a very important business for Malta one would have assumed that the reductions in the tariff would be reflected in the price for the consumer. From statistics compiled from port workers, some 30,000 tons of cement alone is imported to Malta every month and given the fact that the tariff for such cargo was reduced by half, the saving was substantial. However, this reduction was not reflected in the price for the end consumer and therefore one wonders who effectively benefited from the substantial reductions¹⁸¹⁰.

1418. In an interview, a shipping agent commented that the 2007 reform only led to a temporary reduction of cost, because shortly afterwards, tariffs were substantially increased. He said that the cost of handling port labour in Malta is "phenomenal" (200 to 250 EUR to handle one container) and that privatisation is urgently needed.

1419. Finally, Transport Malta argues that the best port labour regime would be one where terminal operators are free to employ the personnel of their choice at all levels, provided that the persons employed have the necessary qualification and training. Transport Malta favours the adoption of guidelines on qualifications of port workers and training needs at national and EU level.

9.14.8. Developments between January 2013 and September 2014

1419A. We have no knowledge of any major developments in the field of port labour in the period under consideration.

¹⁸¹⁰ Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 116-119.

9.14.9. Synopsis

1420.		
SYNOPSIS OF PORT LABOUR IN MALTA¹⁸¹¹		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 2 main ports • Landlord model • 36m tonnes • 8th in the EU for containers • 37th in the world for containers • 8 employers • Appr. 1,100 port workers • Trade union density: 100% 	<ul style="list-style-type: none"> • <i>Lex specialis</i> (Ordinance of 1962, Regulations of 1993) • Party to ILO C137 • Service Level Agreements and company CBAs • Reform in 2006-2007 • 9 categories of port workers: <ol style="list-style-type: none"> (1) Self-employed pool workers (2) Prospective port workers (3) Eligible port workers (4) Auxiliary port workers (5) Licensed foremen (6) Permanent workers employed by terminals under general labour law (equipment operators) (7) Tallymen (8) Baggage handlers (9) <i>Burdnara</i> (hauliers) • Workers under (1) to (5) are registered and administered by tripartite Board 	<ul style="list-style-type: none"> • Exclusive rights of pool workers, foremen, baggage handlers and <i>burdnara</i> • Closed shop • Remnants of discriminatory inheritance scheme • Remnants of gender discrimination • Age discrimination • Rigid manning levels for pool workers • Ban on self-handling • Ban on temporary agency work • Complicated fixed piecework tariffs for pool workers and foremen • Restrictive working practices • Discriminatory port tariffs
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Training by national college • Training by terminal operator 	<ul style="list-style-type: none"> • Training is required for new port workers and licensed foremen • Certificate of competence since 2007 	<ul style="list-style-type: none"> • Lack of requirements on skills and competences • General lack of training
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No national accident statistics on port labour are maintained • Figures are maintained by Malta Freeport 	<ul style="list-style-type: none"> • Specific Dock Safety Regulations • No Party to ILO C152 	<ul style="list-style-type: none"> • Health and safety rules out-dated • Still Party to outdated ILO C32 • No proper enforcement • Lack of safety discipline

¹⁸¹¹ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.15. Netherlands

9.15.1. Port system¹⁸¹²

1421. The Dutch sector of seaports and related services is dominated by the ports of Rotterdam and Amsterdam. Rotterdam is the largest port in Europe. Strategically situated at the mouth of the Rhine, it handles the largest volume of containers of any European port. Its hinterland covers a large part of continental Europe, focusing on the Rhine valley towards Switzerland and the Ruhr area in Germany.

The port of Amsterdam is the fifth largest port in Europe. Amsterdam is an important cargo generating region in its own right. The port is furthermore oriented eastwards towards Utrecht and Amersfoort and further towards the west of Germany.

Other important Dutch ports include the ports of Flushing (Vlissingen) and Terneuzen (jointly managed by Zeeland Seaports), the ports of Delfzijl and Eemshaven (Groningen Seaports) and the port of Moerdijk.

In 2012, the gross weight of seaborne goods handled in Dutch ports was about 543.2 million tonnes¹⁸¹³. As for container handling, Dutch ports ranked 3rd in the EU and 12th in the world in 2011¹⁸¹⁴.

1422. Dutch seaports are landlord ports. All cargo handling services are provided by the private sector. As a rule, the latter hold a land lease *in rem* (erfpacht) granted by the port authority.

1423. In the past decade, several Dutch port authorities underwent reform.

¹⁸¹² For general information on Dutch ports, see ECOTEC and ECORYS, *Employment trends in all sectors related to the sea or using sea resources, Country Report – the Netherlands*, European Commission, DG Fisheries and Maritime Affairs, August 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/netherlands_employment_trends_en.pdf, 11-13; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 71-89. For statistics, see http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

¹⁸¹³ See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

¹⁸¹⁴ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

In 2004, the Port of Rotterdam was corporatised, following which the Dutch Government became a minority shareholder in the otherwise municipally-owned port authority.

Zeeland Seaports, the port authority managing the ports of Vlissingen and Terneuzen, was corporatised early 2011. The main difference with Rotterdam is that here the only shareholder is the Joint Agreement Zeeland Seaports, in which the Province of Zeeland and the municipalities of Terneuzen, Vlissingen and Borssele participate. The Dutch Government is not a shareholder.

In 2013, both the Port of Amsterdam and Groningen Seaports (the port authority managing the ports of Delfzijl and Eemshaven) were corporatised.

At the national level, the Dutch Government has *de facto* followed a 'mainport' approach to the advantage of Rotterdam.

9.15.2. Sources of law

1424. Currently, there are no specific laws on either the management of Dutch ports or port labour.

1425. Port labour is subject to general Dutch laws and regulations on health and safety at the workplace. The main instruments are the Labour Conditions Act¹⁸¹⁵ and the Labour Conditions Regulations¹⁸¹⁶.

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 2004¹⁸¹⁷.

1426. On 14 September 1976, the Netherlands ratified ILO Dock Work Convention No. 137, but on 17 February 2006 it denounced it¹⁸¹⁸.

¹⁸¹⁵ Wet van 18 maart 1999, houdende bepalingen ter verbetering van de arbeidsomstandigheden (Arbeidsomstandighedenwet 1998 or Arbowet).

¹⁸¹⁶ Besluit van 15 januari 1997, houdende regels in het belang van de veiligheid, de gezondheid en het welzijn in verband met de arbeid (Arbeidsomstandighedenbesluit).

¹⁸¹⁷ Wet van 15 december 2004, houdende regels ten aanzien van het veilig laden en lossen van zeeschepen (Wet laden en lossen zeeschepen); Regeling, houdende regels ten aanzien van het veilig laden en lossen van bulkschepen (Regeling laden en lossen bulkschepen).

¹⁸¹⁸ See also Wet van 22 december 2005 tot goedkeuring van het voornemen tot opzegging van het op 25 juni 1973 te Genève totstandgekomen Verdrag betreffende de havenarbeid, 1973 (Verdrag nr. 137, aangenomen door de Internationale Arbeidsconferentie in haar achtenvijftigste zitting; Trb.

The Netherlands is a State Party to ILO Convention No. 152¹⁸¹⁹. Previously, it was bound by ILO Convention No. 32.

1427. Port labour in the Netherlands is largely governed by collective labour agreements at company level. The main focus of these agreements is on employment (including of temporary workers¹⁸²⁰), working time, wages and bonuses, disability, safety management, holidays and dispute settlement. Today, there are no national or port-wide collective agreements.

Normally, collective labour agreements are registered with the Government. In practice, however, not all agreements are registered in a timely manner and some agreements are not registered at all. We were able to consult a number of company agreements which are freely available on the internet.

9.15.3. Labour market

- Historical background

1428. The evolution of the Dutch port labour regime conforms to the typical historical pattern which we have outlined above, with a transition from Ancien Régime corporations over 19th-century liberalisation and 20th-century regulation and decasualisation to recent banalisation, which culminated in the outright abolition of the pool system.

Interestingly, before the French Revolution the porters' guilds in the Dutch Meuse ports of Delfshaven, Maassluis, Rotterdam, Schiedam applied a more or less common system for the allocation of jobs to individual port workers. Whenever a ship arrived at the port, the bell up in the tower of the porters' guild house would toll for a fixed number of minutes. This was all the time the porters of the guild had to turn up and offer their services. Those who made it on time were eligible for recruitment; those who were late were not. Not surprisingly, then, most would hang around all day just in case. If there were too many eligible candidates for a particular job, a throw of the die would ultimately determine who got to work and who not. The guild's house

1974, 70); Parliamentary Documents, Eerste Kamer der Staten-Generaal, *Goedkeuring van het voornemen tot opzegging van het op 25 juni 1973 te Genève totstandgekomen Verdrag betreffende de havenarbeid*, 1973, 2005-2006, no. 30 007. See also *infra*, para 1438.

¹⁸¹⁹ The Convention was automatically approved on the basis of the General Act on the Approval and Publication of Treaties (Rijkswet goedkeuring en bekendmaking verdragen).

¹⁸²⁰ See *infra*, para 1446.

was also used for storing the porters' tools. In Delfshaven, Schiedam¹⁸²¹ and Maassluis the porters' guild houses can still be seen today.

As early as the first half of the 15th century, Rotterdam also had a harbour crane. The crane operators and the guild of towers obtained a monopoly for quayside work and especially the towing of certain goods into the city, which resulted in a number of complaints by wine merchants who claimed the right to self-handle. It was also the case that crane fees had to be paid where the cargo had actually been discharged from the ship by the ship's crew. In 1827, a Royal Decree allowed the municipalities to re-establish associations of port workers, but they could no longer claim any monopoly¹⁸²²; in practice, all monopolies for inner-city transportation were abolished¹⁸²³.

¹⁸²¹ Schiedam's guild of sack bearers is already mentioned in 1316. In 1577, the Municipality laid down their tariff. The guild survived French revolutionary liberalisation laws and continued its existence until 1940 when it still had 7 members (see <http://www.anthonisgilde.nl/historie>; X., *Schiedam Historische stadswandeling*, Schiedam, VVV, s.d., 4; X., *Open Monumentendag Schiedam Zaterdag 11 september 2004*, Schiedam, Gemeente Schiedam, 2004, 43; see further background in van der Velden, M., *Hafenarbeit und Trägergilden*, Rotterdam, M. van der Velden, 1998, 13-17).

¹⁸²² See *Pandectes belges*, v° Débardeur, paras 3-4.

¹⁸²³ For a wealth of historic detail, see Krans, R.H., "'De kraen subject'. De Rotterdamse stadskraan in het handelsverkeer tot ca. 1880", *Rotterdams jaarboekje* 1994, Rotterdam, Gemeentelijke Archiefdienst Rotterdam, 1994, 150-208. On the sack bearers of Rotterdam, see Stakenburg, A.J., *Zakkendragers van Rotterdam*, Rotterdam, Donia Pers Producties, s.d., 56 p.

Figure 105. The porters' guild house at Schiedam from 1725. When a ship arrived, the bell called the workers to report at the house, where the work was allocated by the throw of a dice (photo by the author).



Figure 106. The porters' guild house at Maassluis from 1765 (photo by the author).



1429. In 1914, the Dutch Parliament passed the Stevedores Act¹⁸²⁴, which provided that masters are only allowed to have stevedoring work performed by the ship's crew or by the personnel of a registered stevedoring company. Also, the Act banned child labour from the docks, limited working hours, established safety rules and prohibited hiring and payment of wages in bars¹⁸²⁵. The Act established the office of a governmental labour inspector and, to assist him, a joint labour-management safety committee and a more general joint dock labour advisory committee. The Act was implemented by the Stevedoring Safety Regulations¹⁸²⁶. Furthermore, as the First World War reduced international trade and hence jobs in neutral Holland, the Dutch Government created public employment exchanges and provided subsidies to voluntary systems of unemployment insurance based on contributions by union members and employers¹⁸²⁷. The first labour pool in the port of Rotterdam was established in 1916. The next year, pools for harbour work and warehousing were founded at Amsterdam¹⁸²⁸. After the war, the pools were transformed into a permanent Port Labour Reserve (Havenarbeidsreserve, HAR) for each port, which employed two categories of workers: the semi-regulars (*losvasten*), who enjoyed priority of engagement and a guaranteed minimum wage, sick pay and pension, and the casual workers (*gelegenheidsarbeiders*) who had to report three times a day for work and received unemployment benefit¹⁸²⁹. In the following decades, the pool system was further adjusted. From the start, the Dutch Government contributed to the financing of unemployment benefits¹⁸³⁰.

1430. After the Second World War Rotterdam's HAR was first transformed into a Central Office for Employment (Centrale voor Arbeidsvoorziening, CVA). The port workers were permanently employed by the pool. In the 1950s, the decasualisation scheme guaranteed the payment of up to 80 per cent of wages in the event of unemployment and a start had been made with schemes for vocational training¹⁸³¹. In 1962, the unemployment benefit was raised to 100 per cent¹⁸³². As

¹⁸²⁴ Wet van 16 oktober 1914 houdende bepalingen in het belang van de personen, werkzaam bij het laden en lossen van zeeschepen (Stuwadoorswet).

¹⁸²⁵ See de Boer, M.G., *De haven van Amsterdam en haar verbinding met de zee*, Amsterdam, Gemeente Amsterdam, 1926, 282 *et seq.*; Kagan, R., "How much does law matter? Labor law, competition and waterfront labor relations in Rotterdam and U.S. ports", *Law & Society Review* 1990, (35), 45; Van Der Wind, S., *Inleiding tot de stuwadoorsarbeid, Publicatie ten behoeve van de opleiding van stuwadoorspersoneel*, Rotterdam, 1950, 104-112; Sociaal-Economische Raad, *Advies inzake een partiële wijziging van de stuwadoorswet 1914*, Den Haag, SER, 1977.

¹⁸²⁶ Stuwadoors-Veiligheidsbesluit (Royal Decree of 5 September 1916; full text in Noordraven, T.J. and van der Boom, C.A.G., *Handboek der scheepvaartwetten scheepvaartcontracten en scheepsadministratie*, Amsterdam, Duwaer & Van Ginkel, 1919, 467 *et seq.*).

¹⁸²⁷ Kagan, R., "How much does law matter? Labor law, competition and waterfront labor relations in Rotterdam and U.S. ports", *Law & Society Review* 1990, (35), 45.

¹⁸²⁸ See de Boer, M.G., *De haven van Amsterdam en haar verbinding met de zee*, Amsterdam, Gemeente Amsterdam, 1926, 290-291.

¹⁸²⁹ See de Boer, M.G., *De haven van Amsterdam en haar verbinding met de zee*, Amsterdam, Gemeente Amsterdam, 1926, 293.

¹⁸³⁰ For an overview of the history of Government contributions, see *Parliamentary Documents*, Tweede Kamer, 1995-1996, 24 417.

¹⁸³¹ See Koedijk, P., "The evolution of working conditions in Dutch ports", *The International Transport Workers' Journal*, May-June 1950, (27), 28. For a detailed account of labour relations in Rotterdam between 1945 and 1965, see Nijhof, E., 'Gezien de dreigende onrust in de haven...'. *De ontwikkeling van de arbeidsverhoudingen in de Rotterdamse haven 1945-1965*, Amsterdam, Stichting beheer IISG, 1988, 492 p. Nijhof, E., "Undeserving casuals: the Rotterdam dockers and

from 1 January 1968, the labour pool of Rotterdam was corporatised into the Foundation of Cooperating Port Companies (Stichting Samenwerkende Havenbedrijven, SHB). In Amsterdam, an SHB had been established in 1945¹⁸³³. Companies affiliated to the SHB were obliged to use the latter's services and were all committed to a minimum level of usage.

However, not all port workers were employed by the pool. After WW2, all dock companies raised their numbers of regulars at the expense of the casuals. In the port of Rotterdam, after 1952 the proportion of the regulars definitively exceeded that of the casuals and reached 80 per cent in 1965¹⁸³⁴.

The following table shows the distribution among pool workers and permanently employed port workers in Amsterdam:

Table 83. Pool workers vs. permanently employed port workers in the port of Amsterdam, 1960-1981 (source: Boot, 2011¹⁸³⁵)

Year	Pool workers (per cent of total)	Permanently employed port workers (per cent of total)	Total
1960	2,875 (50.9 per cent)	2,777 (49.1 per cent)	5,652
1972	1,085 (32.4 per cent)	2,267 (67.6 per cent)	3,352
1981	811 (42.3 per cent)	1,106 (57.7 per cent)	1,917

Rotterdam's container handler ECT refused to take any port workers from the central labour pool, arguing that its new terminal was radically unlike traditional breakbulk cargo handling, requiring new full-time employees specially trained to operate expensive container-handling

their unions, 1880-1965", Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, 405-424.

¹⁸³² Ter Hoeven, P.J.A., *Havenarbeiders van Amsterdam en Rotterdam*, Leiden, H.E. Stenfert Kroese, 1963, 25-26.

¹⁸³³ See Boot, H., *Opstandig volk: neergang en terugkeer van losse havenarbeid*, Amsterdam, Stichting Solidariteit, 2011, 97 et seq.; see also Hoekema, A.J., *Rechtsnormen en sociale feiten. Theorie en empirie rond de kleine havendiefstal*, Rotterdam, Universitaire Pers Rotterdam, 1973, 24-25.

¹⁸³⁴ Nijhof, E., "Dock-work is a skilled profession. Decasualization and the Rotterdam labour market (1945-1970)" in Loyen, R., Buyst, E. and Devos, G. (eds), *Struggling for leadership: Antwerp-Rotterdam port competition between 1870-2000*, Heidelberg/New York: Physica-Verlag, 2003, (275), 280.

¹⁸³⁵ Boot, H., *Opstandig volk: neergang en terugkeer van losse havenarbeid*, Amsterdam, Stichting Solidariteit, 2011, 141. On the port labour regime in the early seventies, see also Blonk, W.A.G., *Handbuch der europäischen Seehäfen. Band IV/V Die Seehäfen in den Niederlanden und in Belgien*, Hamburg, Verlag Weltarchiv, 1974, 58 et seq. (Rotterdam) and 101 et seq. (Amsterdam).

equipment. ECT recruited an entirely new team of workers with whom it signed a separate collective bargaining agreement, providing for higher pay than pool workers and for full-time employment. Also, ECT workers were assigned on rotating basis to four, later five shifts, and were trained to operate a number of different machines and do different jobs, as opposed to the traditional rigid job descriptions¹⁸³⁶.

In the eighties, however, large numbers of workers of the Rotterdam port companies were transferred to the SHB¹⁸³⁷.

1431. In the Netherlands, there has never existed a registration scheme for port workers at national level. In Rotterdam, port workers, including permanent workers of individual employers, were registered by the employers' organisation Port Employers' Association Shipping South (Havenwerkgeversvereniging Scheepvaart Zuid) until 1 January 1996, and by the employers' organisation AAVN¹⁸³⁸ from 1 January 1996 until 31 December 1999. Registration was necessary for the purpose of implementing social security regulations and controlling compliance with training requirements. Upon registration, the workers received a card (*pasje*) which they needed to enter the port. White collar workers had a similar card. The cards were issued by the employers' association, not by the pool. According to the unions, the card system was a necessary tool to fight illegal employment.

1432. Mid-1993, the Dutch Minister of Social Affairs and Employment announced that he would terminate the funding of the pools in Dutch ports. Following this declaration, the pool system underwent a radical reform. The abolition of government financing of unemployment benefits and a number of transitional aid measures, which lasted until 1997, were laid down in an Act of 20 December 1995¹⁸³⁹. The objective was to restructure the SHBs into market-oriented players and also to improve the attitude of workers¹⁸⁴⁰. As a result of these reforms, port workers at Rotterdam were no longer registered as from 1 January 2001, and the card system was abolished.

¹⁸³⁶ Kagan, R., "How much does law matter? Labor law, competition and waterfront labor relations in Rotterdam and U.S. ports", *Law & Society Review* 1990, (35), 54 and footnote 23.

¹⁸³⁷ See also van de Berg, F. et al., *Het zal wel doodbloeden. De Rotterdamse stukgoedstaking 1984*, Amsterdam, Pegasus / Vervoersbond FNV, 1984, 87 p.

¹⁸³⁸ On this organisation, see *infra*, para 1453.

¹⁸³⁹ Wet van 20 december 1995 tot regeling van tijdelijke bijdragen aan havenbedrijven voor herstructurering van de arbeidsvoorziening in havens ter vervanging van hoofdstuk V van de Werkloosheidswet (Wet tijdelijke bijdrage herstructurering arbeidsvoorziening havens). For more background, see especially the Explanatory Memorandum in see *Parliamentary Documents*, Tweede Kamer, 1995-1996, 24 417.

¹⁸⁴⁰ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 33.

1433. As we have explained above¹⁸⁴¹, the main legal source on the organisation of port labour used to be collective bargaining agreements at port level. In Rotterdam, these agreements contained 'A-Articles', which were relevant to all members of the employers' association, and company-specific 'B-Articles'.

However, collective bargaining policy in Dutch ports was gradually decentralised, which means that sector agreements were replaced by company-specific agreements. A major motivation was the growing difference between the container and breakbulk businesses, which could not be bridged in one single port-based collective bargaining agreement. Trade unions, however, say that the real agenda was to weaken the position of the trade unions¹⁸⁴². Recently, the unions campaigned for the conclusion of six common collective bargaining agreements in Rotterdam, one per subsector: ro-ro, bulk, tanking, container, lashing and temporary work¹⁸⁴³. Be that as it may, figures show that in 1970, there were no company agreements in Rotterdam, in 1988 there were 16 and in 2009, 45¹⁸⁴⁴.

The exclusive right of the labour pool to supply temporary workers was enshrined in 'Article A9' of the sectoral agreement which was, for that matter, expressly repeated in a number of company agreements and which continues to appear in current agreements regulating the hiring or temporary workers¹⁸⁴⁵.

1434. In 1995, the labour pool of port of Amsterdam was transformed into the private company Labour Pool Amsterdam North Sea Canal Region (Arbeidspool Amsterdam Noordzeekanaalgebied, AAN). The company, however, ran into financial problems and went bankrupt in 1997. At that time, the company employed some 300 port workers¹⁸⁴⁶. With the

¹⁸⁴¹ See *supra*, paras 1427 and 1430.

¹⁸⁴² Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 45-46.

¹⁸⁴³ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 51-52.

¹⁸⁴⁴ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 54, based on data provided by N. Stam.

¹⁸⁴⁵ The typical wording was as follows:

De werkgever zal voor het verrichten van werkzaamheden, vallende onder de Collectieve Arbeidsovereenkomst, uitsluitend gebruik maken van werknemers die in haar eigen vaste dienst zijn, dan wel haar door de „SHB Personeelsplanning B.V.” ter beschikking worden gesteld.

Van deze regel kan uitsluitend worden afgeweken, indien hierover tussen partijen overeenstemming is bereikt.

Compare the similar wording in Art. 4 of the Collective Labour Agreement for the General Cargo Sector in the Port of Rotterdam for 1975.

See, for example, Article A9 of the Collective Labour Agreement of Stena Line Stevedoring at Hoek van Holland, 1 January 2009 - 31 December 2010. See also *infra*, para 1446 on currently applicable provisions.

¹⁸⁴⁶ On the history of labour relations in the port of Amsterdam, see Boot, H., *Opstandig volk: neergang en terugkeer van losse havenarbeid*, Amsterdam, Stichting Solidariteit, 2011.

involvement of the trade union, two foundations (SPAN and SPANO¹⁸⁴⁷) were created to continue the company's activities. In these pools, the trade union took on the unusual role of employer. However, the new pools also faced severe challenges, especially when the policy of no forced redundancies was abandoned and 26 workers were fired. Their dismissal in 1999 gave rise to legal proceedings which lasted until 2011¹⁸⁴⁸. In the meantime, SPANO failed in 2003¹⁸⁴⁹. The remaining workers were integrated into the temporary employment agency SWA¹⁸⁵⁰.

1435. In the late 1990s, SHB's monopoly to provide temporary workers was challenged by a number of terminal operators.

In 1998, two Rotterdam-based cargo handling companies lodged complaints with the Dutch Competition Authority. They argued that the obligation, imposed by collective agreements, to hire all temporary workers from the labour pool SHB, constituted a breach of Dutch competition law. According to the claimants, the pool system was characterised by anti-competitive agreements as well as abuses of a dominant position. Allegedly, SHB's tariffs were excessively high and the trade unions systematically refused to grant derogations, even where these found a basis in express provisions of the collective agreements. Furthermore, in the event of SHB having insufficient workforce, only SHB was entitled to call upon third workforce providers. One claimant even stated that SHB's monopoly had been the direct cause of its bankruptcy. However, the Dutch Competition Authority dismissed the complaints. Relying on the Court of Justice's well-established case law¹⁸⁵¹, it ruled that the relevant collective agreements were outside the scope of the cartel provisions of the Competition Act, because they had resulted from formal negotiations between the social partners and because their purpose was to improve working conditions. Quite remarkably, the Competition Authority also held that the immunity of the collective agreements concluded between the individual employer and the unions – which obliged the former, in their Article A9, to call on SHB or, in the event of a shortage of workers, and always through the mediation of SHB, on third temporary workforce recognised by the unions (*erkende derden*) – extended to the relationship between the former and the port workers' pool SHB, because this relationship merely implemented the collective agreement, or could be considered an essential component of the collectively agreed labour market arrangements. As regards abuse of a dominant position, the Competition Authority seemed to accept that no immunity of collective agreements can be invoked, but that any excessive level of SHB's tariffs amounting had not been demonstrated and that it was not appropriate for the

¹⁸⁴⁷ SPAN referred to 'Stichting Personeelsvoorziening Amsterdam Noordzeekanaalgebied' or Foundation Workforce Supply North Sea Canal Region Amsterdam; SPANO to 'Stichting Personeelsvoorziening Amsterdam Noordzeekanaalgebied Operationeel' or Operational Foundation Workforce Supply North Sea Canal Region Amsterdam.

¹⁸⁴⁸ On these legal proceedings, see Boot, H., *Opstandig volk: neergang en terugkeer van losse havenarbeid*, Amsterdam, Stichting Solidariteit, 2011, 429 *et seq.* See also <http://www.solidariteit.nl/Dossiers/span.html>.

¹⁸⁴⁹ Boot, H., *Opstandig volk: neergang en terugkeer van losse havenarbeid*, Amsterdam, Stichting Solidariteit, 2011, 456.

¹⁸⁵⁰ See http://www.uitpers.be/artikel_view.php?id=3150 (link found broken upon updating) and *infra*, para 1456.

¹⁸⁵¹ See *supra*, para 176.

Authority to order a formal investigation¹⁸⁵². With regard to the immunity of the collective agreements from the cartel provisions, Monica Wirtz observes that the Competition Authority, in highlighting that the collective agreements were "necessary" to achieve their social purposes, seemed to apply an additional proportionality test, which finds no basis in the ECJ's case law¹⁸⁵³. The author also comments that, as the rules on the registration of workers and the recognition of third workforce suppliers closed off access to the market, the set-up was abusive anyway¹⁸⁵⁴.

In 1999, Matrans intended to supply temporary workers for general stevedoring work ("multifunctional" work) to container terminal ECT in Rotterdam, using workers supplied by its subsidiary Transcore, an authorised supplier of temporary lashers. Trade union FNV opposed this because it had never recognised Matrans as an additional temporary work provider for the port. It argued that Transcore workers were only allowed to perform lashing and securing, while solely SHB was entitled to supply temporary port workers for general work, and the move would result in the creation of a second pool which would then compete with SHB. The Court at Rotterdam rejected the claim by Matrans to gain access to the market for general stevedoring work because the parties to the applicable collective agreement for the port had clearly intended to reserve the provision of casual workers performing general port work to SHB. In so doing, the Court of course also confirmed FNV's right to refuse recognition of workforce providers¹⁸⁵⁵.

1436. In 2002, lashing companies Matrans and ILS launched an attempt to establish a mooring company in order to compete with age-old monopolist De Eendracht, following which the latter

¹⁸⁵² Decision of the Director-General of the Dutch Competition Authority of 14 December 2000, no. 1012/51, Van Eck Havenservice; Decision of the Director-General of the Dutch Competition Authority of 12 July 2001, no. 1199/35, EMO vs SHB; Decision of the Director-General of the Dutch Competition Authority of 30 October 2001, no. 2320/25, Marine Cargo Services. For a legal analysis, see *supra*, para 176.

¹⁸⁵³ Wirtz, M.S., *Collisie tussen CAO's en mededingingsrecht*, doctoral dissertation, Utrecht, Utrecht University, 2006, <http://igitur-archive.library.uu.nl/dissertations/2006-1204-200112/full.pdf>, 211-212. Upon closer scrutiny, the Authority only mentions that the priority right was "necessary" to maintain an agreement on redundancies. It did not apply any supposed necessity test to the second objective of the agreement, which was to "make it possible" that the attractive working conditions were guaranteed.

¹⁸⁵⁴ Wirtz, M.S., *Collisie tussen CAO's en mededingingsrecht*, doctoral dissertation, Utrecht, Utrecht University, 2006, <http://igitur-archive.library.uu.nl/dissertations/2006-1204-200112/full.pdf>, 283.

¹⁸⁵⁵ See Court of Rotterdam, 28 January 1999, Matrans Marine Services B.V. and Transcore Rotterdam B.V. vs. FNV Bondgenoten, No. 112155 / KG ZA 99-119, unreported; see also X., "Vervat des duivels op FNV'er Stam", *Nieuwsblad Transport* 30 January 1999, <http://www.nieuwsbladtransport.nl/Archive/Article/tabid/409/ArchiveArticleID/105989/ArticleName/VervatdesduivelsopFNVerStam/Default.aspx#>; X., "Getouwtrek om Transcore tijdens geding om sjorders", *Nieuwsblad Transport* 26 January 1999, <http://www.nieuwsbladtransport.nl/Archive/Article/tabid/409/ArchiveArticleID/105870/ArticleName/GetouwtrekomTranscoretijdensgedingomsjorders/Default.aspx>; X., "SHB houdt monopolie in Rotterdamse haven", *Trouw* 30 January 1999, <http://www.trouw.nl/tr/nl/5009/Archief/archief/article/detail/2705754/1999/01/30/SHB-houdt-monopolie-in-Rotterdamse-haven.dhtml>.

threatened to start up a competing lashing firm. Due to growing unrest in the port and after consultations with the Port Authority, these initiatives were soon abandoned however¹⁸⁵⁶.

1437. The 2003 report *Labour costs in the transshipment sector. An international comparison of harbours in Northwest European ports*, which was commissioned by the Rotterdam Port Authority, concluded that the level of employment conditions at Rotterdam as compared with those in ports abroad did not explain the loss in Rotterdam's market share in container transshipment. It also noted the stricter legal regulation of port labour in Belgium, France and Germany as well as differences in the level of public financing of the unemployment risk¹⁸⁵⁷.

1438. On 17 February 2006 the Netherlands denounced ILO Convention No. 137.

It had ratified the Convention in 1975 and implemented it through a registration of permanent workers by the employers' organisation and of casual workers by the pool. The pool was set up under sectoral collective bargaining agreements and co-financed under Dutch unemployment legislation. The card system was managed by employers' organisations. In other words, the ratification of the Convention by the Government was based on a collective agreement by the social partners, not on the adoption of legislation.

The reason for the denunciation was that the Convention was *de facto* no longer respected as from 1 January 2000¹⁸⁵⁸. From that date, individual employers refused to register port workers¹⁸⁵⁹ and provisions of collective bargaining agreements on registration had become

¹⁸⁵⁶ X., "Klanten betreuren opheffing DMS", *Nieuwsblad Transport* 1 February 2002, <http://www.nieuwsbladtransport.nl/Archive/Article/tabid/409/ArchiveArticleID/74339/ArticleName/KlantenbetreurenopheffingDMS/Default.aspx>; X., "Roeiers DMS: kater na mislukt avontuur", *Nieuwsblad Transport* 1 February 2002, <http://www.nieuwsbladtransport.nl/Archive/Article/tabid/409/ArchiveArticleID/74373/ArticleName/RoeiersDMSkaternamisluktavontuur/Default.aspx>.

¹⁸⁵⁷ FNV Bondgenoten and WVM Training & Advies, *Labour costs in the transshipment sector. An international comparison of harbours in Northwest European ports*, Utrecht, 2003. The Dutch version is entitled *Arbeidskosten in de containeroverslag. Een internationale vergelijking van Noordwest Europese havens*.

¹⁸⁵⁸ See *Parliamentary Documents*, Eerste Kamer der Staten-Generaal, Goedkeuring van het voornemen tot opzegging van het op 25 juni 1973 te Genève totstandgekomen Verdrag betreffende de havenarbeid, 1973, Memorie van Toelichting, 2005-2006, 30 007, para 3; see also *Parliamentary Documents*, Eerste Kamer der Staten-Generaal, Nota naar aanleiding van het verslag, 2005-2006, 30 007, para 6) and the report on the oral debate in *Parliamentary Documents*, Tweede Kamer, 31 August 2005, 100-6119 *et seq.*; see further International Labour Office (91st Session, 2003), *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), <http://learning.itcilo.org/ilo/jur/en/bibl/91-rep-III-1A-eng.pdf>, 621-622; International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), 93rd Session, 2005, <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-iii-1a.pdf>, 468.

¹⁸⁵⁹ See also X., "Protest havenarbeiders tegen opzegging verdrag", *Trouw* 31 August 2005, <http://www.trouw.nl/tr/nl/4492/Nederland/article/detail/1547205/2005/08/31/Protest-havenarbeiders-tegen-opzegging-verdrag.dhtml>.

inoperative. The Court at The Hague ruled that this situation amounted to a breach of ILO Convention No. 137¹⁸⁶⁰.

Following the refusal of the Rotterdam port employers to continue a registration system in accordance with the requirements of ILO Convention No. 137, Minister A. J. de Geus declared that he was unwilling to introduce national legislation in order to fill the gap left by the collective agreements, because such a measure would be incompatible with current national employment policy:

Creating compartments does not correspond with the ambition to have an open and flexible labour market. Such a policy would conflict with the idea of employability and renders it impossible for employees from other sectors to accept jobs in ports. After all, the existence of social measures accessible to everyone renders a special protection for port workers superfluous¹⁸⁶¹.

Asked in Parliament why the Government took the exceptional course of denouncing an ILO Convention whilst the European Commission, in its 2004 Ports Package had invited the Member States to ratify Convention No. 137, the Minister drew attention to the limited number of States Parties to the latter in the EU, which furthermore did not include the Netherlands' main competitors, namely Belgium, Germany and the UK. The Minister recalled that ILO Convention No. 137 had been a historic response to automation and mechanisation in the 1970s which had made a large untrained workforce redundant and had led to a restructuring of many port companies, while the port of today is well-functioning, safe and competitive. What is more, since the factual non-observance of the Convention in 2000, hundreds of port workers had found new employment in the port of Rotterdam. The Minister also highlighted the weak phrasing of the European Commission's statement on ILO Convention No. 137 ("*the Commission wishes to invite Member States to ratify [...]*") which certainly did not give rise to any binding legal obligation upon the Netherlands. Next, no other Member State considered accession to the instrument in the near future. As a result, the Convention had not brought about a level playing field and this would not be changed as a result of the Dutch denunciation. Furthermore, the Minister stated that ILO Convention No. 137 does not in itself contribute to the training of port workers and that Dutch legislation on conditions of work would remain fully applicable.

During the parliamentary debate, it was also observed that a registration system within the sense of ILO Convention No. 137 had never been implemented for the ports of Amsterdam, Flushing and Delfzijl¹⁸⁶².

The denunciation of the ILO Convention sparked protests by Rotterdam's port workers who feared that the employers would hire cheap labour from other countries¹⁸⁶³. In the Dutch

¹⁸⁶⁰ See Rechtbank 's-Gravenhage, 29 September 2004, LJN B13079, 208285, case no. 03-2886, published on <http://www.rechtspraak.nl>.

¹⁸⁶¹ *Parliamentary Documents*, Eerste Kamer der Staten-Generaal, Goedkeuring van het voornemen tot opzegging van het op 25 juni 1973 te Genève totstandgekomen Verdrag betreffende de havenarbeid, 1973, 2005-2006, no. 30 007, 3.

¹⁸⁶² *Parliamentary Documents*, Tweede Kamer, 31 August 2005, 100-6125.

Parliament the opposition also referred to the threat of self-handling by unqualified and underpaid ship's crews.

1439. SHB, Rotterdam's labour pool, went bankrupt in 2009¹⁸⁶⁴. Reportedly, during the last years of the pool, employers were reluctant to employ pool workers because this group of workers was considered to be underperforming and less motivated, often refusing to carry out tasks, and it included numerous agitators who were solely interested in influencing the others¹⁸⁶⁵. Having reached, on average, an advanced age, the pool workers were also relatively expensive; they were not particularly flexible or even skilled and the level of absenteeism was high¹⁸⁶⁶. Practically speaking, under no circumstances could workers be dismissed (except in the case of theft)¹⁸⁶⁷. The best and most loyal workers were directly employed by the companies¹⁸⁶⁸.

The end of Rotterdam's SHB is said to have had a negative impact on trade unionism in the port¹⁸⁶⁹.

After SHB's bankruptcy a new company was set up under the name of Rotterdam Port Services (RPS). This organisation operates along the lines of an employment agency: people can register with it and may as a result secure work, but they receive nothing from the agency if they are not working. In practice, cargo handling companies are often not allowed to employ temporary port workers via other job recruitment or employment agencies. As a matter of fact, after RPS and trade union FNV had signed a collective agreement on working conditions at the new company, FNV notified individual port companies that it recognised RPS as an 'A company', meaning that RPS, together with the previously recognised Matrans and ILS, enjoyed priority in supplying temporary workers. FNV also informed the employers that where existing collective agreements, especially in their central A9 Article¹⁸⁷⁰, mentioned SHB, this now had to

¹⁸⁶³ See Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 30. See also X., "Protest havenarbeiders tegen opzegging verdrag", *Trouw* 31 August 2005, <http://www.trouw.nl/tr/nl/4492/Nederland/article/detail/1547205/2005/08/31/Protest-havenarbeiders-tegen-opzegging-verdrag.dhtml>.

¹⁸⁶⁴ See Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 33.

¹⁸⁶⁵ See Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 33-34.

¹⁸⁶⁶ See the Decision of the Dutch Competition Authority of 12 July 2001, cited *supra*, para 1435, para 16.

¹⁸⁶⁷ De Lange, H., "Elke havenwerknemer moet nu drie beroepen leren", *Trouw* 22 maart 1996, <http://www.trouw.nl/tr/nl/5009/Archief/archief/article/detail/2626219/1996/03/22/Elke-havenwerknemer-moet-nu-drie-beroepen-leren.dhtml>.

¹⁸⁶⁸ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 33.

¹⁸⁶⁹ See Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 65.

¹⁸⁷⁰ See *supra*, para 1433.

be read as a reference to RPS, under the understanding that RPS, Matrans and ILS were equally ranked. Today, several collective bargaining agreements at company level continue to stipulate that the port employer shall only use its permanent port workers or the port workers of a designated employment agency (in particular Rotterdam Port Services) for activities that fall under the collective bargaining agreement¹⁸⁷¹. In 2009, Rotterdam Port Services employed around 300 workers¹⁸⁷². Reportedly, about two thirds of its staff is deployed on a regular basis. The company has its own collective labour agreement¹⁸⁷³.

1440. Immediately after SHB's bankruptcy, several commercial companies had proposed to take over the pool. Following the take-over by RPS, Joint Port Staff Holding (JPS), another temporary work agency where some 140 former pool workers had meanwhile registered, assumed that Article A9 of the sectoral agreement, which granted SHB an exclusive right to supply temporary workers, had lapsed, and applied, on that basis, for recognition by FNV as an additional workforce provider in the port of Rotterdam. This recognition never materialised however. CEO Jan Weemering was surprised that he needed permission from trade union FNV to obtain access to the temporary labour market and stated that such a requirement existed in no other sector in the Netherlands¹⁸⁷⁴. Eventually, JPS sought a court order obliging FNV to immediately grant recognition on the usual conditions of the sector. The company based its claim upon an alleged infringement by FNV of Dutch competition law. In 2009, the Court at Utrecht dismissed the claim, essentially because the agreement between FNV and the new commercial pool company RPS had social objectives and could not be tested against the prohibition on anti-competitive agreements. Neither could it be tested against the prohibition to abuse a dominant position, because trade union FNV is not an undertaking and JPS itself had broken off negotiations. Finally, the Court found no indications of any other wrongful behaviour on the part of FNV. The trade union had not acted illegally where, in order to safeguard existing working conditions and employment, and fully within the spirit of Article A9 of the port's collective agreements, it urged companies to give priority to the temporary workers of RPS¹⁸⁷⁵. A trade union spokesman welcomed the judgment because it prevented a proliferation of temporary work providers in the port¹⁸⁷⁶.

Together with the economic crisis, the failure by JPS to gain access to the port labour market in Rotterdam contributed significantly to its own bankruptcy in 2011.

¹⁸⁷¹ See further details *infra*, para 1446.

¹⁸⁷² See <http://www.transport-online.nl/site/transportnieuws/index.php?news=5287>.

¹⁸⁷³ See further details *infra*, para 1448.

¹⁸⁷⁴ X., "SHB - JPS meldt zich vergeefs voor doorstart", *Nieuwsblad Transport* 13 January 2009, <http://www.flexnieuws.nl/2009/01/14/shb-jps-uitzendbureau-personeelsinhuur-werknemers/>.

¹⁸⁷⁵ Court of Utrecht 24 July 2009, LJN BJ3474, 269528 / KG ZA 09-645, www.rechtspraak.nl. JPS lodged appeal but due to a procedural error no appeal judgment was issued (X., "JPS: geen bemiddeling SHB na procedurefout", *Nieuwsblad Transport* 3 October 2009, <http://www.flexnieuws.nl/2009/10/03/jps-geen-bemiddeling-shb-na-procedurefout/>).

¹⁸⁷⁶ X.? "FNV hoeft uitzendbureau JPS niet te erkennen", *AD* 24 July 2009, <http://www.ad.nl/ad/nl/1038/Rotterdam/article/detail/2066558/2009/07/24/FNV-hoeft-uitzendbureau-JPS-niet-te-erkennen.dhtml>.

- *Regulatory set-up*

1441. To summarize the current port labour regime in Dutch ports, port workers in the Netherlands are employed by individual cargo handling companies, either on a permanent basis or as temporary workers. Employers are not obliged to join or to contribute to any association or labour pool entity. Port workers are not registered and no hiring halls are used.

Following the winding-up of the labour pools, flexibility in Dutch ports is thus no longer achieved by external means (pool system) but mainly through a flexible labour organisation at company level. A permanent staff of highly qualified workers in core functions (for example crane men) is combined with interim workers. Reportedly, some workers such as women and people of foreign origin actually prefer flexible employment. Distribution among fixed and temporary labour differs according to the traffic pattern that prevails at the individual terminal.

1442. As we have explained¹⁸⁷⁷, conditions of employment are now mainly governed by collective agreements concluded at company level.

In this respect, a distinction is made between port workers in the narrow sense (who are employed at the ship/shore interface) and warehouse or logistics workers employed within the port. The collective labour agreements at company level focus primarily on the activities of terminal operations properly (stevedoring) and do not deal with warehousing or logistics.

Browsing a number of company-based collective bargaining agreements, we found several provisions on multi-skilling and flexibility but no mandatory rules on the composition of gangs or the allocation of workers to fixed shifts.

1443. Reportedly, employees from terminal operators active in more than one Dutch port are occasionally transferred temporarily to another port. Most employers however have terminals in only one port.

1444. At first sight, it would appear that no restrictions prevail in the port labour market in Dutch ports.

¹⁸⁷⁷ See *supra*, para 1427.

However, mention must be made of (1) rules on lashing in the Port Regulations of Rotterdam; (2) certain provisions in a number of company-based collective bargaining agreements in Rotterdam (and, to an extent, also Amsterdam and Flushing); and (3) provisions in the collective agreement of RPS.

1445. Interestingly, the Port Regulations of the port of Rotterdam contain provisions on the lashing of containers on board seagoing vessels¹⁸⁷⁸:

Article 11.4.1 Prohibition of lashing

It is prohibited to lash containers on board seagoing vessels, unless this is carried out:

- a. by the crew of the seagoing vessel concerned insofar as it concerns a seagoing vessel with a maximum length of 170 metres, or;*
- b. by a lasher who is employed by a lashing company which holds a permit.*

Article 11.4.2 Licensing conditions for lashing companies

The Municipal Executive will issue a permit to a lashing company if the lashing company:

- a. offers its services 24 hours per day, 7 days per week and is able to handle at least one seagoing vessel in the time made available by the shipping company or stevedore;*
- b. is in possession of an ISO 9002 certificate or demonstrates that it will have one within the foreseeable future;*
- c. ensures that the lashers working under its responsibility are sufficiently competent, reliable and recognisable in accordance with the provisions of Article 11.4.3, and;*
- d. issues a proof of identity to the lashers which is provided with a passport photo which is a true likeness and which states at least:*
 - 1°. the name, place and date of birth of the lasher, and;*
 - 2°. the name of the lashing company with whom the lasher is employed.*

Article 11.4.3 Obligations of lashers

- 1. Upon entering the employment of a recognised lashing company a lasher shall possess a certificate of good conduct.*
- 2. The profession of lasher may only be practised by a person who has successfully completed the training course for Port Operations Operative as included in the dossier adopted by the Minister for Education, Culture and Science, with registration code CREBO-93070.*
- 3. During the lashing operations a lasher shall carry the proof of identity referred to in Article 11.4.2, under d.*
- 4. Lashers shall show their proof of identity upon the request of persons or companies who make use of their services.*

¹⁸⁷⁸ The English translation was provided by the Port Authority.

Currently, ILS and Matrans are authorised to perform lashing services on the basis of the provisions quoted above.

The Port Authority of Rotterdam and FNV clarified that, in accordance with Article 11.4.1(a), containers on smaller vessels are sometimes lashed by the ship's crew. These seafarers are not covered by the port's collective labour agreements.

The above provisions were inserted into the Rotterdam Port Regulations at the demand of the trade unions. The College of Mayor and Aldermen of the City of Rotterdam, which enacted the Regulations, is aware of the fact that other EU ports do not impose similar rules. Yet, the Rotterdam Harbour Master continues to support the insertion of the provisions in the Regulations and highlights their contribution to overall port security¹⁸⁷⁹.

1446. Secondly, a number of company-based collective bargaining agreements in the port of Rotterdam include provisions to the effect that if temporary workers are needed to meet peak demand, such additional workforce may only be hired from a number of designated or recognised temporary work providers. The examples below were randomly selected. The first three concern major terminal operators at Rotterdam¹⁸⁸⁰.

At ECT, the collective agreement contains provisions on the hiring of temporary administrative staff (*operationele beampten*) and operatives (*operationele medewerkers*). The latter include various categories of manual workers, crane, forklift and straddle carriers as well as maintenance personnel¹⁸⁸¹. With respect to these categories, the agreement provides that, before recourse is had to overtime work, the employer will call upon Matrans, ILS and RPS. The former two companies are authorised lashing companies (who also provide drivers however), while RPS is the commercial remnant of the failed labour pool SHB. The agreement further states that in the event of temporary peaks, workers from these three companies may be hired and that such employment will be based on the lists of functions applicable to the temporary work provider concerned¹⁸⁸².

At APM Terminals Rotterdam (APMTR), the employer is allowed to hire van carrier drivers from Matrans, ILS and RPS. Next, the collective agreement provides that if these three providers are unable to supply sufficient labour, the parties to the agreement will consult on calling upon

¹⁸⁷⁹ Letter of Alderman M. Harbers to Commission for Economy, Social Affairs, Environment and Transport of the College of Mayor and Aldermen of 12 June 2008, published online on <http://www.bds.rotterdam.nl/dsresource?objectid=178879>. See also the Letter of Alderman M. Harbers to the Commission for Economy, Social Affairs, Environment and Transport of the College of Mayor and Aldermen of 29 October 2008, published online on <http://www.bds.rotterdam.nl/dsresource?objectid=183084>.

¹⁸⁸⁰ For a number of companies, we had no access to currently applicable agreements. The only purpose of our overview is to outline a number of characteristic arrangements rather than to describe the details of presently applicable provisions at individual companies.

¹⁸⁸¹ See the definitions in Art. 1 of the Agreement as well as the List of functions in its Chapter IV.

¹⁸⁸² Annex II to the Collective Agreement of ECT, 1 July 2009 - 1 October 2012, version of September 2010.

other undertakings. Temporary workers must meet qualification standards set by APMTR (among other things STC certification)¹⁸⁸³.

At EMO, a major dry bulk terminal, the collective agreement regulates both the calling upon temporary work providers and outsourcing. The former is possible for such port jobs as trimming, cleaning and bulldozer driving (and, as from 2012, also for mechanical shovel driving). The agreement identifies the individual companies that may supply additional workforce. The agreement mentions that a mix of 80 per cent of fixed work and 20 per cent of temporary work would be appropriate but also that temporary work is "a very sensitive issue" and that mutual confidence, consultation and communication are paramount. All temporary workers who may be hired by EMO are registered and receive a pass. Outsourcing may take place for intra-terminal transportation of bulk cargoes by means of lorries and dumpers and maintenance work at the terminal¹⁸⁸⁴.

A collective agreement for DFDS Seaways at Vlaardingen mentions that only fixed personnel and workers supplied by (wound up) SHB may be employed (this should now be interpreted as a reference to RPS, ILS and Matrans). Temporary workers must be proficient in Dutch, and deployment of these workers is limited to a maximum of 20 per cent on a weekly basis¹⁸⁸⁵. The agreement precludes the use of fixed manning scales¹⁸⁸⁶.

Finally, it should be recalled that the previously applicable pool regime comprised a system under which third companies eligible to supply temporary workers had to be recognised by the trade unions¹⁸⁸⁷. It would appear that in essence this restriction still prevails at a number of important port companies.

1447. In addition to the limitations on market access for lashing companies in the Rotterdam Port Regulations and the priority rights of authorised companies in the collective bargaining agreements of terminal operators, the authorised lashing firms' own collective agreements impose further restrictions on the hiring of temporary workforce.

Matrans Marine Services, for example, is only allowed to rely on ILS, RPS, Unilash and Transcore in the event of temporary peak demand. Outsourcing between members of the

¹⁸⁸³ Annex 3 to the Collective Agreement for Terminal Operators, Gate Inspectors and Mechanics of APM Terminals Rotterdam, 1 July 2009 - 30 September 2011.

¹⁸⁸⁴ Annex B I to the Collective Bargaining Agreements of EMO, 1 January 2009 - 1 January 2011 and 1 January 2011 - 1 January 2013.

¹⁸⁸⁵ Art. 9 of the Collective Agreement of DFDS Seaways at Vlaardingen, 1 January 2011 - 31 December 2011. Remarkably, the Agreement still refers to SHB.

¹⁸⁸⁶ See Art. C7.

¹⁸⁸⁷ See already *supra*, paras 1435, 1439 and 1440; see further Decision of the Director-General of the Dutch Competition Authority of 14 December 2000, no. 1012/51, Van Eck Havenservice, para 28. Comp. also, on Amsterdam, Boot, H., *Opstandig volk: neergang en terugkeer van losse havenarbeid*, Amsterdam, Stichting Solidariteit, 2011, 290.

employers' association is also possible, but there are limitations on the number and the duration of outsourcing contracts¹⁸⁸⁸.

International Lashing Service (ILS) shall rely on, in order of priority:

- (1) its own employees;
- (2) workers supplied by other lashing companies (*collegiale inhuur* or 'fraternal' hiring);
- (3) workers supplied by "preferred supplier" Transcore Rotterdam;
- (4) workers supplied by RPS.

If demand is still not met, workers can be hired from other port companies, or tasks can be outsourced, but the latter is subject to limitations on the number and the duration of contracts¹⁸⁸⁹.

1448. The collective agreement for RPS provides that the company may only engage workers not employed by the former port labour pool SHB with the consent of the trade unions FNV and CNV. Interestingly, 20 per cent of the profits of RPS is reserved for its employees¹⁸⁹⁰.

1449. In the port of Amsterdam, since the collapse of the pool, all stevedores mainly employ permanent staff. In addition, they all maintain a list of temporary workers whom they can rely on. A small number of pool workers is now employed by a temporary work agency¹⁸⁹¹.

Under the collective agreement of IGMA, a major dry bulk terminal at Amsterdam belonging to the Cargill group, employment of temporary workers is limited to a maximum of 25 per cent of the fixed labour force. The parties agree to consult further on the concrete conditions¹⁸⁹².

1450. At the ports of Flushing and Terneuzen (managed by Zeeland Seaports), the organisation of port labour is characterised by a high degree of flexibility. People with the right qualifications have access to the profession of port worker. The high degree of flexibility is also reflected in the recruitment of casual port workers, the deployment of multi-skilled dockworkers (exchange of workers between different terminals during a shift), the composition of the gangs, *etc.* Cargo handling companies largely rely on permanent port workers paid according to collective bargaining agreements at company level. Wage differentiation is based on three elements: qualifications, seniority and bonuses/surcharges. The peaks in port demand

¹⁸⁸⁸ See Annex II to the Collective Agreement of Matrans Marine Services, 1 July 2009 - 30 September 2012.

¹⁸⁸⁹ See Art. A9 and Annex I to the Collective Agreement of International Lashing Services, 1 July 2009 - 31 December 2011; see also .

¹⁸⁹⁰ See Annexes IV and V of the Collective Agreement of Rotterdam Port Services, 2009 - 2011.

¹⁸⁹¹ See *supra*, para 1434 and *infra*, para 1456.

¹⁸⁹² Art. A9 of Collective Agreement of IGMA, 1 April 2009 - 31 March 2011;

can be absorbed through casual workers made available via temporary labour offices. Casual workers sign contracts with these labour offices and work according to the conditions contained therein (hourly wage, working hours, leave, allowances, etc.). The terms and provisions of the contracts between the casual worker and the temporary labour office apply (such as the start of a shift or shift duration)¹⁸⁹³.

A number of temporary work agencies in the ports of Zeeland are controlled by the terminal operators (for example, C-Port¹⁸⁹⁴ is partly owned by Kloosterboer). These terminal operators have a limited workforce of their own and rely largely on the services of the specialised temporary work agencies, which ensures considerable flexibility. Interviewed terminal operators confirmed that loading and unloading operations can start immediately after the ship has docked. There are neither fixed shifts, nor mandatory manning scales. As a result, ports in Zeeland enjoy a competitive advantage over their competitors in Belgium, and succeeded in attracting considerable flows of in particular paper pulp traffic which used to be handled in Antwerp, which is located further upstream the River Scheldt.

The (expired¹⁸⁹⁵) collective bargaining agreement at Verbrugge Terminals in the Province of Zeeland (ports of Flushing and Terneuzen) contained provisions on the hiring of manned harbour cranes and of temporary workers. It stated that temporary workers are needed to respond to the unwillingness of fixed workers to perform overtime work and to meet demands of the clients, particularly to ensure compliance with arrangements for the turnaround of ships, but that the policy of the employer is not to reduce the level of fixed in-house workers. It also mentioned that fixed workers may be exchanged between terminals and Flushing and Terneuzen. Temporary workers must be certified and shall be informed on safety matters. Preferably, they will be hired from fixed providers. Temporary workers shall meet the following criteria:

- (1) minimum age of 18;
- (2) acceptable proficiency in Dutch;
- (3) expertise in port work;
- (4) possession of a safety helmet, gloves and safety boots provided by the labour agency.

The agreement further stipulates that priority shall be given to temporary work agencies which have an agreement to which the trade union FNV is also a party. If this does not result in a sufficient supply, workers may be hired from other providers, subject to prior consultation. The hiring of temporary workers is monitored by a special joint commission established within the company. For certain categories of workers (crane driver and controllers), the hiring of temporary workers is prohibited¹⁸⁹⁶.

¹⁸⁹³ Notteboom, T., *Dock labour and port-related employment in the European seaport system. Key factors to port competitiveness and reform*, ESPO / ITMMA, 2010, www.porteconomics.eu, 76.

¹⁸⁹⁴ See www.c-port.nl.

¹⁸⁹⁵ Reportedly, negotiations on a new agreement are still ongoing.

¹⁸⁹⁶ See p. 17 and Annex IV of the Collective Agreement of Verbrugge Terminals, 2008 - 2010.

1451. As a rule, unemployed port workers are entitled to unemployment benefit.

- Facts and figures

1452. In the absence of a national identification and demarcation of port labour as a socio-economic sector in its own right or, for that matter, as a separate policy domain or as the subject-matter of a specific legal framework, no nation-wide statistics on the number of port employers and workers in the Netherlands are available. Estimating the total number of port employers and workers is complicated further by the increasing reliance upon temporary agency and part-time workers.

1453. Official data on the number of employers of port workers in Dutch ports are not available.

In the port of Rotterdam between 40 to 50 cargo handling companies operate, which are grouped in two different organisations. The first one is Deltalinqs, which represents the common interests of all logistics and industrial companies in the Rotterdam port and industrial area (about 600 companies and associations)¹⁸⁹⁷. The second organisation is the General Association of Dutch Employers (Algemene Werkgeversvereniging VNO-NCW¹⁸⁹⁸, AWWN). AWWN, a general employers' association representing over 850 companies, 700 business units and some 65 institutions from many branches of industry, the services sector and the world of harbours, transportation and logistics¹⁸⁹⁹. AWWN has members in Rotterdam, but also in Delfzijl, Amsterdam and Zeeland. Not all port employers are members of AWWN, but there is no competing association. In the ports managed by Groningen Seaports, port workers are employed by between 10 and 20 companies.

AWWN assists individual companies during collective bargaining processes. The association is however not mandated to sign collective bargaining agreements¹⁹⁰⁰. In the port sector, AWWN assists between 30 to 40 companies.

¹⁸⁹⁷ See <http://www.deltalinqs.nl>.

¹⁸⁹⁸ VNO-NCW stands for 'Verbond van Nederlandse Ondernemingen - Nederlands Christelijk Werkgeversverbond'.

¹⁸⁹⁹ See <http://www.awwn.nl>. Before 1995, the port employers of Rotterdam were grouped in the Shipping Association South (Scheepvaartvereniging Zuid, SVZ) (see briefly Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 45). In Amsterdam, employers were united in the Shipping Association North (Scheepvaartvereniging Noord, SVN).

¹⁹⁰⁰ See also Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 45.

In the first version of this study, we estimated the total number of employers of port workers in Dutch seaports at between 85 and 105 in 2012.

A commentator observed that our estimate must be wrong because the economic impact report *Havenmonitor* which is published annually by the Erasmus University of Rotterdam mentions, – in the most recent version of 2014, which is based on data for 2012 – 301 companies active in transshipment and warehousing (Dutch *overslag* and *opslag* respectively)¹⁹⁰¹. We are not convinced however, because the figure put forward in the *Havenmonitor* comprises activities such as non-maritime loading, unloading and warehousing as well as storage in tanks, cool warehouses, distribution centres and all other facilities¹⁹⁰². Not all these activities are performed by port workers within the meaning of this study. In addition, some individual companies registered for the purposes of the *Havenmonitor* may be dormant entities or subsidiaries. Having regard to the lack of a clear-cut legal definition of port labour in The Netherlands and of copper-bottomed statistics, we have raised our estimate to between 85 and 150 employers of port workers in the sense of this study.

1454. Rough estimates of the number of permanent workers, including the fixed staff of providers of temporary workforce in Rotterdam (ILS, Matrans, RPS and Transcore) kindly provided by trade union FNV, are as follows (figures for 2012): 6,100 in Rotterdam (including Steinweg), 700 at Amsterdam, between 300 and 350 in Zeeland Seaports, almost 100 at Dordrecht and Moerdijk and around 50 in Groningen¹⁹⁰³. This would result in a nation-wide total of approximately 7,275 regularly employed port workers in The Netherlands. The aforementioned *Havenmonitor* mentions 15,013 workers employed in transshipment and warehousing¹⁹⁰⁴. For the reasons set out in the previous paragraph, it seems justified to raise the estimate of the number of port workers to between 7,275 and about 11,000.

1455. According to the Rotterdam Port Authority, there were approximately 6,000 port workers in the port of Rotterdam in 2012.

Since 1990, the number of port workers in Rotterdam evolved as follows:

¹⁹⁰¹ Nijdam, M., van der Lugt, L. and de Jong, O., *Havenmonitor 2012. De economische betekenis van Nederlandse zeehavens*, Rotterdam, Erasmus Universiteit Rotterdam (RHV), January 2014, 18.

¹⁹⁰² *Ibid.* at 151.

¹⁹⁰³ These estimates were kindly provided by Niek Stam of trade union FNV. In its reply to the questionnaire, the trade union FNV mentioned an estimated 6,300 dockworkers, 1,400 office staff and 600 other workers (including 400 tugboat crew) employed in Dutch ports.

¹⁹⁰⁴ Nijdam, M., van der Lugt, L. and de Jong, O., *Havenmonitor 2012. De economische betekenis van Nederlandse zeehavens*, Rotterdam, Erasmus Universiteit Rotterdam (RHV), January 2014, 18.

Table 84. Number of port workers and labour productivity in Rotterdam, 1990-2008 (source: Poot and Luijsterburg, 2009¹⁹⁰⁵)

	1990	2000	2008	Increase of productivity 1990-2008 (throughput / number of workers), in per cent
Dry bulk	2,373	1,321	1,031	130
Containers and ro-ro	3,326	3,352	3,903	128
General cargo (including labour pool)	3,273	1,881	962	128
Total	8,972	6,554	5,896	

1456. In the port of Amsterdam, the temporary work agency SWA¹⁹⁰⁶ currently employs some 30 port workers under a contract for an indefinite term, who were taken over from the former pool organisation SPANO.

1457. The Port Authority of Rotterdam estimates that approximately 50 to 60 per cent of Rotterdam's port workers are members of a trade union. Two trade unions are active in the ports: the Dutch Trade Union Federation (FNV Bondgenoten¹⁹⁰⁷, FNV) with a share of approximately 80 per cent and the National Federation of Christian Trade Unions (CNV Vakmensen¹⁹⁰⁸, CNV) with a share of approximately 20 per cent.

According to the employers' organisation AWWN, about 70 per cent of the port workers in the port of Rotterdam are members of a trade union (65 per cent is said to be a member of FNV and 5 per cent is a member of CNV). In some companies union membership is high (above 90 per cent) whereas in other companies fewer than half the workers are members of a union. Generally speaking, it is no longer considered self-evident that a port worker joins a union.

¹⁹⁰⁵ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 41.

¹⁹⁰⁶ See <http://www.weetvanwerken.nl/werknemers/specialismen/havens-and-logistiek>.

¹⁹⁰⁷ FNV stands for 'Federatie Nederlandse Vakbeweging'. 'Bondgenoten' means Confederates.

¹⁹⁰⁸ CNV refers to 'Christelijk Nationaal Vakverbond' (Christian National Trade Union). 'Vakmensen' means Professionals.

According to trade union FNV, at national level 80 per cent of port workers, staff and tugboat crew are members of a trade union. In an interview, it specified that trade union density in the port of Rotterdam can be estimated at between 54 and 58 per cent, with 45 to 47 per cent of the port workers being a member of FNV¹⁹⁰⁹.

The average union density in the container sector is reportedly about 10 per cent lower than in the break bulk sector¹⁹¹⁰.

Even so, trade union membership among port workers reaches a higher level than in the Dutch economy as a whole, where it stands at about 20 per cent¹⁹¹¹.

9.15.4. Qualifications and training

- Regulatory set-up

1458. Current Dutch law does not provide for any national qualification standards for port workers (an omission which was criticised in the Dutch Parliament upon denunciation of ILO Convention No. 137¹⁹¹²).

1459. Collective labour agreements at company level make certain types of training compulsory.

Pursuant to the collective agreement of EMO, for example, all temporary workers will be trained in-house. The programme includes issues such as the history and the current situation of the employer, safety, environment and specific instructions for trimmers and drivers. Following an examination, trainees will receive a company training certificate¹⁹¹³.

¹⁹⁰⁹ Another source mentions between 60 and 75 per cent of trade union members (see and compare Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009*?, diss. Universiteit Tilburg, 2009, 50 and Lei, L., *Industrial relations in the port of Rotterdam, 1990-2008*, diss. Universiteit Tilburg, 2009, 19).

¹⁹¹⁰ Lei, L., *Industrial relations in the port of Rotterdam, 1990-2008*, diss. Universiteit Tilburg, 2009, 19.

¹⁹¹¹ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

¹⁹¹² Parliamentary Documents, Tweede Kamer, 31 August 2005, 100-6123.

¹⁹¹³ Annex B I to the Collective Bargaining Agreement of EMO, 1 January 2009 - 1 January 2011; idem in the Agreement for 1 January 2011 - 1 January 2013.

- Facts and figures

1460. The Port Vocational School (Haven Vakschool), a school for port vocational training, was founded in 1949, when it was a worldwide innovation. Initially, the school offered voluntary training for dockworkers in the age of 18-30. Later, it also trained crane-drivers, overseers and bosses and even offered training for school-leavers age 14 to 18. Because most employers wanted to keep the training of their regular personnel in their own hands, most trainees of the Port Vocational School were casual workers¹⁹¹⁴.

1461. Currently, training of port workers in the Netherlands is organised by the Shipping and Transport College (Scheepvaart en Transport College, STC) at Rotterdam¹⁹¹⁵, the Port College (Haven College) at Amsterdam¹⁹¹⁶, the Foundation for Vocational Training Transport and Logistics (Stichting Vakopleiding Transport en Logistiek, VTL)¹⁹¹⁷ and Regional Education Centres (Regionale opleidingencentra, ROC).

STC offers training for, among others, drivers of forklifts, ship cranes, tugmasters and drivers of reach stackers, empty container handlers and straddle carriers. STC is assisted by an advisory committee composed of representatives of both employers and unions. A 2008 report mentions that nearly all Rotterdam port companies buy training at the Shipping and Transport College, with some of these courses being organised within the company¹⁹¹⁸.

VTL develops competence profiles (*beroepscompetentieprofielen*) for different functions in ports¹⁹¹⁹. These profiles are used by STC for the organisation of its training courses.

¹⁹¹⁴ Nijhof, E., "Dock-work is a skilled profession. Decasualization and the Rotterdam labour market (1945-1970)" in Loyen, R., Buyst, E. and Devos, G. (eds), *Struggling for leadership: Antwerp-Rotterdam port competition between 1870-2000*, Heidelberg/New York, Physica-Verlag, 2003, (275), 281. See also Koedijk, P., "The evolution of working conditions in Dutch ports", *The International Transport Workers' Journal*, May-June 1950 (27), 28; Laan, M.R., "La formation professionnelle des dockers", in Kühne, K. and Ledeganck, A.J. (Eds.), *La productivité dans les ports*, Paris, Organisation européenne de coopération économique, 1959, (67), 74-80.

¹⁹¹⁵ See <http://www.stc-group.nl> and <http://www.stc-group.nl/Pages/Education/1043/mbo-haven.aspx>.

¹⁹¹⁶ See <http://www.havencollegeamsterdam.nl/>.

¹⁹¹⁷ See <http://www.vtl.nl> and <http://www.werkenindehaven.nl/>.

¹⁹¹⁸ Van Wersch, F. and Winthagen, T., *Resultaten onderzoek ontwikkelingen binnen havenbedrijven in Rotterdam*, Tilburg, IVA, 2008, 13. This report is labeled 'confidential' but appears to be widely available and known throughout the port sector, including among trade unions.

¹⁹¹⁹ See <http://www.vtl.nl/Scholen/Kwalificatiestructuur/Sector-Havens>.

1462. In response to our questionnaire, the following types of formal training were reported to be available for port workers in the Netherlands:

- specialised training as part of a regular educational programme (secondary school);
- continued or advanced training after a regular educational programme;
- induction courses for new entrants;
- courses for the established port worker;
- training in safety and first aid;
- specialist courses for certain categories of port workers such as crane; forklift, container handling equipment, tugmaster operators, lashing and securing personnel, tallymen, signalmen and reefer technicians;
- training aimed at the availability of multi-skilled or all-round port workers;
- retraining of injured and redundant port workers.

1463. A 2008 report on developments in port companies in Rotterdam showed a trend towards multi-skilling of port workers. For example, crane drivers and maintenance staff are now also able to drive forklifts and lorries. This allows for more flexibility, which enables the employer to deploy his staff to other activities in periods of low maritime traffic. Due to automation, port workers need a higher level of training and become 'process operators' who must have knowledge of the entire computerised process but also be able to drive forklifts. Nonetheless, operatives doing manual work with little or no training will always remain in demand. Interestingly, the report also mentions long travelling times hampering employment of part-time workers at the distant Meuse Plain port area¹⁹²⁰.

9.15.5. Health and safety

- Regulatory set-up

1464. In 1995, the Dutch Stevedores Act, which governed health and safety in ports¹⁹²¹, was repealed¹⁹²². Relevant rules were incorporated in the general legislation on safety in the workplace.

Today, safety and health on the work floor are governed by the Labour Conditions Act which also applies to port labour¹⁹²³. The Labour Conditions Act sets out general obligations on

¹⁹²⁰ Van Wersch, F. and Winthagen, T., *Resultaten onderzoek ontwikkelingen binnen havenbedrijven in Rotterdam*, Tilburg, IVA, 2008, 7-8.

¹⁹²¹ See *supra*, para 1429.

¹⁹²² Art. 12:1 of Wet van 23 november 1995, houdende bepalingen inzake de arbeids- en rusttijden (Arbeidstijdenwet).

¹⁹²³ See *Parliamentary Documents*, Staten Generaal, 1997-1998, no. 25 888 (R 1607).

employers and employees on how to deal with occupational safety and health, for example to have a written OSH-policy and a risk inventory. The Act gives certain powers to the Labour Inspectorate, for example, obliging the employer to stop the work.

Implementing rules are laid down in the Labour Conditions Regulations. The latter repealed earlier specific Regulations on the Safety of Stevedoring Work¹⁹²⁴ and on the Safety of Inland Shipping¹⁹²⁵. The current Labour Conditions Regulations continue to contain some specific rules on the loading and unloading, such as the inspection and certification of lifting equipment and lifting gear on board ships (Art. 7.24-7.30).

In the light of this new general legal framework on occupational safety, the Dutch legislator decided to ratify ILO Convention No. 152 without adopting any further national rules for its implementation¹⁹²⁶.

1465. According to the Port Authority of Rotterdam, in practice, a VCA Certificate (Dutch *Veiligheid, gezondheid en milieu Checklist Aannemers* or Safety, Health and Environment Checklist for Contractors) is required in order to be employed as a port worker. A VCA Certificate is a safety certificate which is mandatory for operational personnel of sub-contractors deployed at high-risk industrial plants. The VCA system was developed by employers in the petrochemical industry (which is mainly based in port areas). As we will explain below¹⁹²⁷, AWVN and FNV are currently preparing the introduction of a specific certificate for ports.

- Facts and figures

1466. Between 2004 and 2006, the rate of Dutch port workers possessing a VCA Certificate improved. In 2006, the average was 55.2 per cent. Further details are given in the table below (with 'Inhuur' referring to the hiring of temporary workers). Updated figures are unavailable.

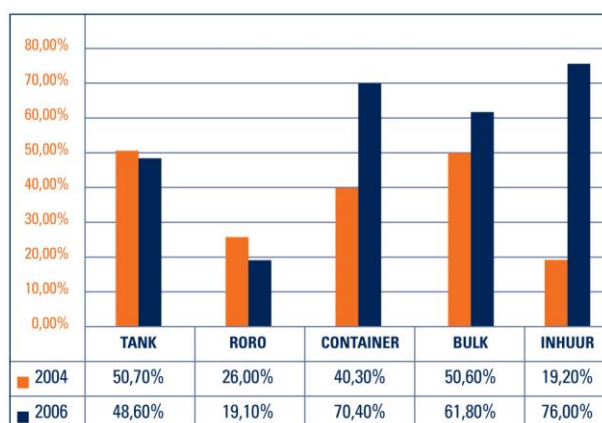
¹⁹²⁴ Veiligheidsbesluit Stuwadoorsarbeid.

¹⁹²⁵ Veiligheidsbesluit Binnenvaart.

¹⁹²⁶ See *Parliamentary Documents*, Staten-Generaal, 1997-1998, 25 888 (R 1607), paras 251 and 1, 2.

¹⁹²⁷ See *infra*, para 1497.

Figure 107. Possession of a VCA Safety Certificate by Dutch port workers, 2004-2006 (source: FNV¹⁹²⁸)



1467. No nation-wide statistics on the number of occupational accidents involving port workers in the Netherlands are available. The Labour Inspectorate explained to us that this is due to the fact that accidents are registered per company and not according to type of activity or location of the workplace and that many cargo handling companies also have activities outside port areas.

Both AAVN and FNV confirmed that no reliable overall statistics on accidents involving port workers are maintained. Moreover, only severe accidents have to be reported to the Labour Inspectorate. Minor accidents are not registered at all.

1468. The Dutch Labour Inspectorate considers ports a priority sector.

In 2009, the Inspectorate stated that compliance is relatively low in ports and that risks (accidents, health risks) are high.

Inspections are conducted in function of:

- active projects, such as physical strain on port workers;
- accidents including the falling of containers, traffic accidents at terminals, accidents with cranes and at stevedoring work;
- complaints by employees and/or trade unions;
- political requests, such as projects on fumigated containers, or as part of EU-campaigns such as 'Lighten the Load'.

¹⁹²⁸ FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006, 14.

The Inspectorate has a specific port strategy which is based on a triple approach:

- (1) broad surveillance, partially also carried out by other inspectorates in the ports;
- (2) system inspections to stimulate labour condition policies within companies with high accident rates;
- (3) a specific central theme or risk every one or two years.

The figures below give an impression of active inspection initiatives by the Dutch Labour Inspectorate, with the exclusion of reactive inspections following an accident and of activities relating to, for example, fumigation, which are registered on the basis of the importer's address. The Labour Inspectorate does not maintain overall statistics on inspection activities by location.

Table 85. Number of inspections in ports by the Dutch Labour Inspectorate, 2003-2011 (source: Dutch Labour Inspectorate)

2003	2005	2006	2007	2008	2009	2010	2011
186	124	38	153	117	134	23	24

Inspectors focus on aspects such as personal protection measures (especially the use of helmets and safety boots), lashing methods, safe boarding of ships, use of machinery (cranes, forklifts, straddle carriers), working from heights, emissions from diesel engines, system-level prevention of accidents¹⁹²⁹.

The Dutch Labour Inspectorate is a founding member of the cooperation framework of European port labour inspectorates¹⁹³⁰.

1469. In 2004, trade union FNV conducted a survey and published a report on workers' safety among port workers. In 2006, it published a follow-up report¹⁹³¹.

The latter report mentions free movement of workers in the EU and self-handling as two threats to occupational safety in Dutch ports. The authors also complained that ILO Convention No. 152 received insufficient attention in The Netherlands and described cases of illegal employment of cheap Polish labour in Dutch ports¹⁹³².

¹⁹²⁹ Labour Inspectorate (Netherlands), *Meeting European Port Inspectors Rotterdam 2009. Evaluation Report*, <http://www.hamburg.de/contentblob/2547432/data/d501-portinsp-2009-rotterdam.pdf>, 10-11.

¹⁹³⁰ See *supra*, para 260.

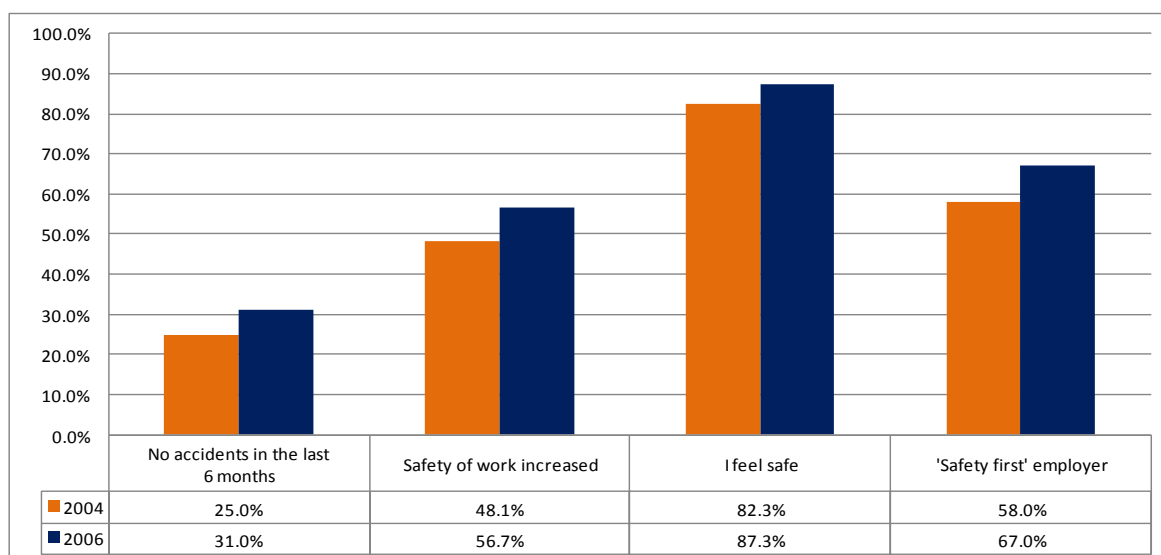
¹⁹³¹ FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006.

¹⁹³² FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006, 4-7.

Nevertheless a thorough survey pointed out that since 2004 the overall safety situation in Dutch ports has improved. The safety awareness of temporary workers improved as well. In 2006, 61.8 per cent of temporary workers were reported to be well informed about safety procedures. In the container sector, this figure reached 72.2 per cent (against only 47.6 per cent in 2004).

Overall results on safety levels in Dutch ports are summarised in the graph below:

Figure 108. Overall safety indicator in Dutch ports, 2004-2006 (source: FNV¹⁹³³)



On the other hand, the survey also confirms that ports continue to be a particularly dangerous sector of the industry.

Time pressures continue to be high as well:

Table 86. Percentage of employees working always or mostly under pressure of time in Dutch ports, 2006 (source: FNV¹⁹³⁴)

Tanking	40.7
Roro	57.2
Containers	46.4

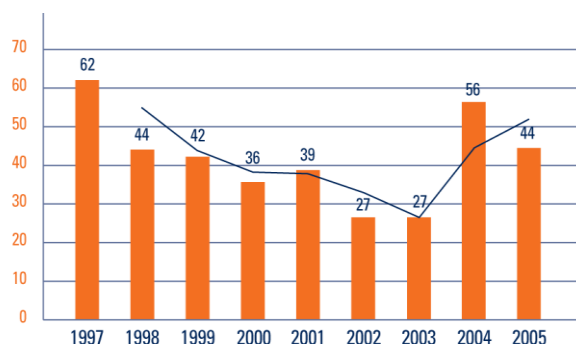
¹⁹³³ FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006, 11.

¹⁹³⁴ FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006, 12.

Bulk	32.9
Temporary work	44.2
General cargo (breakbulk)	48.5
Controlling	45.6
Total	44.4

Statistics maintained by the Dutch Labour Inspection suggested that the safety situation had *not* improved. Between 1997 and 2005, the number of accidents requiring notification¹⁹³⁵ in the ports of Rotterdam evolved as follows:

Figure 109. Evolution of the number of reported serious accidents in the ports of Rotterdam (including airports), 1997-2005 (source: Dutch Labour Inspectorate and FNV¹⁹³⁶)



It must be mentioned, however, that the latter statistics are far from accurate, because they do not include all the accidents which occur in the port, while, on the other hand, they include groundhandling at airports as well. This only confirms that adequate statistics on accidents in Dutch sea ports are unavailable. Even then, the Labour Inspectorate mentions a high risk of collisions at port terminals as well as risks involved in the driving of heavy machinery and working at heights¹⁹³⁷.

Finally, the authors of the 2006 FNV report formulated the following recommendations:

- safety in port work should be addressed at sectoral level;
- employees and trade unions should be more actively involved in safety matters;

¹⁹³⁵ The term 'industrial accidents requiring notification' applies to accidents resulting in permanent physical injury, hospitalisation or death.

¹⁹³⁶ FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006, 22.

¹⁹³⁷ FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006, 22.

- best practices in the field of safety should be elaborated into a sector-specific target-based occupational safety Code of Practice (*arbocatalogus*) implementing ILO Convention No. 152 and the accompanying ILO Guidelines;
- a reliable system for the registration of accidents should be developed at sectoral level;
- employees and employers should work on the development and the implementation of a Port Safety Certificate¹⁹³⁸;
- port workers should receive a port card (Dutch *havenpas*) as a proof of their technical skills, but also for safety and security purposes;
- preventive investigations should be undertaken;
- concrete action plans should be adopted on time pressure, collision risks, dangerous goods and safety communication;
- the fundamental right to a safe workplace should be safeguarded in a solid Occupational Safety Act¹⁹³⁹.

Yet another issue brought to the fore by FNV is that enforcement of the Working Conditions Act is only partly possible because there are many self-employed workers on ships engaged in inland navigation. As a result, a lot of dangerous and unsafe situations remain invisible and unreported¹⁹⁴⁰.

1470. Also in 2006, the Dutch Labour Inspectorate published a report on an investigation of safety issues in cargo handling at ports, which concluded that the accident rate in the port sector remains considerably higher than the average. The Inspection explains that, almost every year, it carries out special inspection programmes in ports. In 2005, 65 per cent of inspected companies were found to be in breach of applicable safety legislation. A major concern was the carcinogenic exhaust of diesel engines in enclosed workplaces. The Inspection also noted insufficient measures for the prevention of falls and many cases of non-use of personal protection means such as helmets. The Inspection insisted upon the need for employers to make efforts to fundamentally change the safety attitude of workers.¹⁹⁴¹

1471. In its 2007 report on the Port Safety Certificate, trade union FNV reported on a survey among safety and prevention officers at port companies on *inter alia* the causes of unsafe

¹⁹³⁸ On the safety certificate for ports, see *infra*, para 1497.

¹⁹³⁹ FNV Bondgenoten, *Veiligheidscertificaat Havens, wie neemt het voortouw?*, Rotterdam, FNV Bondgenoten, 2007, 23-24.

¹⁹⁴⁰ See International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), 99th Session, 2010, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_123424.pdf, 752, with further references to a 2005 report by the Labour Inspectorate.

¹⁹⁴¹ Arbeidsinspectie, *Projectrapportage Inspectieproject Overslag Havens 2005 - A697*, Utrecht, 2006, http://docs.minszw.nl/pdf/38/2006/38_2006_6_15615.pdf; International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), 99th Session, 2010, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_123424.pdf, 752.

situations. These causes include lack of professionalism (39 per cent), culture and behaviour (including machismo) (32 per cent) and selectivity of safety awareness in certain situations, for example routine jobs (29 per cent)¹⁹⁴².

1472. In 2007, the Dutch Labour Inspection focused its attention on physical strain caused by stacking, lashing, trimming and manual breakbulk activities in ports. It found cases of serious physical overstrain at more than one third (37.3 per cent) of inspected companies, with approximately one half of companies not taking sufficient measures and many workers applying a macho approach to safety issues. Port employers were concerned about the lack of an EU level playing field and distortions of competition. The Inspectorate stated that in the light of shortages on the labour market, investments in safety prevention are of the utmost economic importance and that issues deserving priority attention include machismo among port workers and physical overstrain among temporary workers and foreign crews¹⁹⁴³.

1473. In 2008, the Dutch Labour Inspection reported on inspections of the handling of fumigated containers. At no fewer than 85 per cent of companies, enforcement proceedings had to be launched. Many employers only took action after substantial media coverage of safety issues¹⁹⁴⁴.

1474. Publicly available information shows that fatal accidents do occur in Dutch ports. In April 2007, for example, a port worker died in the port of Rotterdam after being crushed between the ship's hull and an excavator which the worker was loading on board ship¹⁹⁴⁵. In April 2010, a worker died in the port of Amsterdam after being run over by a reach stacker¹⁹⁴⁶. In February 2012, a port worker died after being run over by a crane in the port of Flushing¹⁹⁴⁷. The same

¹⁹⁴² FNV Bondgenoten, *Veiligheidscertificaat Havens, wie neemt het voortouw?*, Rotterdam, FNV Bondgenoten, 2007, 24.

¹⁹⁴³ See Arbeidsinspectie, *Fysieke belasting bij havenarbeid*, 2007, http://www.inspectieszw.nl/Images/Havenarbeid_tcm335-312330.pdf; see also <http://osha.europa.eu/fop/netherlands/nl/euweek/2007/vvlerken.pdf>.

¹⁹⁴⁴ See Arbeidsinspectie, *Project Gegaste Containers. Rapportage A870*, http://docs.minszw.nl/pdf/38/2009/38_2009_6_19023.pdf.

¹⁹⁴⁵ See X., "Dood door werk", 14 May 2011, <http://zembra.incontxt.nl/seizoenen/2011/afleveringen/14-05-2011>.

¹⁹⁴⁶ Althoff, M., "Dodelijk heftruckongeval bij Ter Haak Group", *Logistiek* 17 August 2010, <http://www.logistiek.nl/Warehousing/heftrucks/2010/8/Dodelijk-heftruckongeval-bij-Ter-Haak-Group-LOGNWS110545W/>.

¹⁹⁴⁷ X., "Dodelijk bedrijfsongeval bij Verbrugge in Vlissingen-Oost", *PZC* 24 February 2012, <http://www.pzc.nl/regio/zeeland/10533459/Dodelijk-bedrijfsongeval-bij-Verbrugge-in-Vlissingen-Oost.ece>.

month, a worker died in the port of Rotterdam after being crushed by a roll of paper weighing several hundreds of kilos¹⁹⁴⁸.

1475. In 2008, the trade unions established the Foundation for a Safer Port (Dutch *Stichting Veilige Haven*)¹⁹⁴⁹. The Foundation monitors the developments in the field of safety in Dutch seaports and will register (near-)accidents and unsafe situations in the port. Reportedly, EMO and Vopak have joined the Foundation.

1476. In 2009 it was reported that the Dutch Labour Inspection had found 69 out of 134 port employers in Amsterdam to be in breach of safety regulations. Lashing of containers and manual stuffing and stripping of containers were mentioned among the most strenuous jobs. Machismo among port workers was again identified as a major safety issue¹⁹⁵⁰.

1477. In 2010, the Dutch Labour Inspection published an information brochure on landside collision risks at port terminals, which were termed "the main occupational risk at ports"¹⁹⁵¹. It reiterated that physical strains imposed on port workers were still unacceptable. The Inspection again pointed to continuing accidents and machismo among workers. FNV stated that a VCH Certificate would be a better solution than the adoption of a Code of Practice which would have no teeth¹⁹⁵².

1478. In the port of Rotterdam, a Group of Safety Managers (Dutch *Kring van veiligheidsfunctionarissen voor de haven van Rotterdam*) was established. This group is composed of safety experts from large companies in the port¹⁹⁵³ and meets six times a year to discuss safety matters in ports¹⁹⁵⁴.

¹⁹⁴⁸ X., "Man overleden na bedrijfsongeval", NOS 23 February 2012, <http://nos.nl/artikel/344147-man-overleden-na-bedrijfsongeval.html>.

¹⁹⁴⁹ See <http://www.stichtingveilighaven.nl/>.

¹⁹⁵⁰ See <http://www.iedereenisondernemer.nl/sectoren/havens---logistiek/stuwadoors/actueel/arbeidsinspectie--havenwerkers-doen-veel-te-zwaar-werk.htm?stelID=1&itmID=52968>.

¹⁹⁵¹ Arbeidsinspectie, *Aanrijdgevaar: het belangrijkste arbeidsrisico op haventerreinen*, http://docs.minszw.nl/pdf/38/2006/38_2006_6_15615.pdf.

¹⁹⁵² See <http://www.arboonline.nl/artikelen/havenwerk-veiligheidscertificaat-of-arbocatalogus.28498.lynkx?thema=Home>.

¹⁹⁵³ FNV Bondgenoten, *Veiligheidscertificaat Havens, wie neemt het voortouw?*, Rotterdam, FNV Bondgenoten, 2007, 16.

¹⁹⁵⁴ See http://www.steppingstonesproject.nl/docs/Bijlage_II_interviews.pdf.

9.15.6. Policy and legal issues

1479. Contrary to initial indications, the Rotterdam Port Authority, the Amsterdam Port Authority and the trade union FNV confirmed that, in the absence of establishment, service providers from other EU countries are allowed to offer port services in the port. Employers' organisation AAVN stated however that the unions would never accept service providers entering the market from other countries. Be that as it may, we have no knowledge of Dutch laws or regulations which restrict access to the market of port services for other EU providers.

1480. The restrictions on the hiring of temporary workers identified above¹⁹⁵⁵ suggest that the labour market in the port of Rotterdam has not been fully opened up to temporary work agencies.

According to a 2009 university thesis, port employers increasingly rely on their own fixed workers or temporary work providers other than RPS, the successor to the SHB pool. AAVN is of the opinion that today there is no need whatsoever to have a specific temporary work agency for the port. The trade unions can only impose the use of services by RPS on the basis of power, not sound arguments. Practice shows that the port continues to function properly and safely when companies use other work agencies, provided these agencies inform workers about safety rules¹⁹⁵⁶.

AAVN confirmed that in practice the unions try to force employers to continue hiring temporary workers from RPS. For example, one ro-ro operator is reportedly forced to call upon RPS, while its main competitor is allowed to hire workers from Randstad.

One interviewee stated that the market for temporary labour port of Rotterdam is closed off to real competition, because temporary work providers RPS, Matrans and Transcore all belong to the same owner; it is rumoured that the latter also has stakes in ILS (we were unable to verify this). Two entrepreneurs, with the support of FNV, were said to have divided up the market between themselves. For this reason, the person we spoke to termed the port of Rotterdam a 'clique' and a 'Mafia'. He went on to say that the employers' association does not complain about the current situation because the SHB, which had a negative image and was unable to supply workers fit for the job yet had to be financed by the employers, has disappeared and because the risk of unemployment at RPS is now largely borne by the State budget.

Another company offering subcontracting and manpower services in Rotterdam, Flushing and Moerdijk confirmed that RPS, ILS and Matrans are all controlled by the same entrepreneur who,

¹⁹⁵⁵ See *supra*, para 1446.

¹⁹⁵⁶ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 34.

in cooperation with trade union FNV and its continuous threat of industrial action, is blocking market access for outsiders and influencing high level public decision-making on unemployment benefits. Our interviewee concluded that the system is "a stinking cesspool of corruption" and added that numerous smaller players are concerned about the present concentration of market power. He also insisted that all his workers are highly skilled and possess a VCA certificate and in addition attended at least 1 or 2 company training programmes.

We were unable to confront all the companies concerned with these accusations. However, a representative of ILS confirmed that the system of preferred temporary workforce suppliers exists but said that it is widely accepted in the port, even if not all operators rely on these suppliers. He had no information that his company was controlled by the same owner as Matrans.

In another interview, a manager at a major dry bulk operator in Rotterdam confirmed that, according to the company agreement, temporary workers may only be hired from recognised suppliers. Even if the employer has no access to the free market, the system works reasonably well. The employer and the suppliers reached agreement on the training of the workers. One main issue is that some workforce suppliers who focused on the dry bulk sector may get into serious trouble in times of low demand. Our interviewee also said that manning levels on the terminals are entirely a matter for management and that no fixed rules have been established. Finally, he said that his company wholeheartedly supports the introduction of the special VCH certificate on safety of port work.

The General Federation of Dutch Temporary Work Agencies (Algemene Bond Uitzendondernemingen, ABU) informed us that when they screened collective agreements on the presence of restrictions on the use of work agencies, they had not identified any such restriction in the port sector. Neither has ABU received any complaints about these restrictions from their members. No restrictions in the port sector were mentioned in the preliminary review by the bipartite Dutch Labour Foundation¹⁹⁵⁷ or in the official review of prohibitions and restrictions which the Dutch Government submitted to the European Commission in compliance with Directive 2008/104/EC¹⁹⁵⁸.

Allegedly, a number of port firms and authorised workforce providers rely on cheap workers supplied by dubious third party agencies¹⁹⁵⁹. The Dutch authorities have set up a Fraudulent Employment Agencies Reporting Centre¹⁹⁶⁰ which does not specifically target situations in the port sector however.

¹⁹⁵⁷ Stichting van de Arbeid, *Analyse van de Stichting van de Arbeid ten behoeve van de heroverweging met betrekking tot beperkingen en verbodsbepalingen op de inzet van uitzendarbeid in cao's*, http://www.stvda.nl/~media/Files/Stvda/Nota/2010_2019/2011/20111207_heroverweging_cao.ashx.

¹⁹⁵⁸ Letter of the Ministerie van Sociale Zaken en Werkgelegenheid to the European Commission of 5 December 2011, ref. AV/AR/2011/21970.

¹⁹⁵⁹ See discussions on the internet forum <http://havencafe.eu> (password needed).

¹⁹⁶⁰ See http://www.inspectieszw.nl/english/fraudulent_employment_agencies_reporting_centre/.

1481. In Rotterdam, self-handling by ship's crews is reported not to be an issue at all. It takes place at several ro-ro terminals. Other examples are the unlashing of containers at sea and the handling of project cargo. In Amsterdam as well, ro-ro cargo is lashed by ship's crews. FNV complains that seafarers take away jobs from the local workers. AAVN commented that, overall, self-handling by the crew remains a rare phenomenon¹⁹⁶¹.

1482. In 2011, the Dutch Labour Inspection identified the reduction of accidents, including collisions, at port terminals, physical strain in container lashing and risks of the opening of fumigated containers as priority issues¹⁹⁶².

1483. According to FNV, the following sub-standard or otherwise unacceptable labour conditions exist in Dutch ports:

- job insecurity;
- temporary unemployment;
- unhealthy working conditions;
- unsafe working conditions.

FNV complains that port labour has become unregulated and that only free market principles apply, with downward competition on wages, health and safety and training levels.

1484. In this respect, several observers first of all signal a certain malaise in industrial relations within the port of Rotterdam.

The trade union FNV complains that in an attempt to dissuade port workers to join a trade union, employers give young employees successive temporary contracts, the underlying message being that if these workers want to keep their job, they had better not join the union. FNV also regrets that, since sector-specific SVZ was replaced by nationwide AAVN as the employers' representative, the port sector is not taking up its responsibility for the financing of training, safety and attractive labour conditions in the port as a whole.

However, individual employers clearly state that they do not want sectoral negotiations, because they believe that trade unions should not interfere with safety, employment and training issues at all, and because safety is no a matter for negotiations anyway. After all,

¹⁹⁶¹ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) states that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) *All longshore activities.*

(b) *Exception: Regular crew activities on board ship, including operation of cargo-related equipment, opening and closing of hatches, and rigging of ship's gear.*

¹⁹⁶² See <http://www.evo.nl/site/arbeidsinspectie-arbocatalogus>.

employers have an incentive of their own to provide proper training, because they do not want their equipment being manned by unskilled workers¹⁹⁶³.

To this, FNV responds that it cannot understand why trade unions should have no business discussing training and safety. FNV also denounces the low cost strategy of some employers who would rather hire cheap foreigners.

Even if the employers' association considers the working relationship with FNV good, AWWN believes that the union's main concern is to defend its own power base rather than to advance sound arguments.

On the issue of sectoral negotiations, the frustration of the unions is also caused by the need to invest considerable time and means in countless company-specific negotiations which often bear on exactly the same matters¹⁹⁶⁴. The trade unions favour port sector-wide bargaining because this would alleviate the considerable burden and inefficiencies of negotiating on agreements employer by employer and would give the union time to focus on the real issues such as health and safety and training. Other stakeholders state that the unions advocate sectoral bargaining in order to extend their power base. The employers also favour company-based collective bargaining because under such a model port workers tend to be more committed to their employer.

Whatever the case, over the past 20 years the impact of trade unionism in the port of Rotterdam has waned¹⁹⁶⁵. Yet, the typical dock worker's subculture is said to persist, with a militant and leftist union under charismatic leadership which is suspicious of both management and outsiders¹⁹⁶⁶.

In this respect, several of our interviewees added that the membership of the unions is ageing and that the power of the unions has also eroded in other sectors of the economy. Reportedly, the position of the unions in ports such as Flushing and Groningen is less strong than in Rotterdam.

1485. In 2007, the trade union FNV organised a survey among safety and prevention officers of port companies. One of the questions related to the expected impact of liberalisation of the port labour market. The response was as follows:

¹⁹⁶³ AWWN also commented that SVZ had already left training to the individual employers by the end of the 1980s so that the transition from SVZ to AWWN played no role whatsoever in this respect.

¹⁹⁶⁴ See also Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 56 and 61.

¹⁹⁶⁵ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 66.

¹⁹⁶⁶ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 69.

Table 87. Opinions of safety and prevention officers at Dutch port companies on the expected impact of liberalisation on professional skills (source: FNV¹⁹⁶⁷)

Liberalisation...	Percentage of respondents agreeing	Comment
Will be detrimental to professional skills	26	Large companies will continue to comply with safety rules. But how will the small ones behave ?
Will possibly be detrimental to professional skills	63	It depends on how employers will react. Some interviewees wonder whether the workers will accept it.
I don't know	11	I have not considered this sufficiently.
Will not be detrimental to professional skills	0	

These results suggest that almost 90 per cent of interviewees believed that a liberalisation of the port labour market would impact negatively on professional skills. To our knowledge, no data are available which would allow a verification of these assertions. FNV informed us that its 2007 study has not been updated since.

1486. According to FNV, rules on health and safety in Dutch ports are unsatisfactory. The union notes that, while the more experienced port workers are well trained in safety at work, new port workers lack experience in working safely, are less aware of the risks and need extra training. The union moreover argues that the replacement of older port workers by younger ones may jeopardize health and safety in ports. Furthermore, FNV says that applicable rules on health and safety are not properly enforced¹⁹⁶⁸.

Other interviewees categorically denied these statements and considered them a case of typical union rhetoric. In their responses to our questionnaire, the Port Authorities of Amsterdam and Rotterdam confirmed that health and safety rules are adequately enforced.

¹⁹⁶⁷ FNV Bondgenoten, *Veiligheidscertificaat Havens, wie neemt het voortouw?*, Rotterdam, FNV Bondgenoten, 2007, 22.

¹⁹⁶⁸ See also the interview with Niek Stam in *GNT Bulletin* December 2011, <http://www.itfglobal.org/files/extranet/-/1/32597/Dec%20GNT%20English.pdf>.

Yet, mention should again be made of a number of serious health and safety issues which emerged over the past decade and which were addressed in official reports by the Dutch Labour Inspectorate¹⁹⁶⁹.

1487. FNV's 2006 report on port safety highlighted that no accurate statistics on occupational accidents in Dutch ports are available. According to this report, the Dutch Labour Inspectorate admitted its inability to carry out investigations into the causes of these accidents, which is due to insufficiency of staff and resources¹⁹⁷⁰. AAVN confirmed that no accurate statistics on port labour accidents are available.

1488. In 2007, FNV also stated that the worst cases of substandard port labour can be found on board vessels in port, where foreign crew remain in most cases unprotected by Dutch labour legislation¹⁹⁷¹.

1489. FNV also drew attention to two specific occupational risks in connection with container handling in ports. The first one is created by the presence of fumigation gases inside containers which may endanger the health of port workers. The second one relates to incorrectly stuffed containers which may bring trucks out of balance and cause accidents. To solve these problems, gases inside containers are now measured immediately and weigh bridges identify imbalances¹⁹⁷². Both issues were also addressed by the Dutch Labour Inspectorate¹⁹⁷³.

9.15.7. Appraisals and outlook

1490. First of all, we should again recall that the Dutch Government sees no need for any specific legal regulation of port labour, because it wishes to encourage flexibility in the labour

¹⁹⁶⁹ See *supra*, para 1470 *et seq.*

¹⁹⁷⁰ FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006, 22.

¹⁹⁷¹ FNV Bondgenoten, *Veiligheidscertificaat Havens, wie neemt het voortouw?*, Rotterdam, FNV Bondgenoten, 2007, 17.

¹⁹⁷² <http://www.nieuwsbladtransport.nl/Video/tabid/68/YearMonth/201102/ItemID/550/Default.aspx?Title=FNVpaktgas%C3%A9nonbalansincontainersaan>.

¹⁹⁷³ See *supra*, para 1473. See also the fact sheet of the Labour Inspectorate on gases in import containers http://www.inspectieszw.nl/Images/Gassen%20in%20importcontainers_tcm335-312231.pdf.

market and it moreover notes a general trend towards permanent employment across the port sector in the EU and a declining reliance on pool workers¹⁹⁷⁴.

1491. The abovementioned¹⁹⁷⁵ 2008 report on recent developments within port companies at Rotterdam highlights the impact of globalisation on the regime of port labour, with US or China (Hong Kong)-based parent companies wishing to introduce their own management style and to focus on greater efficiency and productivity. In short, globalisation should open the door for a liberalisation of the labour market. Practically speaking, this would entail an influx of staff of the parent companies into the port of Rotterdam. Yet, opposing factors are at work. The employers complain about "a locally enclosed labour market" (*een lokaal omsloten arbeidsmarkt*) and say that trade unions wish to reinstate a closed shop system inspired by an American or Australian model¹⁹⁷⁶.

The report also mentions that since the 1970s, the number of port employees has dwindled from 20,000 to 6,000. On the other hand, work in the port is still well-paid and there are no influx restrictions caused by training requirements. A major problem identified by the employers is the ageing of the workforce. Unless the labour market is liberalised at EU level, the port companies expect a fight for qualified Dutch youngsters. Some employers would like to recruit employees from other EU countries, provided this does not give rise to competition on the basis of labour conditions and that workers possess the necessary documents including safety certificates. Next, all interviewees mentioned the problem of the wrong image of port labour as physically hard, monotonous and dirty work performed in grim circumstances, while the real picture is one of varied, hightech and multiskilled work with employers offering many training opportunities¹⁹⁷⁷.

On training, the report states that the official scheme for learning at work (BeroepsBegeleidende Leerweg, BBL) is not geared to the real needs and that students have to receive additional training within the company. The employers would welcome the creation of a specific BBL-education for port-based technical maintenance staff. Next, employers are aware that each company has developed its own training methods and agreements. A common port training system would have advantages and be conducive to multi-skilling, a reduction of costs and an exchange of experiences with training (multiplier effect)¹⁹⁷⁸. In an interview, an FNV representative said that the apprentices employed under the BBL scheme can be compared to "modern slaves". AWVN commented that this is totally wrong since the Shipping and Transport College is responsible for the scheme and would certainly never tolerate abuses.

¹⁹⁷⁴ See already *supra*, para 1438 and further, *inter alia*, *Parliamentary Documents*, Eerste Kamer der Staten-Generaal, 2003-2004, 29 200 XII, no. 142, 3.

¹⁹⁷⁵ See *supra*, para 1463.

¹⁹⁷⁶ Van Wersch, F. and Winthagen, T., *Resultaten onderzoek ontwikkelingen binnen havenbedrijven in Rotterdam*, Tilburg, IVA, 2008, 9-10.

¹⁹⁷⁷ Van Wersch, F. and Winthagen, T., *Resultaten onderzoek ontwikkelingen binnen havenbedrijven in Rotterdam*, Tilburg, IVA, 2008, 11-12.

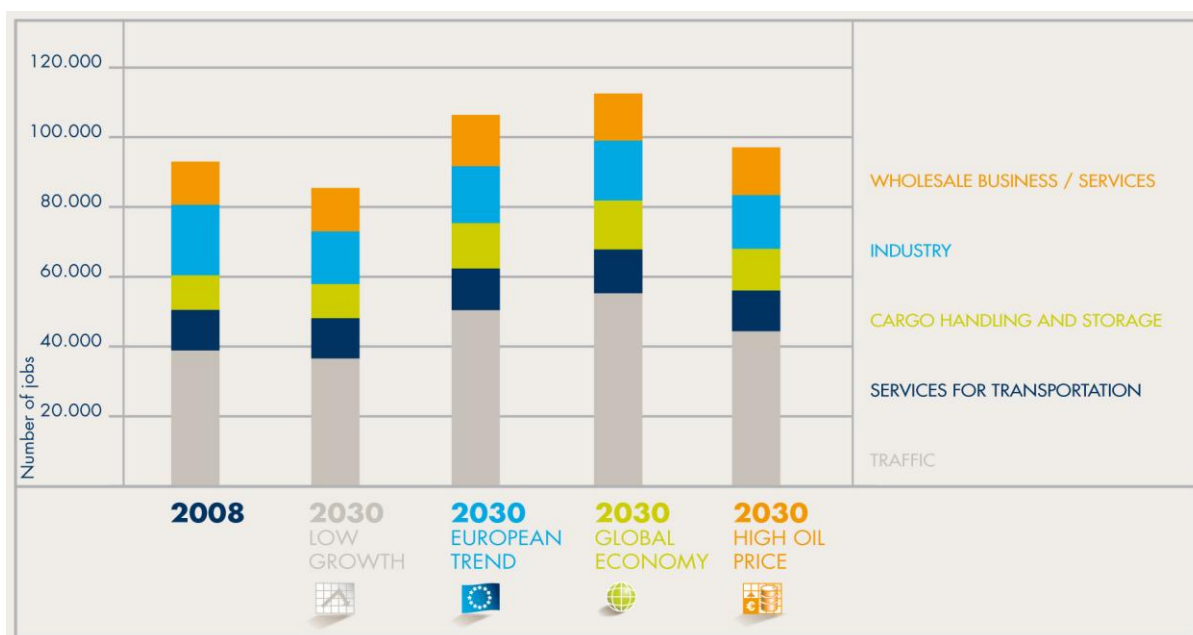
¹⁹⁷⁸ Van Wersch, F. and Winthagen, T., *Resultaten onderzoek ontwikkelingen binnen havenbedrijven in Rotterdam*, Tilburg, IVA, 2008, 13.

As regards safety, the employers note discrepancies between rules and guidance provided by the employer and the attitude of employees which is characterised by a mentality of personal carelessness and the force of habit. A requirement that all workers possess a VCA Safety Certificate is desirable, but the exams would have to be organised by an independent institution, and trade unions have no role to play in the establishment of safety standards within the company. The interviewees also mentioned some issues regarding the identification of the parties having competence to adopt a Code of Practice on safe work (*arbocatalogus*). A majority of employers rejects the proposal by the trade unions to introduce a safety pass for all port workers¹⁹⁷⁹.

1492. In 2011, the port of Rotterdam published its long term vision in a strategic document entitled Port Vision 2030. It sets out Rotterdam's ambition that in 2030, businesses operating in the port can attract skilled personnel at all levels, work in the port will be popular and education well aligned with demand. Businesses must be able to offer competitive conditions to attract skilled personnel. This is quite a challenge because the port of the future will have more jobs for the highly educated. There will also be more demand for logistics and technical personnel at MBO-4 level (highest level of intermediate vocational education). Work will be carried out behind screens and from a distance. This may apply to process operators, but also, for example, to crane drivers. English will become even more important than today. Labour productivity in the port will increase as a result of ongoing automation and technological developments: per tonne or per container fewer people will be needed to transfer and transport freight. It is expected that employment will continue to grow because of increasing freight volumes, however there is not a linear relation between the two.

¹⁹⁷⁹ Van Wersch, F. and Winthagen, T., *Resultaten onderzoek ontwikkelingen binnen havenbedrijven in Rotterdam*, Tilburg, IVA, 2008, 14-15.

Figure 110. Scenarios for the development of jobs in the port of Rotterdam, 2008-2030 (source: Rotterdam Port Authority¹⁹⁸⁰)



For the Rotterdam Port Authority, priority actions include:

1. Increasing the number of technical and logistics graduates

Students need to be encouraged to take an interest in the port from a young age, at all educational levels. Businesses are involved in the curriculum for this reason, to ensure that it is well-aligned with the kind of jobs available in the port, and to guarantee enough attractive trainee posts. Long-term work-study programmes focusing on technical and logistics skills are essential. Another point that is high on the agenda is to help people who have trained in other disciplines to adapt their skills. By handing responsibility for coordination and implementation to one single party, initiatives are no longer fragmented.

2. Getting young people interested

It is a challenge to increase awareness of the port and the various jobs it offers, and to improve their popularity. Successful projects, such as the special port education curriculum, guest lectures, the 'Ideal Port' lectureship and port excursions for pupils will be continued. Young people living in the region, in particular, will be informed frequently about the prospects of working in the port. The FutureLand information centre on the Maasvlakte will remain open, even after completion of the first stage of

¹⁹⁸⁰ Port of Rotterdam Authority, *Port Vision 2030*, 15 December 2011, <http://www.portofrotterdam.com/en/Port/port-in-general/port-vision-2030/Documents/Port-Vision-2030.pdf>, 65.

the construction of Maasvlakte 2. Its success will be perpetuated by informing a wide audience about the port and its activities.

3. Up-to-date human resources policy

Modern HR policies will be indispensable in the port in the coming decades. This involves policies geared towards enthusing and recruiting specific target groups, policies that are in line with the wishes of a new generation of young people, women, immigrants and older employees. To young people, for instance, responsibility, variety and a horizontal organisation are important; women find a safe social working environment important, and flexible working hours are important to everyone. Another essential requirement is ongoing training for existing employees, in order to promote internal mobility within the organisation. Specific attention needs to be paid to the match between jobseekers at the lower end of the employment market and jobs in the port.

4. Strengthening facilities in the port

The quality of the working environment is an import aspect when it comes to retaining staff in the port. Besides paying continuous attention to the visual quality, that is the physical appearance of the port and industrial area, it is also important to provide comprehensive clusters of facilities at easily accessible locations. Clusters of, for instance, hotels and restaurants, supermarkets and meeting places, combined with good facilities for truck drivers, will contribute to a pleasant working environment¹⁹⁸¹.

1493. According to the Rotterdam Port Authority, the current relationship between port employers and port workers is satisfactory and "instrumental". The Port Authority confirms that the current port labour system impacts positively on the competitive position of the port of Rotterdam. Multi-skilled labour is considered to enhance productivity as well as market shares.

Recent reforms notwithstanding, it appears that the wage level for port workers continues to be above the average in other sectors. The Port Authority of Rotterdam reported, for example, that forklift drivers in ports are paid one-third more than their peers outside the port area¹⁹⁸².

1494. The Port Authority of Amsterdam states that port labour is satisfactorily organised, that relations between employers and unions are good and that, generally, port labour is not a competitive issue for the port.

¹⁹⁸¹ See Port of Rotterdam Authority, *Work in the port: a battle for talent*, <http://portcompass2030.com/files/downloads/pdf/201101ID-FS002-E-Employees.pdf>; Port of Rotterdam Authority, *Port Vision 2030*, 15 December 2011, <http://www.portofrotterdam.com/en/Port/port-in-general/port-vision-2030/Documents/Port-Vision-2030.pdf>, 64-65.

¹⁹⁸² Turnbull, P., and V. Wass, "Defending dock workers – Globalization and labor relations in the world's ports", *Industrial Relations* 2007, (582), 605.

1495. AAVN notes that the port sector increasingly resembles other sectors and in this regard refers to a process of ‘demystification’ of the port sector. The distinction between blue and white collar workers has faded. Generally speaking, wages and secondary conditions of work are excellent and many people would like to join the sector. AAVN considers the current Dutch port labour model a best practice because it acknowledges the importance of flexibility, productivity and customer demands.

1496. As we have already mentioned¹⁹⁸³, the trade union FNV does not consider the current port labour regime satisfactory and argues that employers “do not have to follow any rules at all”. In the opinion of FNV, the current regime does not offer legal certainty. Moreover, the system impacts negatively on the competitive position of Dutch ports. However, FNV is of the opinion that other elements, for example port dues, have more impact on cargo flows than the port labour regime¹⁹⁸⁴. FNV also denounces the fact that employers try to attract youngsters to the port while almost 450 former SHB pool workers remain unemployed¹⁹⁸⁵.

FNV considers the Belgian and the Hamburg port labour regimes best practices.

FNV does not understand why port employers oppose collective bargaining at sectoral level while sectoral collective agreements are concluded in many other sectors of the Dutch economy including agriculture, construction, banks, super markets and metal works. FNV also complains that AAVN staff are not properly mandated to represent employers at negotiations.

1497. Following the rejection of the proposal for an EU Port Services Directive in 2003, FNV demanded that a national Port Labour Act be introduced¹⁹⁸⁶.

In 2004, however, FNV launched an initiative on a Safety Certificate for Ports (Veiligheidscertificaat haven, VCH)¹⁹⁸⁷. The proposed certificate has a focus on port-related risks and is intended to complement the existing VCA Certificate¹⁹⁸⁸. The trade union believes that the certificate is a means to prevent unqualified personnel and organisations from performing labour in ports. FNV suggest that certification be conducted jointly by employers’

¹⁹⁸³ See *supra*, para 1483 *et seq.*

¹⁹⁸⁴ See also FNV Bondgenoten and WVM Training & Advies, *Labour costs in the transshipment sector. An international comparison of harbours in Northwest European Ports*, study conducted on behalf of the Port of Rotterdam, 2003, 5.

¹⁹⁸⁵ See http://www.fnvhavens.nl/images/Documenten/013DscRwe_brf_Tweede_Kamer_alle_fracties.pdf.

¹⁹⁸⁶ Stam, N., "Liberalisering havens geblokkeerd - indrukken uit Rotterdam en Amsterdam. Werk voor professionals", http://www.solidariteit.nl/nummers/117/Werk_voor_professionals.html.

¹⁹⁸⁷ See <http://www.stichtingveiligehaven.nl>.

¹⁹⁸⁸ On the latter, see *supra*, paras 1465 and 1469.

and employees' organisations¹⁹⁸⁹. A separate VCH could also be introduced for the company as such. The proposed VCH certification scheme has not yet been implemented.

Reportedly, the Group of Safety Managers for the port of Rotterdam is working on a certification similar to FNV's safety certificate for ports¹⁹⁹⁰.

In addition, AWWN is working on safety certification as well. However, the organisation is of the opinion that VCH certification should be conducted by an independent institute. In this respect, it refers to Foundation Cooperating for Safety (Stichting Samenwerken voor Veiligheid, SSVV) (Cooperating for Safety Foundation) which also manages VCA certification. VCH certification would also apply to temporary work providers (and serve as a condition to have access to the market).

In connection with the Port Safety Certificate, there is some reluctance from the employers' side who fear that the certificate could be used by the trade unions as a labour-market instrument and pave the way for a closed-shop system.

FNV recently informed us that the VCH is now set to be developed by the Safe Port Foundation as an e-learning application.

1498. The Foundation for a Safer Port, an organisation established by trade unions, favours the idea of a sector-wide collective labour agreement on safety, rather than adopting a Code of Practice (Arbocatalogus) on safe work in ports which many employers would immediately shelve¹⁹⁹¹. Of course, a sector-wide collective agreement would depart from the current practice of signing collective agreements at company level.

1499. The first terminals at Rotterdam's 2000-hectare port expansion area of Maasvlakte 2 ('Second Meuse Plain') are set to open in 2013.

¹⁹⁸⁹ FNV Bondgenoten, *Veiligheidscertificaat Havens, wie neemt het voortouw?*, Rotterdam, FNV Bondgenoten, 2007, 16.

¹⁹⁹⁰ FNV Bondgenoten, *Veiligheidscertificaat Havens, wie neemt het voortouw?*, Rotterdam, FNV Bondgenoten, 2007, 16.

¹⁹⁹¹ See <http://www.stichtingveiligehaven.nl/home/157-uitkomsten-veiligheidsenquête-haven-2011-nu-te-lezen.html>.

Figure 111. Artist's impression of the Maasvlakte 2 expansion area in Rotterdam which was due to open in 2013. Trade union FNV voiced concerns over the impact on employment at existing terminals, labour conditions at the new facilities and the introduction of new technologies (source: Rotterdam Port Authority)



Trade union FNV expressed concerns about the impact of the additional terminal capacity on labour conditions at the present container terminals at the port area of Maasvlakte 1, with an expected use of new technologies, surpluses of workers, competition on the basis of labour conditions, increased risk of accidents, proliferation of temporary work due to the absence of collective labour agreements and social unrest. FNV advocated the adoption of a sector-wide collective agreement and the establishment of a labour pool for container terminal workers, the conclusion of contracts with the authorised lashing companies and the requirement to possess a VCH Certificate.

1500. The Port Authority of Rotterdam sees no clear need for a regulatory framework on port labour at EU level. It would not oppose such an initiative, but it is certainly not considered a priority issue for the port sector. The Port Authority of Amsterdam sees no reason for any EU intervention either.

1501. AWWN sees no need for any EU legislation on port labour whatsoever, and is mainly concerned that the liberalisation achieved in the Netherlands should not be reversed.

1502. A stevedoring company complaining about collective market dominance by RPS, Matrans, ILS and trade union FNV said that he had been fighting a losing battle for many years and that EU action to open the market would be very welcome.

1503. FNV believes that there is a need to create a legal framework on port labour at EU level. Such a framework should define the concepts of 'dock work', 'dock worker' and 'port area'. A combination of a legal framework with permanent employment would be conducive to a good mix of job security and labour flexibility. Furthermore, FNV favours a registration of dockworkers that ensures priority of employment.

One FNV representative also advocated the adoption of an EU-wide ban on self-handling by ship's crews in order to safeguard employment of European workers. Liberalisation measures for the port labour market are a waste of time because the cost of a port call is absolutely negligible and has no impact whatsoever on the end price of a product. As a result, it would not serve the interests of consumers or the economy at all.

9.15.8. Developments between January 2013 and September 2014

1503A. Despite criticism by FNV Bondgenoten, Rotterdam Port Authority in 2013 granted a conditional container lashing and unlashng licence to the cooperative society Dutch Dockers, a new market entrant¹⁹⁹².

In the conventional cargo sector, Belgian-controlled company 1A4 started lashing and unlashng operations in the port of Rotterdam. In this sector no licensing regime applies¹⁹⁹³.

Still in 2013, FNV Bondgenoten demonstrated against the employment of low-salary temporary workers by a subtenant of the former container terminal in the port of Amsterdam which allegedly distorted competition¹⁹⁹⁴.

¹⁹⁹² See X., "Dutch Dockers wil siorren in Rotterdam", *Nieuwsblad Transport* 16-22 October 2013; X., "Dutch Dockers krijgen vergunning", *Nieuwsblad Transport* 2 December 2013.

¹⁹⁹³ Jumelet, P., "Bewegingen aan siorfront", *Nieuwsblad Transport* 23-29 October 2013.

¹⁹⁹⁴ See X., "FNV stopt containerschip in haven Amsterdam", *Nieuwsblad Transport* 9 November 2013.

1503B. In 2013, operator APM Terminals had concluded a CBA for its new terminal at Maasvlakte 2. However, in 2014 FNV Bondgenoten argued that the Rotterdam Port Authority should postpone or reschedule the opening of Maasvlakte 2 to avoid existing container volumes being transferred to the new, highly automated, facilities, causing a dramatic loss of jobs¹⁹⁹⁵.

On 24 September 2014, the Rotterdam court dismissed a claim by incumbent terminal operator ECT who had argued that the new port would drain traffic from terminals at Maasvlakte 1 and that the port authority has abused its dominant position¹⁹⁹⁶.

1503C. In 2014, the jointly managed Stichting Veilige Haven launched its port safety training programme under which workers can obtain a port-specific VCH (VeiligheidsCertificaat Haven) certificate. It is expected that the new scheme will replace the existing VCA certification¹⁹⁹⁷.

¹⁹⁹⁵ See X., "'Stel opening Maasvlakte 2 uit'", *Nieuwsblad Transport* 17 April 2014.

¹⁹⁹⁶ Court of Rotterdam, 24 September 2014, C/10/392686 / HA ZA 11-2212.

¹⁹⁹⁷ More information on <http://www.stichtingveilighaven.nl/>.

9.15.9. Synopsis

1504.		
SYNOPSIS OF PORT LABOUR IN THE NETHERLANDS¹⁹⁹⁸		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 7 main ports • Landlord model • 543,2m tonnes • 3rd in the EU for containers • 12th in the world for containers • 85-150 employers • Appr. 7,275 – 11,000 port workers • Trade union density: 54-80% 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • ILO C137 denounced • Company CBAs, but not everywhere • Abolition of Rotterdam and Amsterdam pools in the 1990s • All permanent and temporary workers employed under general labour law • Local licensing system for lashing companies in Rotterdam • Company CBAs reserve temporary work for recognised providers • Successor of pool RPS may only engage non-former pool workers with consent of union • No mandatory manning scales 	<ul style="list-style-type: none"> • Provision of temporary workers largely controlled by small number of preferred companies • Factual restrictions on market access for subcontractors and temporary work agencies • Factual but no absolute ban on self-handling • Union concerns over job insecurity and refusal by some employers to conclude CBAs • Malaise in industrial relations • Uncertain effect on employment of opening of new port area Maasvlakte 2 (2013)
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Training by Shipping and Transport College and various other institutions 	<ul style="list-style-type: none"> • No national requirements on skills and competences • Some training compulsory under company CBAs • CBAs encourage multi-skilling 	<ul style="list-style-type: none"> • No specific issues
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No specific national accident statistics 	<ul style="list-style-type: none"> • No specific laws or regulations • Party to ILO C152 • VCA Safety Certificate required at Rotterdam and Amsterdam 	<ul style="list-style-type: none"> • Lack of statistics • Concerns over safety level despite indications of improvement • Introduction of specific Port Safety Certificate expected soon

¹⁹⁹⁸ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.16. Poland

9.16.1. Port system¹⁹⁹⁹

1505. There are 55 ports and harbours in Poland. The three largest Polish ports by total volume are Gdańsk, Szczecin / Świnoujście and Gdynia.

In 2012, the gross weight of seaborne goods handled in Polish ports was about 58.8 million tonnes, in which Gdańsk, Szczecin / Świnoujście and Gdynia had shares of 41.4, 32.1 and 22.4 per cent respectively²⁰⁰⁰. For container traffic, Polish ports were 13th in the EU and 51th in the world in 2011²⁰⁰¹.

1506. Most Polish commercial ports are governed by port authorities in the form of a joint stock company. Regardless of minimum shareholdership rules laid down by law, the State Treasury currently owns between 85 and 99.5 per cent of the shares in the port authorities of Gdańsk, Gdynia and Szczecin-Świnoujście, the rest being distributed among municipalities and employees²⁰⁰².

Polish ports operate under a landlord model. Port operating services are performed by private businesses. However, a number of cargo handling companies are still controlled by the port authority. In recent years, a number of such publicly-owned terminal companies have been privatised. Today, this privatisation process is still ongoing. Also, some new commercial cargo handling companies were established. In several cases, the privatisation process attracted foreign capital.

¹⁹⁹⁹ For general information on Polish ports, see ECOTEC, *Employment trends in all sectors related to the sea or using sea resources, Country Report – Poland*, European Commission. DG Fisheries and Maritime Affairs, August 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/poland_employment_trends_en.pdf, 11-12; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 377-388. A wealth of statistical data is published in Central Statistical Office, *Statistical Yearbook of Maritime Economy 2011*, Warsaw / Szczecin, 2011, www.stat.gov.pl, 423 p.; for statistics on throughput, see also *Polish Ports shipping and logistics. Special supplement of Namiary na Morze i Handel*, April 2012, 6-7; see also http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

²⁰⁰⁰ Central Statistical Office, *Statistical Yearbook of Maritime Economy 2013*, Warsaw / Szczecin, 2013, www.stat.gov.pl, 18-19. See also [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

²⁰⁰¹ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

²⁰⁰² Exact percentages are:

- in Gdańsk: 85.71 per cent State Treasury; 2.08 per cent Municipality; 12.21 per cent employees;
- in Gdynia: 99.4830 per cent State Treasury; 0.0436 per cent Municipality; 0.4734 per cent employees;
- in Szczecin-Świnoujście: 86.05 per cent State Treasury; 0.155 per cent Municipality of Szczecin; 0.155 per cent Municipality of Świnoujście; 13.64 per cent employees.

9.16.2. Sources of law

1507. The legal status and powers of port authorities and the regime of port land are governed by the Act on Ports and Harbours of 20 December 1996²⁰⁰³ which, however, does not contain any specific provisions on port labour.

1508. Port labour in Poland is governed by the Labour Code²⁰⁰⁴ (Act of 26 June 1974), which does not appear to contain any port-specific provisions.

1509. Occupational health and safety are regulated by Chapter 10 of the Labour Code and by the National Labour Inspectorate Act of 13 April 2007²⁰⁰⁵.

The main specific legal instrument on port labour is the Regulation of the Minister of Transport and Maritime Economy on health and safety at work in sea and inland ports of 6 July 1993²⁰⁰⁶.

A Ministerial Decree of 2 July 2001 determines the territorial competence and the headquarters of port health inspectors²⁰⁰⁷.

Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers was transposed through several consecutive legal instruments²⁰⁰⁸.

²⁰⁰³ Ustawa z dnia 20 grudnia 1996 r. o portach i przystaniach morskich. A consolidated version was published by Proclamation of the Speaker of the Parliament of the Republic of Poland of 9 February 2010.

²⁰⁰⁴ Kodeks pracy.

²⁰⁰⁵ Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy.

²⁰⁰⁶ Rozporządzenie Ministra Transportu i Gospodarki Morskiej z dnia 6 lipca 1993 r. w sprawie bezpieczeństwa i higieny pracy w portach morskich i śródlądowych.

²⁰⁰⁷ Rozporządzenie Ministra Zdrowia z dnia 2 lipca 2001 r. w sprawie terytorialnego zakresu działania oraz siedzib portowych inspektorów sanitarnych.

²⁰⁰⁸ Zarządzenie Nr 19 Dyrektora Urzędu Morskiego w Gdyni z dnia 16 grudnia 2004 r. zmieniające zarządzenie w sprawie dodatkowych wymagań i procedur dotyczących bezpieczeństwa załadunku i wyładunku masowców; Ustawa z dnia 18 września 2001 r. Kodeks morski; Zarządzenie Nr 9 Dyrektora Urzędu Morskiego w Gdyni z dnia 29 kwietnia 2004 r. w sprawie dodatkowych wymagań i procedur dotyczących bezpieczeństwa załadunku i wyładunku masowców; Zarządzenie Nr 1 Dyrektora Urzędu Morskiego w Szczecinie z dnia 5 kwietnia 2004 r. w sprawie dodatkowych wymagań i procedur dotyczących bezpieczeństwa załadunku i wyładunku masowców; Zarządzenie Nr 1 Dyrektora Urzędu Morskiego w Słupsku z dnia 29 kwietnia 2004 r. w sprawie dodatkowych wymagań i procedur dotyczących bezpieczeństwa załadunku i wyładunku masowców; Zarządzenie Nr 3 Dyrektora Urzędu Morskiego w Słupsku z dnia 22 grudnia 2004 r. zmieniające zarządzenie w sprawie dodatkowych wymagań i procedur dotyczących bezpieczeństwa załadunku i wyładunku masowców; Zarządzenie nr 5 Dyrektora Urzędu Morskiego w Szczecinie z dnia 29 grudnia 2004 r.

1510. Poland ratified ILO Convention No. 137²⁰⁰⁹ but is not a Party to ILO Conventions No. 32 or 152.

1511. Finally, specific aspects of port labour are governed by local port regulations²⁰¹⁰.

1512. In Polish ports, only company-specific collective labour agreements apply. However, it would appear that such agreements are not in place at every individual company. Especially in recently set up or privatised firms, no collective agreement may be available, but employment conditions are laid down by the employer in Work Regulations, after consultation with the employee's elected representative.

9.16.3. Labour market

- Historical background

1513. In Poland, too, port labour arrangements appear to have a long tradition. In the port of Szczecin, for example, a porters' guild was already in operation in the 14th century²⁰¹¹. In the port of Gdańsk, port work (e.g. transshipment, weighing, packing) in the 16th and 17th century was performed by municipal civil servants, appointed by the major or alderman and benefiting in this respect from a monopoly²⁰¹². These civil servants were entitled to levy a tax for their services²⁰¹³.

The current port labour arrangements in Poland are characterised by the recent transition from a State-controlled to a private market structure.

zmieniające zarządzenie w sprawie dodatkowych wymagań i procedur dotyczących bezpieczeństwa załadunku i wyładunku masowców.

²⁰⁰⁹ The Convention was published on 22 May 1975 and entered into force on 22 February 1980.

²⁰¹⁰ For an example, see *infra*, para 1529.

²⁰¹¹ van der Velden, M., *Hafenarbeit und Trägergilden*, Rotterdam, M. van der Velden, 1998, 11-13.

²⁰¹² Cieslak, E., "Le fonctionnement du port de Gdansk comparé à celui des autres ports baltiques - XVIe-XVIIIe siècles", in S. Cavaciocchi, *I porti come impresa economica*, s.l., Le Monnier, 1988, (569), 575.

²⁰¹³ Cieslak, E., "Le fonctionnement du port de Gdansk comparé à celui des autres ports baltiques - XVIe-XVIIIe siècles", in S. Cavaciocchi, *I porti come impresa economica*, s.l., Le Monnier, 1988, (569), 576.

Since the end of the Second World War the main Polish ports had been managed by dedicated State Companies which were acting as executive branches of the Ministry of Transport. The port ownership and management structure was thus strictly centralised. Polish ports operated mainly on behalf of the national economy and as transit points for cargoes from Czechoslovakia and Hungary, within the COMECON framework. Port workers were employed by the State on a regular basis and allocated to different berths as needed, and workers not required for work in connection with a ship were employed for other duties²⁰¹⁴. Ports also employed occasional workers who were however not deployed on board ships or for other dangerous jobs. The latter were entitled to attendance money but were allowed to exercise another profession²⁰¹⁵.

Between May and November 1992, the Polish State port enterprises were transformed into joint stock companies under the Act of 13 July 1990 on Privatization of State Owned Enterprises²⁰¹⁶.

In 1996, upon adoption of the Polish Ports and Harbours Act which laid the foundations for a transition from a full-service to a landlord model, the World Bank still noted a situation of excessive employment in the Polish port sector. Also, it reported that, while most operating units were formally separated from the port authorities, real competition between port service providers was still very much in its infancy²⁰¹⁷.

Simultaneously with its establishment as a joint-stock company, the Port Authority of Gdańsk had formed 28 limited liability companies out of former departments of the port enterprise. At a first stage, the Port Authority kept 45 per cent of the shares of these companies, the other 55 per cent being owned by the workers. In 1993, the Port Authority transferred its 45 per cent share to the individual companies, now consequently 100 per cent employee-owned. The World Bank stated that although this was formally a genuine privatisation process, the result in the field was still remote from what should be expected from private commercial port operations, in particular as far as competition was concerned. It noted that all stevedoring companies, for example, worked under the umbrella of the Commercial Sea Port of Gdańsk, an additional private company belonging to the port workers (80 per cent) and the companies themselves (20 per cent). This umbrella company actually did all the marketing for the stevedoring companies, based on a common tariff policy, and distributed the work to keep everyone busy, which was nothing but a new monopoly situation, in fact a workers' monopoly²⁰¹⁸. Even if the share capital of the daughter companies was owned by the workers, the Port Authority of Gdańsk had full control over them through the annual leasing contract for infrastructure and equipment²⁰¹⁹. The

²⁰¹⁴ Thus Evans, A.A., *Technical and social changes in the world's ports*, Geneva, ILO, 1969, 59.

²⁰¹⁵ Thus Vigarié, A., *Ports de Commerce et Vie Littorale*, Paris, Hachette, 1979, 415.

²⁰¹⁶ See also The World Bank, *Staff Appraisal Report. Republic of Poland. Port Access and Management Project*, June 11, 1996, Report No. 15149-POL, 7; see also Misztal, K., *The present state and future prospects of Polish sea ports*, Turku / Åbo, University of Åbo / University of Turku, 1993, 28 p.; Misztal, K. and Zurek, J., "The privatization of Polish ports—the present situation and outlook for the future", *Maritime policy and management* 1997, 291-297.

²⁰¹⁷ The World Bank, *Staff Appraisal Report. Republic of Poland. Port Access and Management Project*, June 11, 1996, Report No. 15149-POL, 3.

²⁰¹⁸ The World Bank, *Staff Appraisal Report. Republic of Poland. Port Access and Management Project*, June 11, 1996, Report No. 15149-POL, 10.

²⁰¹⁹ The World Bank, *Staff Appraisal Report. Republic of Poland. Port Access and Management Project*, June 11, 1996, Report No. 15149-POL, Annex 5, 1.

World Bank stressed that according to the Ports and Harbours Act, the port authorities would have to withdraw from the operating companies²⁰²⁰.

The Port Authorities of Gdynia and Szczecin-Świnoujście also established subsidiaries. In the latter port, workers obtained 55 per cent of the shares of the subsidiaries²⁰²¹.

In the meantime, the subsidiaries were progressively privatised by the sale of their shares to outside investors. Also, new enterprises were set up on the basis of terms agreed with the port authorities²⁰²². But as of 2012, full privatisation of all formerly public stevedoring companies has not yet been achieved.

- *Regulatory set-up*

1514. Under the current port labour system, all port workers in Poland are directly employed by cargo handling companies. These companies are not obliged to join an employer's organisation or a pool, and do compete with one another.

1515. Although Poland ratified ILO Convention No. 137, port workers do not have to be registered in a central or port-wide register. An ILO report from 2002 mentions that in Poland, the task of registering port workers falls to employers²⁰²³. This is still the case today.

1516. There is no pool system for port workers in Poland. All port workers of publicly or privately controlled cargo handling companies are, as a rule, permanently employed.

However, there is no prohibition on the employment of temporary workers via employment agencies in peak periods, provided all regular workers are effectively employed. Reportedly, the privately owned terminals regularly rely on such employment. Occasional workers such as students are used as well. We were informed that at least three container terminal operators in Gdańsk and Gdynia rely on the services of the agency Kadry Agencja Pracy Tymczasowej which also supplies certified crane operators and cooperates on training programmes; for other

²⁰²⁰ The World Bank, *Staff Appraisal Report. Republic of Poland. Port Access and Management Project*, June 11, 1996, Report No. 15149-POL, 11.

²⁰²¹ For further details, see The World Bank, *Staff Appraisal Report. Republic of Poland. Port Access and Management Project*, June 11, 1996, Report No. 15149-POL, 10-11 and Annex 5, 2-3.

²⁰²² See Misztal, K. and Zurek, J., "The privatization of Polish ports—the present situation and outlook for the future", *Maritime policy and management* 1997, (291), 295-296.

²⁰²³ International Labour Conference (90th Session 2002), *General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, <http://www.ilo.org/public/english/standards/reIm/ilc/ilc90/pdf/rep-iii-1b.pdf>, 54, para 123.

jobs competition such as forklift drivers, other agencies compete. Well-performing temporary agency workers are often offered a permanent contract with the port operator.

There are no hiring halls for port workers in Polish ports.

1517. Further, no distinction is made between port workers working on shore and workers working on board and between port workers in the narrow sense (who are employed at the ship/shore-interface) and warehouse or logistics workers in the port. As a rule, port workers can be moved from one job to another.

1518. Reportedly, commercial cargo handling companies can engage new staff on the basis of individually negotiated contracts of employment, in which case no collective bargaining agreements must be complied with. Such additional permanent workforce are often selected following a period of temporary employment through an employment agency.

1519. A manager of another privately controlled company informed us that qualifications of port workers are determined by the employer. The employer organises medical, psychological and acrophobia tests according to his own needs. Through additional tests and exams, employees can develop a career within the company. As a result, turnover among workers is reportedly low. As regards daily operations, the employer said he enjoys considerable flexibility, including on the composition of gangs, which he considers a major competitive asset.

1520. Theoretically, port workers can be transferred temporarily from employer to employer, although in practice this does not happen.

1521. Port workers enjoy unemployment benefit in accordance with general social security law.

- Facts and figures

1522. The Central Statistical Office of Poland maintains detailed statistics on the maritime economy which are published in a Yearbook, from which we have excerpted the data on

'maritime economy entities' active in cargo handling and storage in seaports. An expert at the Gdańsk Port Authority estimates that office workers represent between 10 and 30 per cent of all workers at operator companies, while the percentage is almost 100 per cent at port authorities.

To summarise the data below, some 423 cargo handling operators, among which 198 commercial companies, employ 7,487 staff, of whom, supposedly, 5,990 (20 per cent) port workers for the purpose of the present study.

Table 88. Number of maritime economy entities active in cargo handling and storage in seaports by legal form, 2007-2012 (source: Central Statistical Office of Poland²⁰²⁴)

	2007	2008	2009	2010	2011	2012
State-owned enterprises	-	-	-	-		
Commercial companies, of which	75	81	187	198	192	191
- Joint-stock	6	6	7	8	7	7
- Limited liability	66	70	172	180	175	173
- Unlimited partnerships	3	5	8	9	7	8
Civil law partnerships	7	9	38	37	36	38
Individual persons conducting economic activity	31	34	161	184	199	186
Total	113	125	391	423	431	420

²⁰²⁴ Central Statistical Office, *Statistical Yearbook of Maritime Economy 2011*, Warsaw / Szczecin, 2011, www.stat.gov.pl, 36; Central Statistical Office, *Statistical Yearbook of Maritime Economy 2013*, Warsaw / Szczecin, 2013, www.stat.gov.pl, 34.

Table 89. Number of of maritime economy entities active in cargo handling and storage in seaports by maritime province (voivodship), 2007-2012 (source: Central Statistical Office of Poland²⁰²⁵)

	2007	2008	2009	2010	2011	2012
Pomerania (comprising Gdańsk and Gdynia)	60	68	94	105	119	119
Warmia- Mazuria	-	1	1	3	3	4
West Pomerania (comprising Szczecin and Świnoujście)	50	49	89	90	91	95
Total	113	125	391	423	431	420

Replying to our questionnaire, the Port of Gdańsk Authority mentioned a number of 104 employers in its port in 2011.

1523. Still according to the Central Statistical Office of Poland, data on employed persons are as follows:

²⁰²⁵ Central Statistical Office, *Statistical Yearbook of Maritime Economy 2011*, Warsaw / Szczecin, 2011, www.stat.gov.pl, 42; Central Statistical Office, *Statistical Yearbook of Maritime Economy 2013*, Warsaw / Szczecin, 2013, www.stat.gov.pl, 40.

Table 90. Number of employed persons active in cargo handling and storage in seaports, 2007-2012 (source: Central Statistical Office of Poland²⁰²⁶)

	2007	2008	2009	2010	2011	2012
State-owned enterprises	-	-	-	-		
Commercial companies, of which	5,096	4,717	7,683	6,873	7,653	7,329
- Joint-stock	249	258	304	909	860	795
- Limited liability	4,788	4,392	7,248	5,832	6,655	6,399
- Unlimited partnerships	59	67	131	127	98	90
Civil law partnerships	23	29	161	158	142	155
Individual persons conducting economic activity	63	77	394	419	472	468
Total	5,182	4,831	8,337	7,487	8,300	7,989

Table 91. Number of employed persons active in cargo handling and storage in seaports by maritime province (voivodship), 2007-2012 (source: Central Statistical Office of Poland²⁰²⁷)

	2007	2008	2009	2010	2011	2012
Pomerania (comprising Gdańsk and Gdynia)	3,063	2,813	2,705	2,664	6,646	2,537
Warmia-Masuria	-	-	-	-	31	38
West Pomerania (comprising Szczecin and	2,113	1,985	2,052	1,964	1,965	1,828

²⁰²⁶ Central Statistical Office, *Statistical Yearbook of Maritime Economy 2011*, Warsaw / Szczecin, 2011, www.stat.gov.pl, 38; Central Statistical Office, *Statistical Yearbook of Maritime Economy 2013*, Warsaw / Szczecin, 2013, www.stat.gov.pl, 36.

²⁰²⁷ Central Statistical Office, *Statistical Yearbook of Maritime Economy 2011*, Warsaw / Szczecin, 2011, www.stat.gov.pl, 45; Central Statistical Office, *Statistical Yearbook of Maritime Economy 2013*, Warsaw / Szczecin, 2013, www.stat.gov.pl, 43.

Świnoujście)						
Total	5,182	4,831	8,337	7,487	8,300	7,989

Table 92. Number of maritime economy entities active in cargo handling and storage in seaports by number of employed persons, 2007-2012 (source: Central Statistical Office of Poland²⁰²⁸)

	2007	2008	2009	2010	2011	2012
up to 9	78	90	320	345	351	340
10-49	17	21	46	51	51	52
50-249	11	8	16	18	19	19
250-499	4	5	6	7	7	6
500 and more	3	1	3	2	3	3
Total	113	125	391	423	431	420

Table 93. Number of full and part-time employees employed by entities active in cargo handling and storage in seaports employing more than 9 persons, 2007-2012 (source: Central Statistical Office of Poland²⁰²⁹)

	2007	2008	2009	2010	2011	2012
Total	4,971	4,583	7,554	6,519	7,288	6,948
- of which women	721	663	2,061	1,618	2,255	2,208
Full-time employees	4,909	4,516	7,402	6,410	7,138	6,827
- of which women	694	633	1,983	1,560	2,172	2,143
Part-time employees	61	62	146	106	144	111
- of which women	27	28	75	57	81	61

²⁰²⁸ Central Statistical Office, *Statistical Yearbook of Maritime Economy 2011*, Warsaw / Szczecin, 2011, www.stat.gov.pl, 46; Central Statistical Office, *Statistical Yearbook of Maritime Economy 2013*, Warsaw / Szczecin, 2013, www.stat.gov.pl, 44.

²⁰²⁹ Central Statistical Office, *Statistical Yearbook of Maritime Economy 2011*, Warsaw / Szczecin, 2011, www.stat.gov.pl, 50; Central Statistical Office, *Statistical Yearbook of Maritime Economy 2013*, Warsaw / Szczecin, 2013, www.stat.gov.pl, 49.

Interestingly, the Central Statistical Office also maintains data on the average monthly gross remuneration in the maritime sector, including in cargo handling and storage of seaports but, as we have explained²⁰³⁰, this subject is beyond the scope of our study.

1524. There are two main trade unions for port workers: the Port Workers Country Section of the Independent and Self-Governing Trade Union Solidarnosc (Niezależny Samorządny Związek Zawodowy (NSZZ) "Solidarność") and the Free Trade Union of Maritime Economy Workers (Wolny Związek Zawodowy Pracowników Gospodarki Morskiej, WZZPGM).

Reportedly, Solidarnosc still holds a particularly strong position among workers in cargo handling companies that have remained under control of the port authorities. In new, privately owned companies, however, employee organisations have considerably less bargaining power, if they play any role at all. Detailed membership figures or shares are not available. The Port of Gdańsk Authority stated that 50 per cent of its own employees are unionised, but that the percentage is higher for port workers. At privatised terminals, union density is probably lower.

In Poland as a whole, trade union density is estimated at around 15 per cent, one of the lowest rates in the European Union²⁰³¹.

9.16.4. Qualifications and training

1525. Even if they were not fully consistent, responses to our questionnaire indicate that the following types of formal training are available for port workers in Poland:

- specialised training as part of a regular educational programme (secondary school);
- continued or advanced training after regular educational programme;
- induction courses for new entrants;
- courses for the established port worker;
- training in safety and first aid;
- specialist courses for certain categories of port workers such as operators of cranes, container handling equipment, tugmasters or forklifts, lashing and securing personnel, tallymen, signalmen and reefer technicians;
- training aimed at the availability of multi-skilled or all-round port workers;
- retraining of injured and redundant port workers.

In most cases, the training is compulsory.

²⁰³⁰ See *supra*, para 25.

²⁰³¹ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

The Ministry of Transport, Housing and Maritime Economy provided us with a curriculum on port and terminal operation techniques published by the Ministry of Education²⁰³² which covers the following items:

- professional terms relating to seaports and terminals;
- laws and regulations on seaports and terminals;
- types and functions of seaports and terminals;
- rules on the handling of vessels;
- rules on cargo handling in seaports and terminals;
- rules on passenger and baggage handling in seaports and terminals;
- rules concerning other means of transport used in seaports and terminals;
- rules on safety and security of work;
- rules on environmental protection;
- telecommunication.

1526. As we have mentioned²⁰³³, privatised terminal operators seem, as a rule, free to decide on qualification and training issues.

One interviewed privately owned container terminal operator explained that all new employees on the terminal have to attend an initial in-house occupational health and safety training as well as an ISPS training.

These training sessions are carried out by the safety and compliance manager who is an occupational health and safety senior specialist and a port facility security officer (PFSO). Additionally, training on the International Maritime Dangerous Goods (IMDG) Code is organised for the operational staff. Periodic occupational health and safety training sessions are carried out every 3, 4 or 5 years (depending on the worker's position). All training is provided by in-house instructors.

In-house training for crane drivers *etc.* is organised on the basis of the following programme:

²⁰³² Ministerstwo Edukacji Narodowej, *Program Nauczania. Techniki Eksploatacji Portów I Terminali 342 [03]*, 13 September 2006.

²⁰³³ See *supra*, para 1519.

Table 94. In-house training programme for STS, RTG, R/S and IMV at the DCT terminal in the port of Gdańsk (source: DCT)

	Ship-to-Shore Crane	Rubber Tyred Gantry Crane	Reach Stacker	Internal Movement Vehicle
Total number of days	42	25	3	6
Theoretical training	1st day	1st day	1st day	half of first day
Practical training (first part)	2nd - 10th day	2nd - 5th day	2nd - 3rd day	1st - 6th day
Internal examination	10th day	5th day	3rd day	6th day
Practical training (second part)	11th - 20th day	6th - 12th day		
2nd Internal examination	20th day	12th day		
Practical training (third part)	21st - 42nd day	13th - 25th day		
External (state) examination	42nd day	25th day	3rd day	

Reportedly, STS, RTG and R/S training is required by law²⁰³⁴. Nobody is allowed to drive such equipment without the relevant certificate, which is only issued after a state exam. The exam is organised by the Office of Technical Inspection (Urząd Dozoru Technicznego, UDT) which is a government agency responsible for the authorisation of all technical devices in Poland.

1527. Another operator of a privatised container terminal explained that its equipment and workers are certified by the Transportation Supervision Agency (Transportowy Dozór Techniczny, TDT) and confirmed that no specific school for port workers exists. Training is mainly a responsibility for the individual employer.

1528. Yet a further privately owned terminal operator confirmed that training is indeed organised within the company.

²⁰³⁴ We were unable to identify the applicable legal instruments.

1529. Some local port regulations set forth requirements on training of workers handling dangerous goods²⁰³⁵.

9.16.5. Health and safety

- *Regulatory set-up*

1530. The abovementioned Regulation of 6 July 1993 of the Minister of Transport and Maritime Economy on health and safety at work in sea and inland ports²⁰³⁶ contains the following nine chapters:

Chapter 1: Preliminary provisions

Chapter 2: General requirements: Qualifications and responsibilities of the workers; Organisational matters; Quays, piers, breakwaters, roads and yards; Warehouses; Lighting and electronic devices

Chapter 3: Cargo handling devices/equipment: General requirements; Engine vehicles; Gravity conveyors; Mechanical conveyors; Capstan winches/Broaching machines; Auxiliary cargo handling equipment (General requirements; slings; Bridges, platforms, plates, pallets, loading trays; Electromagnetic receptors)

Chapter 4: Access to the vessel for the workers

Chapter 5: Preparatory works on board of the vessel: Opening and closing the hatches and ship's cargo handling equipment; Securing the cargo holds' hatches; Entering the cargo hold

Chapter 6: Cargo handling: General requirements; Handling of wood and general cargo; Handling of bulk cargo; Cargo handling operations on board of the specialised vessel

Chapter 7: Various works: Mooring operations; Cleaning of the cargo holds

Chapter 8: Storage of the cargo

Chapter 9: Final provisions

²⁰³⁵ See, for example, § 153 of the Port Regulations of Swinoujście - Szczecin which reads:

1. *Cargo handling of dangerous goods shall be executed in accordance with such safety operations instructions as have been prepared by stevedores and approved by the Director of the Maritime Office in Szczecin.*

2. *The instructions referred to in subsection 1 shall determine the person responsible for cargo operation, the rules of cargo operation, emergency procedure EmS, First Aid rules, MFAG, communications during operations and the procedures to be used for communicating and requesting assistance.*

3. *Persons employed in carrying out cargo operations involving dangerous goods shall have appropriate training; this includes training on the types of dangers, rules of cargo handling and operations with dangerous goods. Persons responsible for cargo handling shall be responsible for carrying out the training. Such training shall be confirmed by a signature on a participants' list, which should be shown on request to any supervisory body.*

²⁰³⁶ See *supra*, para 1509.

The Regulation defines "port handling" as the activities associated with the cargo handling on seagoing and inland shipping vessels and all other means of water and land transport, including all activities concerning cargo handling, storage, disposal, arrangement and transfer of cargoes in warehouses and on the storage places for subsequent transport (§ 1, 11).

1531. Enforcement of health and safety rules may be ensured through the intervention of the port authority, the harbour master, the terminal operator and the Labour Inspectorate.

- Facts and figures

1532. According to the Polish Ministry of Transport, no statistics on accidents and occupational diseases concerning work in ports are available, but the Regional Labour Inspectorates are informed about every incident within the port area.

In October 2014, the National Labour Inspectorate informed us that in the period 2010-2013 its inspectors investigated 10 accidents at work connected with work at sea ports. It would appear that these data not only cover port labour as defined for the purpose of the present study.

Table 95. Number of occupational accidents in Polish seaports investigated by the National Labour Inspectorate, 2010-2013²⁰³⁷ (source: National Labour Inspectorate)

Year	Type of accident (by the gravity of its consequences)		
	fatal	serious	light
2010	0	1	0
2011	1	0	1
2012	1	3	0
2013	2	0	1

The National Labour Inspectorate investigates circumstances and causes of workplace accidents which employers are legally obliged to report. Hence it is unable to provide frequency and seriousness rates.

²⁰³⁷ Data received on 16 November 2012.

Data maintained by the Central Statistical Office (GUS) show that in the period 2010-2012 a total of 223 water-related occupational accidents occurred. This figure comprises accidents at lakes, rivers, ports and on board all types of vessels, platforms, etc. (reference code 112).

Table 96. Number of occupational accidents at lakes, rivers, ports and on board all types of vessels, platforms, etc. in Poland, 2010-2012 (source: National Labour Inspectorate / Central Statistical Office)

Year	Total	Type of accident (by the gravity of its consequences)	
		fatal	serious
2010	86	0	1
2011	76	2	1
2012	61	0	1

1533. The Institute of Maritime and Tropical Medicine at Gdynia has conducted a number of interesting studies on health and safety in port labour.

For example, in 1990 it published a study on energy expenditure of port workers performing heavy loading and discharging work and other groups of workers. The results indicated that the work of stevedores and trimmers is heavy and, for specific loading operations, very heavy. Remaining groups performed work which could be considered light, at times of a moderate strenuousness. Out of all the occupational groups, the labour of stevedores and trimmers was characterised by the highest energy expenditure. The lower the energy expenditure, the higher the average body mass and the incidence of overweight and obesity²⁰³⁸.

In 1996, a study was published on the effect of heavy work on the musculoskeletal system of port workers which confirmed that the stevedores perform heavy to very heavy labour while the work of other port workers is moderately strenuous or light²⁰³⁹.

Yet other studies focused on reasons for loss of fitness of port workers to perform physically heavy loading operations²⁰⁴⁰, cervical and back pain syndromes²⁰⁴¹, sick absence²⁰⁴², maximum oxygen uptake by port workers performing heavy work and by operators of mechanical equipment in ports²⁰⁴³, the impact of the working environment upon the health of workers handling dusty materials (with special attention for the respiratory and circulatory system)²⁰⁴⁴,

²⁰³⁸ <http://www.ncbi.nlm.nih.gov/pubmed/2135914>.

²⁰³⁹ <http://www.ncbi.nlm.nih.gov/pubmed/9101049>.

²⁰⁴⁰ <http://www.ncbi.nlm.nih.gov/pubmed/9101048>.

²⁰⁴¹ <http://www.ncbi.nlm.nih.gov/pubmed/9591149>.

²⁰⁴² <http://www.ncbi.nlm.nih.gov/pubmed/1844842>.

²⁰⁴³ <http://www.ncbi.nlm.nih.gov/pubmed/1844847>.

²⁰⁴⁴ <http://www.ncbi.nlm.nih.gov/pubmed/3270581>.

changes in electrocardiograms at rest among port workers employed at the loading and unloading of dusty materials²⁰⁴⁵ and reasons why port workers lose their fitness for work²⁰⁴⁶.

9.16.6. Policy and legal issues

1534. The main issue regarding port labour arrangements in Polish ports seems to be the incomplete transition of the Polish port system from a centralised state-controlled service port model to a landlord model based on intra-port competition between privately-owned and commercially run terminal operators.

As we have noted above²⁰⁴⁷, this privatisation process is still ongoing. As a result, the ownership and management structure of port terminals in Poland is currently rather diverse, and the same applies to the corresponding port labour regimes.

1535. In the port of Gdańsk, for example, the dry bulk facilities in the outer port are now run by a company that used to be owned by the workers who each owned one share but which was after a public tender taken over by a Belgian commercial group. The new terminal opened in 2013. Also in the outer port, Gdańsk's major container terminal is run by DCT, a newly established commercial player which attracted funds from a major international infrastructure investment group.

The Port of Gdynia has privatised several terminal handling companies, including its container terminal BCT. In 2011, a major bulk handling company in the port of Gdynia was taken over by a French group. A major general cargo terminal was privatised in 2014.

Privately owned terminals employ their own staff. Over the past years, some claim to have recruited numerous additional workers in order to cope with increasing cargo volumes.

1536. However, the older inner port of Gdańsk, for example, is still operated by a subsidiary controlled by the Port Authority, which continues to own 98.28 per cent of the shares. This company operates 8 quays and is the port's biggest operator. It employs almost 600 employees. The privatisation process was launched in 2014.

²⁰⁴⁵ <http://www.ncbi.nlm.nih.gov/pubmed/3841819>.

²⁰⁴⁶ <http://www.ncbi.nlm.nih.gov/pubmed/7580346>.

²⁰⁴⁷ See *supra*, para 1513.

1537. Replying to our questionnaire, the Port of Gdańsk Authority argues that employment should be more flexible and that the lack of modern and adequate regulations is also detrimental to employees. Overmanning continues to occur but is not seen as a major competitive issue. Still according to the Port of Gdańsk Authority, port workers are insufficiently trained.

1538. The Port of Gdańsk Authority aims at a further privatisation of its cargo handling subsidiaries which continue to employ an excess workforce, but this is reportedly opposed by the trade unions, while private investors are not keen on taking over massive social liabilities and less profitable divisions. The Port Authority believes that there is considerable interest from port operators to take over Port Gdański Eksploatacja.

1539. Several interviewees from the private sector confirmed that a further privatisation of publicly owned cargo handling companies in Polish ports is hampered by the presence of an excess workforce and less efficient working practices.

One interviewee explained that at non-privatised terminals, unwritten customs would for example require employment of two operators per gantry crane, who would then each perform half of an 8-hour shift. Upon privatisation, several employers abolished this rule and reasserted the right of the employer to decide on manning levels, while of course ensuring breaks for rest and meals. In publicly-owned terminals, such customs may continue to apply.

1540. We have no information on how ILO Convention No. 137, which is still binding upon Poland, is implemented at the privatised terminals.

1541. Self-handling by ship's crews is not specifically regulated in Poland. Port authorities leave this matter to contractual arrangements between the vessel and the operator²⁰⁴⁸. It is probably safe to assume that a factual ban applies, which may be lifted by the operator²⁰⁴⁹. We were informed of one example where a container terminal charges a handling fee when the

²⁰⁴⁸ European Sea Ports Organisation, *Factual Report on the European Port Sector*, Brussels, 2004-2005, 155.

²⁰⁴⁹ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) mentions that the following longshore work by crewmembers aboard U.S. vessels is prohibited in Polish ports:

(a) *All longshore activities.*

(b) *Exceptions:*

(1) *Operation of cargo-related equipment,*

(2) *Opening and closing of hatches, and*

(3) *Rigging of ship's gear.*

ship's crew is loading or unloading project cargo, because the terminal owns the infrastructure which moreover has only a limited berthing capacity. At non-privatised terminals, self-handling may encounter opposition from the unions.

1542. Replies to our questionnaire suggest that port workers cannot be transferred temporarily to another port. The Ministry of Transport, Construction and Maritime Economy and the Port of Gdańsk Authority denied that such a ban existed. The former commented that there is no demand for such transfers, but the latter said that workers are reluctant to work at another port.

1543. The Ministry of Transport, Construction and Maritime Economy and the Port of Gdańsk Authority concur that, generally, rules on employment and on health and safety are adequate and properly enforced.

9.16.7. Appraisals and outlook

1544. The Polish *National Transport Policy for 2006 – 2025* which was approved by the Council of Ministers on 29 June 2005 mentions the following prioritised activity:

*implementation of European Union standards on port management and operation, including separation of the function of port area and infrastructure management from provision of commercial port services*²⁰⁵⁰.

As we have explained²⁰⁵¹, Polish port authorities are still in the process of privatising cargo handling companies in which they or the workers hold shares, but it seems that today this process is largely completed.

The Ministry of Transport, Construction and Maritime Economy is currently preparing a new *Transport Development Strategy for 2020* as well as a *Seaports Development Programme for 2020* (both with prospects to 2030).

²⁰⁵⁰ *National Transport Policy for 2006 – 2025*, <http://cms-en.transport.gov.pl/files/2/46f38651bb49e/PolitykaTransportowaPastwanalata20062025Rzdowajzangjelski.pdf>, 20.

²⁰⁵¹ See *supra*, paras 1513 and 1534.

1545. The Port of Gdańsk Authority does not consider the current port labour regime satisfactory but also does not believe that this is the main competitive factor. It mentioned the port labour systems of Rotterdam and Hamburg as benchmarks.

Both the Ministry of Transport, Housing and Maritime Economy and the Port of Gdańsk Authority describe relations between employers and unions as satisfactory (the latter, however, also describes them as unsatisfactory at times).

1546. One interviewed independent commercial terminal operator said that the organisation of port work at its terminal is not hampered by any restrictive rules. He mentioned, however, that a further transfer of publicly-owned cargo handling companies to the private sector is delayed due to the presence of huge social liabilities and opposition by the powerful trade union Solidarnosc. Commercial operators tend to employ smaller gangs who are, however, better paid and receive pay increases and bonuses. According to this interviewee, the labour situation in Polish ports is gradually being normalised.

1547. However, we also heard echoes of trade unionists complaining that in Gdańsk employees are "completely without rights" and that any talk of unions leads to firing²⁰⁵².

1548. The Port of Gdańsk Authority does not see a need for any EU action and argues that, primarily, port labour is a matter for national regulations. The Ministry of Transport, Construction and Maritime Economy mentioned that the need for further national reform remains to be assessed.

9.16.8. Developments between January 2013 and September 2014

1548A. We are not aware of any major developments.

²⁰⁵² Brink, "Havnearbejdere i Rotterdam kalder på solidaritet", 16 February 2012, http://www.eufagligt.dk/artikel/havnearbejdere_i_rotterdam_kalder_pa_solidaritet/.

9.16.9. Synopsis

1549.		
SYNOPSIS OF PORT LABOUR IN POLAND²⁰⁵³		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 55 seaports, 3 main ports • Landlord model, in final transition from full-service model • 59m tonnes • 13th in the EU for containers • 51st in the world for containers • Appr. 423 employers (198 companies) • Appr. 6,000 port workers (?) • Trade union density: 50% (?) 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • Party to ILO C137 • Company CBAs, but not at privatised terminals • All port workers employed by terminals • Registration of workers by individual employer • No pools • No hiring halls • No mandatory manning scales at privatised terminals • No ban on temporary agency work 	<ul style="list-style-type: none"> • Completion of privatisation of publicly owned terminals • Excess workforce at publicly owned terminals • Restrictive working practices at publicly owned terminals • Ban on self-handling at publicly owned terminals • Reluctance of privatised terminals to cooperate with unions
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Company-based training 	<ul style="list-style-type: none"> • No specific requirements • National training curriculum available • Compulsory certification of equipment operators • Local requirements on handling of dangerous goods 	<ul style="list-style-type: none"> • Insufficient training at publicly-owned terminals
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No specific accident statistics available 	<ul style="list-style-type: none"> • National Health and Safety Regulations • No Party to ILO C32 or C152 	<ul style="list-style-type: none"> • Lack of statistics

²⁰⁵³ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.17. Portugal

9.17.1. Port system²⁰⁵⁴

1550. Portugal has several commercial seaports, namely nine on the mainland and at least one on each island of the Autonomous Regions of Azores and Madeira.

The main cargo seaports are located in the mainland and include, from North to South, Leixões, Aveiro, Lisbon, Setúbal and Sines.

In 2012, the gross weight of seaborne goods handled in Portuguese ports was about 67.9 million tonnes²⁰⁵⁵. The five main ports handle more than 95 per cent of the national cargo throughput. For containers, Portuguese ports ranked 10th in the EU and 46th in the world in 2011²⁰⁵⁶.

1551. Portuguese ports are state-owned. As from 1997, Portuguese ports were transformed into landlord ports. The legal status of port authorities changed from public institutions to private enterprises with the State as sole shareholder. Cargo handling services are provided by private entities.

9.17.2. Sources of law

1552. The current legislative regime of port labour was established from 1993 onwards.

²⁰⁵⁴ For general information on Portuguese seaports, see www.imarpor.pt; Carvalho, M.L.N.C., *Performance Evaluation of the Portuguese Seaports*, dissertation, Universidade Técnica de Lisboa, 2007, <https://dspace.ist.utl.pt/bitstream/2295/147760/1/MLC%20Performance%20Evaluation%20of%20Portuguese%20Seaports.pdf>; ECOTEC, *Employment trends in all sectors related to the sea or using sea resources, Country Report – Poland*, European Commission. DG Fisheries and Maritime Affairs, August 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/portugal_employment_trends_en.pdf, 6-7; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 322-356; for statistics, see http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

²⁰⁵⁶ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

First of all, mention should be made of the legal framework for cargo handling operations:

- Decree-Law No. 298/93 of 28 August 1993 establishing the regime of port operations, as amended by Decree-Law No. 65/95 of 7 April 1995²⁰⁵⁷;
- Decree-Law No. 324/94 of 30 December 1994 approving the general conditions for public service concessions for cargo handling in ports²⁰⁵⁸.

Port labour, then, is governed by the following instruments:

- Decree-Law No. 280/93 of 13 August 1993 establishing the legal regime of port labour, as rectified by Rectification No. 202/93 of 30 October 1993²⁰⁵⁹;
- Regulatory Decree No. 2/94 of 28 January 1994 regulating the carrying out of port activities²⁰⁶⁰.
- Ordinance No. 178/94 of 29 March 1994 laying down rules on the granting of licences to Port Labour Companies²⁰⁶¹.

Decree-Law No. 280/93 was substantially modified by Law No. 3/2013 of 14 January 2013²⁰⁶².

1553. Where no specific rules apply, employment of port workers is governed by general labour law, especially the Labour Code (Act No. 99/2003 of 27 August 2003²⁰⁶³), which was last amended in 2012²⁰⁶⁴.

1554. The main instrument on occupational health and safety is the Occupational Safety and Health Act No. 102/2009 of 10 September 2009²⁰⁶⁵.

No specific legislation on health and safety in port work was enacted.

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 2003²⁰⁶⁶.

²⁰⁵⁷ Decreto-Lei n.º 298/93 de 28 de Agosto de 1993 Estabelece o regime de operação portuária.

²⁰⁵⁸ Decreto-Lei n.º 324/94 de 30 de Dezembro de 1994 Aprova as bases gerais das concessões do serviço público de movimentação da cargas em áreas portuárias.

²⁰⁵⁹ Decreto-Lei n.º 280/93 de 13 de Agosto de 1993 Estabelece o regime jurídico do trabalho portuário; Declaração de rectificação n.º 202/93.

²⁰⁶⁰ Decreto Regulamentar n.º 2/94 de 28 de Janeiro de 1994 Regulamenta o exercício da actividade portuária.

²⁰⁶¹ Portaria n.º 178/94 de 29 de Março de 1994 Estabelece normas sobre a atribuição de licença às entidades que pretendam exercer a actividade de cedência de mão-de-obra portuária.

²⁰⁶² Lei n.º 3/2013 de 14 de janeiro 2013 Primeira alteração ao Decreto -Lei n.º 280/93, de 13 de agosto, que estabelece o regime jurídico do trabalho portuário.

²⁰⁶³ Código del Trabajo.

²⁰⁶⁴ Lei n.º 23/2012 Procede à terceira alteração ao Código do Trabalho, aprovado pela Lei n.º 7/2009, de 12 de Fevereiro; see further *infra*, para 1561.

²⁰⁶⁵ Lei n.º 102/2009 de 10 de Setembro Regime jurídico da promoção da segurança e saúde no trabalho.

²⁰⁶⁶ Decreto-Lei n.º 323/2003 de 24 de Dezembro de 2003.

1555. Portugal ratified ILO Convention No. 137²⁰⁶⁷ but not ILO Conventions Nos. 32 or 152.

1556. There is no nation-wide collective agreement on port work, but each Portuguese port has its own agreement. These agreements deal with, *inter alia*, the organisation of labour, classification of workers, working time, wages, leave and holidays, the termination of employment contracts, the transfer of undertakings, training of port workers, health and safety, trade union rights and discipline. We were able to consult the – particularly elaborate – agreements concluded in 1993 for the ports of Lisbon²⁰⁶⁸, Douro-Leixões²⁰⁶⁹ and Figueira da Foz²⁰⁷⁰, which were published in the Labour and Employment Gazette (*Boletim do Trabalho e Emprego*). The agreements for Lisbon and Figueira are to a large extent identical. We consulted the original versions only (reportedly, over the years, the wage scales were repeatedly revised). The Douro-Leixões agreement was entirely replaced by a new version in 2012²⁰⁷¹.

The collective agreements are supplemented by company-specific protocols, but to our knowledge these documents are not public.

1557. We were also unable to consult the Regulations (*Regulamentos*) of the labour pools, except the one for Aveiro, which contains rules on, *inter alia*, the ordering of workers, priority rights, tariffs and payment conditions. The Regulations of the pools must be posted in a visible place²⁰⁷². Reportedly, they differ considerably.

²⁰⁶⁷ Decreto n.º 56 de 1 de Agosto de 1980 Aprova, para ratificação, a Convenção n.º 137, relativa às repercussões sociais dos novos métodos de manutenção nos portos.

²⁰⁶⁸ CCT entre a AOPL – Assoc. de Operadores do Porto de Lisboa e outra e o Sind. dos Conferentes de Cargas Marítimas de Importação dos Dist. de Lisboa e Setúbal e outros, Lisboa, 12 de Novembro de 1993.

²⁰⁶⁹ CCT entre a Assoc. dos Operadores Portuários dos Portos do Douro e Leixões e outra e o Sind. dos Estivadores e Conferentes Marítimos e Fluviais do Dist. do Porto e outro, Matosinhos, 29 de Setembro de 1993.

²⁰⁷⁰ ACT entre a OPERFOZ – Operadores do Porto da Figueira da Foz, L. da, e outra e o Sind. dos Conferentes de Cargas Marítimas de Importação e Exportação dos Dist. de Lisboa e Setúbal e outros, Lisboa, 15 de Novembro 1993.

²⁰⁷¹ Contrato coletivo entre a Associação dos Operadores Portuários dos Portos do Douro e Leixões e outra e o Sindicato dos Estivadores, Conferentes e Tráfego dos Portos do Douro e Leixões — Revisão global, Leça da Palmeira, 19 de março de 2012.

²⁰⁷² See Art. 9(2) of Regulatory Decree No. 2/94.

1558. A final source of law are practices, usages and customs. Their express repeal in Lisbon and Figueira to the extent that they were contrary to the port-wide agreement of 1993²⁰⁷³ suggests that rules compatible with the agreement indeed retained their force.

9.17.3. Labour market

- Historical background

1559. A report from 1968 by the European Free Trade Association (EFTA)²⁰⁷⁴ explains that, in those days, the state-controlled Port Authority of Lisbon took little part in the loading and discharging operations, as this work was largely carried out by private firms of master stevedores and master porters. The Port Authority did, however, control import cargo in as much as the Authority determined the charges payable by importers for services performed on shore. For this work the Authority employed two main contractors who received the cargo on shore and delivered it either into bond or direct to road vehicles or railway trucks. Export cargo, on the other hand, was dealt with in an entirely different way. Private interests received the cargo and loaded it into the ships, and the Port Authority exercised no control either over the handling or in regard to charges.

According to the authors of the report, it was fair to say that modern developments had come much more slowly to the Port of Lisbon than to some other European ports. This could be attributed in part to such factors as the very widespread and hemmed in nature of the landward area (which inhibited development requiring space), low labour costs, lack of real competition with other ports, and a customs and port policy which, although it was being reviewed, had discouraged consignees from removing goods quickly from the port. The "very formidable" number of employers, to many of whom port operations were only a secondary business, also tended to slow down the introduction of modern methods and appliances. It was not without significance that major private firms concerned with bulk cargoes, and in some cases with general cargo exports, had modernised their installations.

According to the 1968 report by EFTA, the labour force in the port of Lisbon consisted of 3,000 dockworkers, half of whom formed a regular labour force. The other half were called in and employed only when a situation of shortage of regular labour arose. The regular labour force belonged to a syndicate which had its counterpart in other industries, and which aimed generally at higher pay and improved conditions of work for dock labour. The regular men had

²⁰⁷³ Cl. 133(2) of the Collective Agreement for Lisbon; Cl. 131(2) of the Collective Agreement for Figueira.

²⁰⁷⁴ Our account is almost literally based on X., *General cargo handling in three EFTA ports*, Geneva, European Free Trade Association, 1968, 38 and 42-43, and on information on later developments kindly provided by IPTM.

practically full employment; whereas the irregulars, that is, the men who come in when there is work on offer, had a completely casual form of employment.

It appeared that a regular labour force of 1,500 men, which needed at times to be augmented by a further 1,500 men, must in fact have been too small for the normal requirements of the port. All the men were engaged on a daily basis. Foremen attended at a call point and selected the men required for that particular day. In cases, for instance, where the same men were going back to the same job, perhaps for a whole week or more, they still had to report and to be re-engaged daily. This method of engaging workers had been a feature of dock labour in other ports for a very long time, but it was, gradually, in process of being changed. The system had many acknowledged shortcomings from the point of view of both the interests and the efficiency of the workers. There was no attempt in Lisbon to share the work equally amongst the labour force. Since, as mentioned above, the Port Authority took very little active part in the loading and discharging operations of the port, and in any event was not concerned at all with export operations, there was in fact no central organising body undertaking responsibility for dock labour conditions throughout the port. At the time, no fewer than seventy different master stevedores had the right to employ dock labour; a particularly large number when account was taken of the relatively small dock labour force. However, a new agreement was being negotiated under which six of the principal shipping lines engaged in export trade would join forces for stevedoring work on their own ships. They envisaged employing six hundred dockworkers on a yearly basis. Once this agreement was concluded, the new organisation would have been in a position to offer not only regular employment to the men they engaged but also general amenities up to modern standards. However, a representative of the syndicate said the dockworkers would never accept full decasualisation and that the men valued highly the freedom which casual employment gave them.

It was not until the promulgation of Decree-Law No. 145-A/78 of 17 June 1978 that a first legislative framework for port labour was introduced. The Decree-Law determined the employment status of port workers and regulated market access for port companies. On the same date, Decree-Law No. 145-B/78 created the Port Labour Institute (Instituto do Trabalho Portuário, ITP) as a national coordination body for port labour issues. The ITP was organised on the basis of tripartite participation by the public administration, the employers and the trade unions. Decree-Law No. 145-B/78 also established the Port Labour Coordination Centres (Centros Coordenadores de Trabalho Portuário, CCTPs). The Centres were responsible for the organisation, coordination and rationalisation of the various aspects of port labour, including the registration and identification of port workers and the payment of wages. As a result of these arrangements, port workers are nowadays permanently employed and earn monthly wages. In smaller ports where there was no scope for the creation of a CCTP, a different system applied.

1560. Further reform schemes were implemented in 1989 and 1993.

Innovations included a reduction in gang sizes, which could henceforth be determined by the operator entrusted with the technical direction of operations; the transfer of the labour pool management to the private sector; the harmonisation of labour regulations; the abolition of the extra levy on tonnage to pay for pensions; and a preference for operations by concessionaires²⁰⁷⁵.

The current Portuguese port labour regime finds its origin in the 1993 reform. At the time, the Government considered that there were compelling reasons of national interest to revise the existing legal arrangements. It noted that the extra costs and inefficiencies that affected ports and limited their competitiveness were no longer acceptable²⁰⁷⁶. A Social Concertation Pact for the Dock Sector was signed by the Government, the port workers' unions and sectoral employers' associations²⁰⁷⁷.

1561. In 2012, in response to the sovereign debt crisis, general labour law underwent a major reform. With a view to greater flexibility, new rules were enacted on term employment contracts, severance payments, working time arrangements and the termination of employment contracts²⁰⁷⁸.

- *Regulatory set-up*

1562. The 1993 regime of port labour is enshrined in a set of five different legal instruments²⁰⁷⁹, which we will summarise below. In addition, we shall highlight some provisions of local collective agreements.

1563. It follows from the legal provisions that all employers must be licensed and that the port workers are divided into two major groups: those who are employed in the permanent workforce of a port operator (*trabalhadores dos quadros (privativos) de empresa*), for whom there are no significant special provisions in the law, and those who belong to the common complement (*contingente comum*) of the Port Labour Company (Empresa de Trabalho Portuário, ETP), *i.e.* pool workers (*trabalhadores do quadro da ETP*) who are called on by the individual port

²⁰⁷⁵ X., *Social and labour problems caused by structural adjustments in the port industry*, Geneva, International Labour Office, 1996, 17.

²⁰⁷⁶ Preamble of Decree-Law no. 298/93 of 28 August 1993.

²⁰⁷⁷ See X., "Dockers' unions opposed to dock work reform", 28 March 1997, <http://www.eurofound.europa.eu/eiro/1997/03/inbrief/pt9703109n.htm>.

²⁰⁷⁸ For an overview, see Canas da Silva, R., "Portuguese labour law reform: developments in 2011-2012", *European Labour Law Journal* 2012, Vol. 3, No. 1, 86-97.

²⁰⁷⁹ See already *supra*, para 1552.

operators to meet their labour shortages as and when they occur. The ETPs have the authority to, *inter alia*, set the number of pool workers, assign workers to port operators and exercise disciplinary powers²⁰⁸⁰.

1564. First of all, Decree-Law No. 298/93 of 28 August 1993 regulates port operations and access to the market of cargo handling (Art. 1).

The Decree-Law contains detailed definitions of a number of basic concepts such as port operations, port area, port areas for public services, port areas for the private handling of (industrial) cargoes, port authority *etc.* (Art. 2). It defines stevedoring companies (*empresas de estiva*) as legal persons licensed to carry out activities of cargo handling in a port area (Art. 2(g)).

The Decree-Law states that the activity of cargo handling is of public interest (Art. 3(1)). As a result, cargo handling may only be provided (1) on the basis of a public service concession granted, following an open tendering procedure, to a stevedoring company who then possesses an exclusive right of use; (2) on the basis of a licence, which may only be granted in cases where no competing applicants will present themselves or where a strategic national interest is at stake; or (3) in exceptional cases, by the port authority itself (Art. 3(2) and 3(4)). In 2012, the major share of cargo throughput is handled by private concessionaires²⁰⁸¹.

Chapter III of the Decree-Law contains specific provisions on the stevedoring companies. Certain operations remain outside the scope of the regime. These include the handling of military cargo; operations involving distressed ships supervised by competent authorities; operations in the course of official inspections; the handling of ship supplies; the loading, unloading and transfer of petroleum and other liquid bulk at specialised terminals, of dangerous chemicals and, prior to loading or following unloading, of rolling stock²⁰⁸²; lashing and unlashings of cargo, the opening and closing of hatches and the towing on board of cargo if carried out by the ship's crew using on board equipment²⁰⁸³; the sweeping and cleaning of ship's holds and the loading, unloading and stowing of cargo in local boats using ship's gear; and the loading and unloading of means of land transportation using the latter's own gear prior to loading into or following unloading from a ship (Art. 7(2)). All these operations may be carried out without the intervention of port workers (Art. 7(3))²⁰⁸⁴.

²⁰⁸⁰ See also <http://www.eurofound.europa.eu/emire/PORTUGAL/DOCKWORK-PT.htm>.

²⁰⁸¹ Carvalho, M.L.N.C., *Performance Evaluation of the Portuguese Seaports*, dissertation, Universidade Técnica de Lisboa, 2007, 8.

²⁰⁸² See also Cl. 19(9) of the Annex to the Collective Agreement for Lisbon; Cl. 19(8) of the Annex to the Collective Agreement for Figueira.

²⁰⁸³ Comp. Cl. 19(10) of the Annex to the Collective Agreement for Lisbon; Cl. 19(9) of the Annex to the Collective Agreement for Figueira.

²⁰⁸⁴ Compare, however, Cl. 19(8) *et seq.* of the Annex to the Collective Agreement for Lisbon which still reserve for port workers the loading and unloading of ship supplies; in the same sense, Cl. 19(7) of the Annex to the Collective Agreement for Figueira. These agreements also reserve for port workers the mounting of handling equipment such as trestles or conveyor belts (see Cl. 19(11) of the Annex to the Collective Agreement for Lisbon; Cl. 19(10) of the Annex to the Collective Agreement for Figueira). For the situation in Douro and Leixões, see Cl. 7 the Collective Agreement for Figueira).

The Decree-Law sets out the conditions under which licences may be obtained (Art. 9 *et seq.*). These requirements relate to *inter alia* the company's financial and economic situation.

Further chapters of the Decree-Law regulate the rights and duties of stevedoring companies (Chapter IV, Art. 19 *et seq.*), the public service concessions (Chapter V, Art. 26 *et seq.*) and sanctions (Chapter VI, Art. 31 *et seq.*).

Importantly, the Decree-Law expressly stipulates that, without prejudice to the legal powers of the ship master, the stevedoring company exercises operational authority over the personnel (Art. 21(2)) and has the exclusive right to decide on the workforce needed as well as on its management (Art. 21(3)). The rules however do not affect the supervision and coordination powers of the Port Authority and the Institute for Port Labour (Instituto do Trabalho Portuário, ITP) (Art. 21(4)). Today, the latter Institute is dormant and most of its responsibilities in relation to port labour have been transferred to the Port and Maritime Transport Institute (Instituto Portuário e dos Transportes Marítimos, IPTM)²⁰⁸⁵. Non-compliance by a pool worker with orders given by the stevedoring company gives the latter the right to demand immediate replacement of such worker (Art. 21(5)).

1565. Decree-Law No. 324/94 of 30 December 1994 sets out the conditions of public service concessions for cargo handling in ports.

Condition XI relates to the personnel employed by the concessionaire and stipulates that workers must be employed either on the basis of an individual employment contract or in accordance with the legal regime of port labour. According to Condition XI, the concessionaire must trimestrially inform the ITP on the composition of its workforce.

1566. Decree-Law No. 280/93 of 13 August 1993 lays down the legal framework for port labour (Art. 1(1)). Until 2013, it provided as follows²⁰⁸⁶.

For the purposes of this Decree-Law, port work is defined as “the various tasks of cargo handling in public or private areas within the port area” (Art. 1(2)).

Agreement for Douro-Leixões of 2012 (and compare Cl. 5 of Annex II to the Collective Agreement for Douro-Leixões of 1993).

²⁰⁸⁵ Established by Decree-Law nr. 257/2002 of 22 November 2002. On Portuguese ports policy, see Carvalho, J., *Portuguese Ports Policy*, presentation delivered at the 2011 ESPO Conference, Cyprus, 5-6 May, available on <http://www.espo.be/images/stories/events/2011/espoconference2011/joao%20carvalho.pdf>; see also Carvalho, M.L.N.C., *Performance Evaluation of the Portuguese Seaports*, dissertation, Universidade Técnica de Lisboa, 2007, <https://dspace.ist.utl.pt/bitstream/2295/147760/1/MLC%20Performance%20Evaluation%20of%20Portuguese%20Seaports.pdf>.

²⁰⁸⁶ For the current regime, see *infra*, no. 1602A.

The Decree-Law does not apply to work performed by employees or agents of the port authority or to workers in the port area who are not exclusively or predominantly entrusted with cargo handling operations (Art. 1(3)).

The Decree-Law further defines the port workforce (*efectivo dos portos*) as all workers who hold the appropriate professional card and who are engaged in cargo handling under an employment contract for an indefinite term (Art. 2(a))²⁰⁸⁷. Activities of cargo handling are defined as stowing, unstowing, loading, unloading, transshipment, storage and handling of goods at docks, terminals, warehouses and quays, as well as the assembling and disassembling of unitised goods, and the reception, storage and dispatching of these goods (Art. 2(b)). A Port Labour Company (Empresa de Trabalho Portuário, ETP) – *i.e.* a port labour pool – is defined as a legal person whose sole activity is the assignment of skilled workers to carry out cargo handling tasks in ports (Art. 2(c)). The port areas coincide with the areas under the jurisdiction of port authorities (Art. 2(d)). The Decree-Law distinguishes between zones for public service cargo handling and zones for private cargo handling at industrial plants (see Art. 2(e)-(f)).

Labour relations between port workers and their employees are governed by the provisions of the Decree-Law, by the rules applicable to the contract of employment as well as by other labour legislation (Art. 3).

In the organisation and performance of port work, employers and users of port workers must take into account the requirements of quality, productivity and continuity of the services provided to the port users, as well as the interests of the national economy and the principles of free movement of people and goods (Art. 4).

Only workers holding the appropriate professional card may be engaged to perform port work (Art. 5).

The professional card is issued by the ITP, now IPTM (Art. 6(1)). Upon issuance of the card, the port worker is considered registered for the purposes of ILO Convention No. 137.

The relationship between the stevedoring companies, the Port Labour Company and companies using private port areas, on the one hand, and port workers, on the other hand, is governed by the individual contract of employment (Art. 7(1)).

A separate chapter of the Decree-Law describes the legal status of the Port Labour Companies (ETPs) (Chapter 3).

First and foremost, Port Labour Companies must obtain a licence (Art. 8(1)).

²⁰⁸⁷ Compare Cl. 6 of the Collective Agreement for Douro-Leixões of 2012.

The licensing of Port Labour Companies falls within the competence of ITP, now IPTM. Licences are granted according to the procedure laid down by Ordinance of the competent Minister (Art. 8(2))²⁰⁸⁸.

Only legal entities established under private law which are solely engaged in the provision of temporary port labour and which have no other activities may be licensed as a Port Labour Company (Art. 9(1)). Technical, economic and financial conditions for obtaining a licence are laid down in a separate Decree (Art. 9(2))²⁰⁸⁹. For all matters not specifically regulated by the law relating to port labour, Port Labour Companies are subject to the provisions of the general legislation on temporary work agencies (Decree-Law No. 358/89)²⁰⁹⁰ (Art. 9(3)).

The IPTM maintains an updated register of the licensed Port Labour Companies in each port (Art. 10)²⁰⁹¹.

Finally, the Decree-Law contains an elaborate transitional regime (Art. 11 *et seq.*) which regulates *inter alia* the transformation of the former Organisms for the Management of Port Workforce (Organismos de gestão de mão-de-obra portuária, OGMOPs) (Art. 12). It also lays down sanctions (Art. 16 *et seq.*), including against the employment of non-qualified workers (Art. 18).

1567. Regulatory Decree No. 2/94 of 28 January 1994, which was made under Article 9(2) of the abovementioned Decree-Law No. 280/93, lays down the detailed conditions under which Port Labour Companies (ETPs) may be licensed.

The introductory recitals of this Regulatory Decree point to the analogy of the regulation with the regime of temporary employment agencies.

The Regulatory Decree stipulates that the ETP has the task of providing the stevedoring companies and users of private port areas with temporary port workers who fulfil the legal requirements to perform cargo handling in ports (Art. 2).

All ETPs must obtain a licence from the IPTM (Art. 3).

ETPs must meet conditions relating to the availability of dedicated facilities, compliance with tax and social security laws, a financial guarantee, technical expertise, compliance with laws on the activity and the legal capacity of the management to perform commercial activities (Art. 4).

²⁰⁸⁸ See *infra*, nr. 1567.

²⁰⁸⁹ See *infra*, nr. 1567.

²⁰⁹⁰ Decreto-Lei nº 358/89 de 17 de Outubro de 1989 Define o regime jurídico do trabalho temporário exercido por empresas de trabalho temporário.

²⁰⁹¹ For an overview of ETPs, see <http://www.fnstp.pt/www.fnstp.pt/files/moretp.pdf>.

Next, the Decree elaborates on some of these conditions (Art. 5-7) and sets out the duties of the ETPs, which operate under a number of general public service obligations such as continuity, equal treatment of users and publication of tariffs (Art. 9). The Decree also regulates the conclusion of user agreements (Art. 10).

Finally, the Decree contains provisions on the extension, alteration and termination of licences (Art. 11-13).

1568. Ordinance No. 178/94 of 29 March 1994 brings into effect Article 8(2) of the abovementioned Decree-Law No. 280/93 and lays down detailed procedural rules for the licensing of Port Labour Companies.

1569. Today, there are ETPs in the mainland ports of Aveiro, Douro and Leixões, Figueira da Foz, Lisbon, Setúbal, Sines and Viana do Castelo. In Setúbal and Sines, there are two ETPs. In Setúbal, the ETPs compete for all traffic. In Sines, one ETP caters for container traffic while the other focuses on dry bulk.

The shareholders of the ETPs are stevedoring companies. Neither the Government, nor the Port Authority participates in the pools. In the ports of Leixões and Lisbon, a trade union representative sits on the Board of the ETP. In Aveiro, the unions also acted as shareholders.

The ETPs do not use hiring halls.

1570. Under national social security arrangements, pool workers from the port labour pool receive guaranteed pay in periods when they are without work.

1571. Practically, rules on labour arrangements are enforced by the Labour Ministry, the Transport Ministry, the port authorities, the terminal operators and the trade unions. Sanctions do apply to breaches of rules on employment of port workers.

1572. To a large extent, the relationship between employers and workers is governed by the port-wide collective agreements.

In Lisbon and Figueira, these agreements confirm, for example, that no port work may be performed by other workers than the port workers within the meaning of the collective

agreement²⁰⁹² and that all port workers must possess a professional card²⁰⁹³. In Douro and Leixões, the Collective Agreement confirms the exclusive right of the ETP to supply temporary and occasional workers²⁰⁹⁴ and to temporarily replace permanent staff of the port operators²⁰⁹⁵.

In Lisbon and Figueira, all workers must:

- (1) have attended school until the 9th year;
- (2) be 18 years;
- (3) possess a driver's licence;
- (4) be physically robust and medically fit;
- (5) have attended the basic port worker's course²⁰⁹⁶.

In the port of Lisbon, all port workers are classified into three 'types' (*tipos*) A, B and C. Workers of type A were employed by companies or the pool before 31 December 1993 and enjoy priority to be employed permanently by the companies and to be assigned by the pool. Type B workers have an employment contract for an indefinite term with an individual company. The workers of type C are pool workers who are employed for a fixed term by the labour pool (ETP). The latter are used in the event of temporary or exceptional increases in the work and may only perform general work (they are general workers or *trabalhadores de base*)²⁰⁹⁷. Workers of types B and C may be employed for work on board, work on land or tally work²⁰⁹⁸. The same categorisation of workers is applied in Figueira²⁰⁹⁹. Type C workers cannot be employed for tally work.

Workers are further classified into 'categories' (*categorias profissionais*): superintendent, coordinator and general workers; chief, coordinator and general worker in Figueira; superintendent, chief tallyman, coordinator, basic worker and general worker in Douro and Leixões²¹⁰⁰. As a rule, all workers hierarchically superior to general workers must be employed as permanent staff of the individual companies²¹⁰¹.

Further, a distinction is made between three professional 'classes' (*classes profissionais*): stevedoring, transportation and tallying. The agreements contain elaborated descriptions of the

²⁰⁹² Cl. 2(1) of the Annex to the Collective Agreement for Lisbon; Cl. 2(1) of the Collective Agreement for Figueira.

²⁰⁹³ Cl. 8 of the Collective Agreement for Lisbon; Cl. 8 of the Collective Agreement for Figueira.

²⁰⁹⁴ Cl. 17(1) of the Collective Agreement for Douro-Leixões of 2012.

²⁰⁹⁵ Cl. 22(3) of the Collective Agreement for Douro-Leixões of 2012.

²⁰⁹⁶ Cl. 10 of the Collective Agreement for Lisbon; Cl. 10 of the Collective Agreement for Figueira; compare Cl. 11 of the Collective Agreement for Douro-Leixões of 2012.

²⁰⁹⁷ Cl. 6 and 19 of the Collective Agreement for Lisbon and Cl. 13(1) of its Annex.

²⁰⁹⁸ Cl. 12 of the Annex to the Collective Agreement for Lisbon.

²⁰⁹⁹ Cl. 6 and 19 of the Collective Agreement for Figueira and Cl. 12 and 13(1) of its Annex.

²¹⁰⁰ Cl. 14(3) of the Collective Agreement for Lisbon and Cl. 6(1) of its Annex; Cl. 14(3) of the Collective Agreement for Figueira and Cl. 6(1) of its Annex; Cl. 4 of Annex I to the Collective Agreement for Douro-Leixões of 1993 and Cl. 8(1) of the Agreement for Douro-Leixões of 2012 and Cl. 1 of its Annex.

²¹⁰¹ See, for example, Cl. 7 and 8 of the Annex to the Collective Agreement for Figueira; Cl. 1 of Part I of Annex 1 to the Collective Agreement for Douro-Leixões of 2012 (Cl. 5, 6 and 7 of Annex I to the Collective Agreement for Douro-Leixões of 1993).

tasks of the workers belonging to the various professional categories²¹⁰². We were informed, however, that these distinctions have been abandoned in practice.

In Lisbon and Figueira, individual companies wishing to recruit new workers must, as a rule, grant priority to existing pool workers of type A; derogations are possible in the event that no workers having the required special competences are available, or all relevant workers refuse such employment or legitimate grounds are invoked²¹⁰³. In the case of vacancies for workers of type B, priority must be given to the best ranked workers of type C²¹⁰⁴.

To reinforce their complement, the ETPs may use occasional workers (*trabalhadores portuários eventuais*)²¹⁰⁵. ETPs may also maintain a reserve of workers who are used to substitute unavailable workers²¹⁰⁶. If insufficient pool workers are available in Douro and Leixões, employers may employ workers under a contract for a fixed term or occasional workers, but they have to inform the employers' association and the unions²¹⁰⁷.

In case of a shortage of pool workers, companies may exchange their own workers among themselves²¹⁰⁸.

Companies may refuse to employ individual pool workers in the case of a serious earlier disciplinary offence or for any other legitimate reason accepted by the ETP²¹⁰⁹.

In Lisbon, Figueira, Douro and Leixões, the companies have a duty to distribute the work in a fair manner among the workers, according to their aptitudes and the needs of the service. Workers must be available for all work in the course of their working time and can be moved to another task²¹¹⁰.

The collective agreements for Lisbon and Figueira contain detailed descriptions of the rights and duties of employers and workers. For example, workers must comply with orders given by

²¹⁰² Cl. 6 *et seq.* of the Annex to the Collective Agreement for Lisbon; Cl. 6 *et seq.* of the Annex to the Collective Agreement for Figueira; Cl. 5 *et seq.* of the Collective Agreement for Figueira; Cl. 2 of Part II of Annex I to the Collective Agreement for Douro-Leixões of 2012 (Cl. 81 of the Collective Agreement for Douro-Leixões of 1993).

²¹⁰³ Cl. 9(2)-(3) of the Collective Agreement for Lisbon; Cl. 9(2) and (3) of the Collective Agreement for Figueira.

²¹⁰⁴ Cl. 15 of the Annex to the Collective Agreement for Lisbon; Cl. 15 of the Annex to the Collective Agreement for Figueira.

²¹⁰⁵ See, for example, Cl. 13 of the Collective Agreement for Lisbon; Cl. 13 of the Collective Agreement for Figueira. The principle is said to apply at all ETPs.

²¹⁰⁶ Cl. 35 of the Collective Agreement for Lisbon; Cl. 34 of the Collective Agreement for Figueira. This is also said to be valid for all ETPs.

²¹⁰⁷ Cl. 13(1) of the Collective Agreement for Douro-Leixões of 2012; compare Cl. 12(2) of Annex I to the Collective Agreement for Douro-Leixões of 1993.

²¹⁰⁸ Cl. 18(3) of the Collective Agreement for Lisbon; Cl. 18(3) of the Collective Agreement for Figueira; compare Cl. 4 of Part I of Annex II to the Collective Agreement for Douro-Leixões of 1993.

²¹⁰⁹ Cl. 20(2) of the Collective Agreement for Lisbon; Cl. 20(2) of the Collective Agreement for Figueira; compare Cl. 23(4) of the Collective Agreement for Douro-Leixões of 2012 (Cl. 18(4) of the Collective Agreement for Douro-Leixões of 1993).

²¹¹⁰ Cl. 23(2) of the Collective Agreement for Lisbon; Cl. 22(2) of the Collective Agreement for Figueira; Cl. 27(2) and 33 of the Collective Agreement for Douro-Leixões of 2012 (Cl. 22 of the Collective Agreement for Douro-Leixões of 1993).

their employer, respect working hours, exercise due care and prevent damage to goods and equipment, and carry out tasks for the improvement of productivity²¹¹¹.

The organisation and technical control of operations are the sole competence of the port companies²¹¹². The agreements stress that pool workers, too, work under the authority and the instructions of the user company²¹¹³. The employer has the right to introduce new equipment provided it is safe (and/or workers receive adequate training)²¹¹⁴. The agreements stress that pool workers, too, work under the authority and the instructions of the user company²¹¹⁵.

In Lisbon and Figueira, individual companies decide on the number of staff they will employ²¹¹⁶.

The employer has the right to determine manning levels in cooperation with the superintendent of the workers²¹¹⁷. In Lisbon and Figueira, gangs shall be composed taking into account:

- (1) technical and economic requirements of the operations concerned;
- (2) the characteristics of the cargo;
- (3) the equipment to be used;
- (4) the type of service to be performed;
- (5) the professional skills of the workers;
- (6) applicable prevention and safety rules²¹¹⁸.

Similar criteria now apply in Douro and Leixões²¹¹⁹.

In Lisbon and Figueira, coordinators may, as a rule, not be required to perform general work, and general workers may not be charged with more than one task²¹²⁰.

²¹¹¹ Cl. 24-26 of the Collective Agreement for Lisbon; Cl. 23-25 of the Collective Agreement for Figueira, Cl. 89(1) of the Collective Agreement for Figueira; Cl. 27-30 of the Collective Agreement for Douro-Leixões of 2012 (Cl. 81 of the Collective Agreement for Douro-Leixões of 1993).

²¹¹² Cl. 27(1) of the Collective Agreement for Lisbon; Cl. 26(1) of the Collective Agreement for Figueira.

²¹¹³ Cl. 20(4) of the Collective Agreement for Lisbon; Cl. 20(4) of the Collective Agreement for Figueira.

²¹¹⁴ See and compare Cl. 27(3) of the Collective Agreement for Lisbon; Cl. 26(3) of the Collective Agreement for Figueira; Cl. 32 of the Collective Agreement for Douro-Leixões of 2012 (compare Cl. 21 of the Collective Agreement for Douro-Leixões of 1993).

²¹¹⁵ Cl. 20(4) of the Collective Agreement for Lisbon; Cl. 20(4) of the Collective Agreement for Figueira.

²¹¹⁶ Cl. 14(1) of the Collective Agreement for Lisbon; Cl. 14(1) of the Collective Agreement for Figueira.

²¹¹⁷ Cl. 29(1) of the Collective Agreement for Lisbon; Cl. 28(1) of the Collective Agreement for Figueira; compare Cl. 31 and 34 of the Collective Agreement for Douro-Leixões of 2012 (Cl. 20(1) and 23 of the Collective Agreement for Douro-Leixões of 1993 and Cl. 1(1) of Part I of its Annex II).

²¹¹⁸ Cl. 29(2) of the Collective Agreement for Lisbon; Cl. 28(2) of the Collective Agreement for Figueira.

²¹¹⁹ Cl. 31(2) and 34(2) of the Collective Agreement for Douro-Leixões of 2012 (compare compare Cl. 20(2) and 23 of the Collective Agreement for Douro-Leixões of 1993; under this agreement, specific safety-oriented manning rules applied. For example, a minimum gang of two workers had to be used for lashing and unlash work in the ports of Douro and Leixões – at least if this work is not carried out by the ship's crew: see Cl. 5(2) of Part I of Annex II and further Part II of the Collective Agreement for Douro-Leixões of 1993).

²¹²⁰ Cl. 29(4)-(5) of the Collective Agreement for Lisbon; Cl. 28(4)-(5) of the Collective Agreement for Figueira.

The collective agreements regulate working times, shifts and overtime²¹²¹. In Lisbon and Figueira, workers are distributed over shifts²¹²². Overtime must be distributed fairly in accordance with special schemes²¹²³.

Workers must be available for all work in the course of their working time and can be moved to another task²¹²⁴.

Disciplinary authority rests with the company²¹²⁵, but the unions must be informed of these proceedings²¹²⁶.

- Facts and figures

1573. In 2012, there were 21 port operators and 9 pool companies in Portuguese ports, distributed as follows over individual ports:

Table 97. Number of port operators and pool companies in Portuguese ports, November 2012 (source: Instituto Portuário e dos Transportes Marítimos)

Port	Number of operators	Number of pool companies
Aveiro	2	1
Douro and Leixões	2	1
Faro / Portimão	1	0
Figueira da Foz	1	1
Lisboa	7	1
Setúbal	4	2
Sines	2	2
Viana do Castelo	2	1
Total	21	9

²¹²¹ Cl. 30 *et seq.* of the Collective Agreement for Lisbon; Cl. 29 *et seq.* of the Collective Agreement for Figueira; Cl. 35 *et seq.* of the Collective Agreement for Douro-Leixões of 2012 (Cl. 24 *et seq.* of the Collective Agreement for Douro-Leixões of 1993).

²¹²² Cl. 34(1) of the Collective Agreement for Lisbon; Cl. 33(1) of the Collective Agreement for Figueira.

²¹²³ Cl. 38(1) of the Collective Agreement for Lisbon; Cl. 37(1) of the Collective Agreement for Figueira.

²¹²⁴ Cl. 17 of the Collective Agreement for Lisbon; Cl. 17 of the Collective Agreement for Figueira; compare Cl. 21(3) and 33(1) and (2) of the Collective Agreement for Douro-Leixões of 2012 (Cl. 19(3) of the Collective Agreement for Douro-Leixões of 1993).

²¹²⁵ Cl. 77 of the Collective Agreement for Lisbon; Cl. 75 of the Collective Agreement for Figueira; Cl. 91 of the Collective Agreement for Figueira; Cl. 73 of the Collective Agreement for Douro-Leixões of 2012 (Cl. 81 of the Collective Agreement for Douro-Leixões of 1993).

²¹²⁶ Cl. 84(5)(d) of the Collective Agreement for Lisbon; Cl. 82(5)(d) of the Collective Agreement for Figueira; Cl. 91 of the Collective Agreement for Figueira.

1574. According to IPTM in 2012 796 port workers were employed in Portuguese ports, including 579 workers employed for an indefinite period and 217 fixed-term workers.

Table 98. Number of port workers in Portuguese ports, 31 July 2012 (source: Instituto Portuário e dos Transportes Marítimos)

Port	Contract for an indefinite term			Contract for a fixed term		
	concluded before 1993	concluded after 1993	Total	for more than 6 months	for less than 6 months	Total
Aveiro	60	22	82	0	0	0
Faro / Portimão	0	0	0	0	0	0
Figueira da Foz	15	0	15	0	0	0
Leixões	91	0	91	20	10	30
Lisboa	79	181	260	57	0	57
Setúbal	27	0	27	0	0	0
Sines	30	57	87	130	0	130
Viana do Castelo	17	0	17	0	0	0
Subtotal	319	260	579	207	10	217

In addition to these port workers, there is an unknown number of occasional workers.

The share of pool workers in the total number of port workers differs considerably between ports. In Lisbon, for example, we were informed that half of the workers are pool workers and the others terminal personnel. In Setúbal, there were some 57 terminal workers, and 300 casual workers (figures for mid 2012).

1575. Reportedly, all port workers have joined a trade union. There are six trade unions for port workers²¹²⁷, among which the Stevedores' and Transport Workers' Union of the Centre and

²¹²⁷ These are:

- Sindicato dos Estivadores, Trabalhadores do Tráfego e Conferentes Marítimos do Centro e Sul de Portugal, SETTCMCSP;

South of Portugal (Sindicato dos Estivadores, Trabalhadores do Tráfego do centro e sul de Portugal) claims to represent 80 per cent of port workers in the country²¹²⁸. The unions are organised in two national federations: the Confederation of Maritime and Port Unions (Confederação dos Sindicatos Marítimos e Portuários, FESMARPOR) and the National Federation of Port Workers' Unions (Federação Nacional de Sindicatos dos Trabalhadores Portuários, FNSTP)²¹²⁹. Both are said to be ITF-affiliated²¹³⁰.

9.17.4. Qualifications and training

1576. As we have mentioned²¹³¹, the collective agreements for the ports of Lisbon and Figueira set the attending of training courses as a condition for employment. Their Annexes expressly confirm that no worker has access to the job unless he is properly trained²¹³².

Employers have a duty to promote training for their workers, and the latter have a duty to attend such courses²¹³³.

Some local agreements provide that no worker may be employed as a crane or equipment operator unless he is properly trained²¹³⁴. Multi-skilling through training is encouraged²¹³⁵.

-
- Sindicato dos Estivadores, Lingadores e Conferentes do Porto de Viana do Castelo, SELCVC;
 - Sindicato dos Estivadores, Conferentes e Tráfego dos Portos do Douro e Leixões, SECTPDL;
 - Sindicato dos Trabalhadores do Porto de Aveiro, STPA;
 - Associação Sindical dos Trabalhadores Administrativos, Técnicos e Operadores dos Terminais de Carga Contentorizada do Porto de Sines, SINDICATO XXI;
 - Sindicato dos Trabalhadores Portuários de Mar e Terra de Sines, SINPORSINES.

²¹²⁸ See X., "Governo aprova novo regime do trabalho portuário", *Económico* 20 September 2012, http://economico.sapo.pt/noticias/governo-aprova-novo-regime-do-trabalho-portuario_152230.html; X., "Portos: balanço «muito positivo» dos dois dias de greve", *Agência Financeira* 21 September 2012, <http://www.ecofinancas.com/noticias/portos-balanco-muito-positivo-dois-dias-greve>.

²¹²⁹ FNSTP also unites trade unions of dock workers in Madeira and the Azores.

²¹³⁰ The website of IDC mentions as its affiliates: Sindicato dos Estivadores, Trabalhadores do Tráfego e Conferentes Marítimos do Centro e sul de Portugal, Sindicato dos Trabalhadores do Porto de Aveiro and Federação Nacional dos Sindicatos de Trabalhadores Portuários (http://www.idcdockworkers.org/en/?option=com_content&view=article&id=100&catid=20&lang=en).

²¹³¹ See *supra*, para 1572.

²¹³² Cl. 14(1) of the Annex to the Collective Agreement for Lisbon; Cl. 14(1) of the Annex to the Collective Agreement for Figueira.

²¹³³ Cl. 24(a) and 25(1)(i) as well as 124 and 125 of the Collective Agreement for Lisbon; Cl. 23(a) and 24(1)(i) as well as 122 and 123 of the Collective Agreement for Figueira; Cl. 10, 27(1)(d), 28(d), 29(1)(i) and 87-89 of the Collective Agreement for Douro-Leixões of 2012 (Cl. 79, 80, 87(1)(d), 88(c) and (f), and 89(1)(i) of the Collective Agreement for Douro-Leixões of 1993 as well as Cl. 11(1) of its Annex I).

²¹³⁴ Cl. 2(2) of Part II of Annex I to the Collective Agreement for Douro-Leixões of 2012 (Cl. 10(2) of Annex I to the Collective Agreement for Douro-Leixões of 1993).

²¹³⁵ Cl. 2(3) of Part II of Annex I to the Collective Agreement for Douro-Leixões of 2012 (Cl. 10(4) of Annex I to the Collective Agreement for Douro-Leixões of 1993).

1577. Training for port workers is organised both at port and at company level. There is no national port training school.

1578. According to IPTM, the following types of formal training are available:

- induction courses for new entrants;
- courses for the established port worker;
- training in safety and first aid;
- specialist courses for certain categories of port workers such as operators of cranes, container equipment and forklifts as well as for tallymen.

Not all ports have similar arrangements, however. In Setúbal, for example, no permanent training programmes seem to exist.

1579. There are no curricula for the training of port workers in Portugal.

In the 1980s, the Instituto do Trabalho Portuário published a series of port labour courses²¹³⁶, but today these documents are used for reference purposes only.

The unions participate in the elaboration of courses. One union representative stated that most available training manuals were prepared by the unions.

9.17.5. Health and safety

- *Regulatory set-up*

1580. The Occupational Safety and Health Act contains general rules on the provision of safe working conditions, the prevention of occupational risks, the development of policies, education, training and information, etc. It contains no special rules for ports.

1581. As we have mentioned²¹³⁷, Portugal has no specific laws or regulations on health and safety in port labour.

²¹³⁶

See <http://opac.iefp.pt/ipac20/ipac.jsp?session=13375994W04H5.220023&menu=search&aspect=subtab1.1&npp=20&ipp=20&spp=20&profile=crc&ri=&term=portuario&index=.GW&aspect=subtab1.1#focus.>

However, Decree-Law No. 298/93 imposes specific sanctions for non-compliance with applicable health and safety rules (Art. 32(1)(b)).

1582. Health and safety is further regulated in the collective agreements.

In Lisbon and Figueira, for example, workers must comply with health and safety regulations and use collective and personal protective equipment²¹³⁸. Also, the employers and unions agreed to implement international and national health and safety rules²¹³⁹.

1583. Practically, health and safety rules are enforced with the help of national employment authorities, the port authority, terminal companies and the trade unions.

- Facts and figures

1584. IPTM states that there are no statistics on the number, types and causes of occupational accidents involving port workers in Portugal. Reportedly, only accident statistics on employees of the port authorities are maintained. We received no further statistics from either the Portuguese Labour Inspectorate or local employers' associations.

9.17.6. Policy and legal issues

1585. Satisfaction with the port labour regime adopted in 1993 appears very limited.

Over the years, various consecutive propositions for the reform of port work were put forward.

²¹³⁷ See *supra*, para 1554.

²¹³⁸ Cl. 25(1)(j) and 121(1) of the Collective Agreement for Lisbon; Cl. 24(1)(j) and 119(1) of the Collective Agreement for Figueira; compare Cl. 27(1)(c), 28(e), 29(1)(j) and 81-86 of the Collective Agreement for Douro-Leixões of 2012 (Cl. 76-78, 88(d) and 89(1)(j) of the Collective Agreement for Douro-Leixões of 1993).

²¹³⁹ Cl. 120(2) of the Collective Agreement for Lisbon; Cl. 118(2) of the Collective Agreement for Figueira; Cl. 83(2) of the Collective Agreement for Douro-Leixões of 2012 (Cl. 77(2) of the Collective Agreement for Douro-Leixões of 1993).

1586. In 1997, the Portuguese Government published a White Paper entitled 'Maritime and Ports Policy at the approach of the 21st Century'²¹⁴⁰ in which it proposed measures to deregulate port work, ensuring the right of cargo handling companies to freely contract labour²¹⁴¹. The working document was intended to be the starting point for a new maritime and ports policy. The National Federation of Dockers' Unions pointed out that the intended deregulation would be contrary to ILO Convention No. 137. To our knowledge, the document did not lead to any further reform of the legal regime of port labour.

1587. In 2006, the Government approved Strategic Orientations for the Port Maritime Sector. This document suggested the codification of port legislation in one legislative decree (or Port Act). A draft Port Act was presented in Parliament in 2009²¹⁴². Reportedly, this draft Act would have defined 17 specific exclusions from the concept of "port operations", removing from the scope of activities of the stevedoring companies (and consequently from the exclusive right of the port workers) *inter alia* yard operations, gate controls, river and feeder traffic by boats and barges, offshore and estuarine work and cargo operations in port zones which are integrated in logistics platforms²¹⁴³. Reportedly, these exclusions targeted the port of Lisbon, located in the Tagus river estuary. We were informed that these proposals are still on the table.

1588. Replying to our questionnaire, the governmental agency IPTM stated that rules on employment are properly enforced.

In terms of future policy, IPTM explained that the labour costs for cargo handling could be lowered through the non-use of port workers for certain tasks which are now considered port work.

IPTM mentions the following restrictions on employment:

- priority of employment for pre-1993 workers;
- exclusive rights for certain categories of workers;
- low flexibility in the hiring process.

For IPTM, these restrictions are major competitive handicaps.

²¹⁴⁰ Livro Branco: Política Marítimo-Portuária Rumo ao Século XXI.

²¹⁴¹ See X., "Dockers' unions opposed to dock work reform", 28 March 1997, <http://www.eurofound.europa.eu/eiro/1997/03/inbrief/pt9703109n.htm>.

²¹⁴² See http://www.idcdockworkers.org/index.php?option=com_content&task=view&id=69&Itemid=38&lang=english (link found broken upon updating).

²¹⁴³ See http://www.idcdockworkers.org/index.php?option=com_content&task=view&id=64&Itemid=38&lang=english (link found broken upon updating).

IPTM could identify no sub-standard labour conditions in Portuguese ports.

1589. Despite the reform scheme of 1993, the applicable laws and regulations and collective agreements continue to impose far-reaching restrictions on employment.

Our summary of current arrangements above²¹⁴⁴ points out that these restrictions include, for example, the preferential right of port workers, the extension of this preferential right to activities beyond the ship/shore interface, the distinction between various types, categories and classes of workers, with special privileges for older type A workers and the co-decision right of unionised workers in relation to manning levels.

A recent media interview with Secretary of State Sérgio Monteiro confirms the serious negative impact on the competitiveness of Portuguese ports of rigid rules obliging port operators to hire personnel for tasks beyond the normal range of port work, to take into account the distinction between type A, type B and type C workers and to pay for the availability of these workers, even if they do not perform any task. Especially type A workers enjoy employment privileges regardless of their productivity or skills²¹⁴⁵.

1590. The union density of 100 per cent and the particularly strong protection of union rights in the collective agreements suggest that closed shop issues may deserve further attention. In Lisbon, Figueira, Douro and Leixões, union membership fees are immediately deducted by the employer²¹⁴⁶. In the former two ports, workers unable to present a port worker's identification card must be permitted access to the workplace upon production of a union membership card²¹⁴⁷. In the same ports, superintendents or chiefs – *i.e.* the highest professional category who co-decides on manning scales – must be union members²¹⁴⁸. Media reports confirm that access to the port labour market is controlled by the unions²¹⁴⁹. Trade union density in Portugal as a whole is between 19 and 30 per cent²¹⁵⁰. IPTM commented that in practice, union membership is not a requirement.

²¹⁴⁴ See *supra*, para 1562 *et seq.*

²¹⁴⁵ See Moura Pedro, C., "Sérgio Monteiro – Secretário de Estado das Obras Públicas, Transportes e Comunicações. Mudanças para aumentar a competitividade", *Transportes* 13 January 2012, <http://www.transportesemrevista.com/Default.aspx?tabid=210&language=pt-PT&id=3236&area=undefined>.

²¹⁴⁶ Cl. 126 of the Collective Agreement for Lisbon; Cl. 124 of the Collective Agreement for Figueira; Cl. 90 of the Collective Agreement for Douro-Leixões of 2012 (Cl. 81 of the Collective Agreement for Douro-Leixões of 1993).

²¹⁴⁷ Cl. 139(3) of the Collective Agreement for Lisbon; Cl. 137(3) of the Collective Agreement for Figueira.

²¹⁴⁸ Cl. 17(1) of the Annex to the the Collective Agreement for Lisbon; Cl. 17(1) of Annex to the Collective Agreement for Figueira.

²¹⁴⁹ Moura Pedro, C., "Sérgio Monteiro – Secretário de Estado das Obras Públicas, Transportes e Comunicações. Mudanças para aumentar a competitividade", *Transportes* 13 January 2012, <http://www.transportesemrevista.com/Default.aspx?tabid=210&language=pt-PT&id=3236&area=undefined>.

²¹⁵⁰ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker

1591. Self-handling is not allowed²¹⁵¹. A major international ro-ro operator using the port of Lisbon confirmed to us that, unlike the situation in Amsterdam, Hamburg and Tilbury, the crew is not allowed to move cargoes inside the ship. However, the cargo may be secured by the ship's crew. This is in conformity with the applicable laws and regulations as set out above²¹⁵².

1592. Furthermore, employment of temporary workers via job recruitment or employment agencies outside the pool is not allowed.

1593. Reportedly, port workers in Portugal cannot be transferred temporarily from employer to employer, nor can they be transferred temporarily to another port.

1594. A recent international media report confirms that in Portuguese ports, there is no competitive labour market and that port workers are highly unionised and have huge bargaining power because of their ability to block imports and exports²¹⁵³. We also received signals of wage rates for Portuguese port workers being excessively high compared with the situation in northern ports such as Hamburg. The latter issue is beyond the scope of the present study however.

representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

²¹⁵¹ See details *supra*, para 1566. U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

- (a) *All longshore activities.*
- (b) *Exceptions:*
 - (1) *Military operations,*
 - (2) *Operations in an emergency, when under the supervision of the maritime authorities,*
 - (3) *Security or inspection operations,*
 - (4) *Loading and discharge of supplies for the vessel and its crew,*
 - (5) *Loading and discharge of fuel and petroleum products at special terminals,*
 - (6) *Loading and discharge of chemical products if required for safety reasons,*
 - (7) *Placing of trailers and similar material in parking areas when done before loading or after discharge,*
 - (8) *Cleaning of the vessel,*
 - (9) *Loading, discharge, and disposal of merchandise in other boats, and*
 - (10) *Opening and closing hatches.*

²¹⁵² See *supra*, para 1566.

²¹⁵³ X., "Ports in the storm", *The Economist* 24 March 2012, <http://www.economist.com/node/21551072>.

1595. In 2012, the ETP in the Port of Aveiro filed for insolvency proceedings. At the time of writing, it operated under a recovery programme.

1596. We received no particular complaints about health and safety or training issues. IPTM stated that health and safety rules are properly enforced.

9.17.7. Appraisals and outlook

1597. The General Survey of national implementation of ILO Convention No. 137 published by ILO in 2002 noted a fundamental divergence of opinion on the port labour system between Portuguese employers and unions.

The Confederation of Portuguese Industry (CIP) reported to ILO that Convention No. 137 and Recommendation No. 145 refer to an employment and labour situation that has changed since the texts were adopted in 1973 and that it is necessary to revise the national legislation to take into account the economic imperatives that currently prevail in the port sector, and for the same reason, the ILO's instruments should also be revised.

The General Union of Workers (UGT) regretted that Portuguese legislation relating to ports, which had been revised in recent years, allowed less room for the consultation and participation of trade unions in the management and administration of ports. According to the UGT, less attention was also being paid to social matters and to the impact on workers of the structural adjustments carried out in the sector. The conditions for the registration of workers who are available for dock work were too lax. This situation had resulted in more difficult working conditions, which an ineffective labour inspectorate is not capable of remedying. The UGT deplored that no effect was given to the protective provisions contained in the Convention, which the Government has ratified, and the Recommendation²¹⁵⁴.

1598. In 2007, both parties repeated their positions. The employers' organisations confirmed that the Convention is inadequate and should be denounced. In the view of the General Union of Workers, the specific characteristics of dock work required the adoption of special rules, particularly in relation to occupational health and safety and the vocational training of the workers concerned²¹⁵⁵.

²¹⁵⁴ International Labour Conference (90th Session 2002), *General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, <http://www.ilo.org/public/english/standards/realm/ilc/ilc90/pdf/rep-iii-1b.pdf>, 87, para 216.

²¹⁵⁵ International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), 97th Session, 2008,

1599. The governmental agency IPTM informed us that it does not consider the current port labour regime in Portugal satisfactory and also that legal certainty is insufficient. Depending on the port, it regards the relationship between employers and the unions as satisfactory. IPTM believes that the current system has a negative impact on the competitive position of Portuguese ports.

1600. An expert informed us that manpower costs account for a large share of port call costs, especially because the legal framework did not follow the technological evolution in cargo handling. Current arrangements are not in line with this technological evolution and do not contribute to the sustainability and competitiveness of Portuguese ports. The issue of high labour costs for cargo handling might be addressed through general EU guidelines which would then be adapted by each EU Member State.

1601. Portugal has been severely hit by the recent economic crisis and especially by the present sovereign debt crisis.

With the involvement of the EU and the International Monetary Fund (IMF), a financing package was designed to allow Portugal some breathing space from borrowing in the markets while it demonstrates implementation of the policy steps needed to get the economy back on track²¹⁵⁶.

The current Memorandum of Understanding on Specific Economic Policy Conditionality envisages the following reforms in the port sector:

5.25. Define a strategy to integrate ports into the overall logistic and transport system. Specify the objectives, scope and priorities of the strategy, and the link to the overall Strategic Plan for the Transport sector.

5.26. Develop a legal framework to facilitate the implementation of the strategy and to improve the governance model of the ports system. In particular, define the necessary measures to ensure the separation of regulatory activity, port management and commercial activities.

5.27. Specify in a report the objectives, the instruments and the estimated efficiency gains of initiatives such as the interconnection between CP Cargo and Ex-Port, the Port Single Window and Logistic Single Window.

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf, 693.

²¹⁵⁶ IMF, "IMF Executive Board Approves an €26 Billion Extended Arrangement for Portugal", Press Release No. 11/190, 20 May 2011, <http://www.imf.org/external/np/sec/pr/2011/pr11190.htm>.

5.28. Revise the legal framework governing port work to make it more flexible, including narrowing the definition of what constitutes port work, bringing the legal framework closer to the provisions of the Labour Code²¹⁵⁷.

1602. Currently, a new reform process aims at the modernisation of the port labour regime and at a harmonisation with the Labour Code. Its objective is to enhance synergies between ports, to reduce costs for the different stakeholders and to increase the competitiveness of Portuguese ports.

On 10 November 2011, the Portuguese Council of Ministers adopted Resolution No. 45/2011 on Strategic Plans for Transport. In this Resolution, the Government acknowledges that in order to ensure the development and increasing efficiency of the port sector, it is essential to improve the port governance system as well as the port labour regime with a view to greater competitiveness and increased national exports²¹⁵⁸.

By mid-2012, legislative proposals had been prepared which would confine the scope of rules on port labour to the loading and unloading of ships, improve flexibility and lower costs through a cap on overtime, regulate early retirement for older workers, open up the market to temporary work agencies and abolish professional cards for port workers.

Upon finalising the first version of this study, the new bill had been approved by the Portuguese Government on 20 September 2012 and would be put before Parliament. It was based on an agreement with the National Federation of Port Workers' Unions and the General Workers' Union but not with the Stevedores' and Transport Workers' Union of the Centre and South of Portugal which claims to represent eighty per cent of all port workers in Portugal. The reform was expected to reduce the cost of port calls by 25 to 30 per cent²¹⁵⁹.

9.17.8. Developments between January 2013 and September 2014

1602A. On 14 January 2013, a bill amending Act No. 280/93 was promulgated²¹⁶⁰. The new regime limits the scope of the port labour arrangements to specialised port-related activities,

²¹⁵⁷ IMF Country Report No. 11/279.

²¹⁵⁸ See http://www.idcdockworkers.org/index.php?option=com_content&task=view&id=169&Itemid=9&lang=english.

²¹⁵⁹ See X., "Governo aprova novo regime do trabalho portuário", *Económico* 20 September 2012, http://economico.sapo.pt/noticias/governo-aprova-novo-regime-do-trabalho-portuario_152230.html; X., "Portos: balanço «muito positivo» dos dois dias de greve", *Agência Financeira* 21 September 2012, <http://www.ecofinancas.com/noticias/portos-balanco-muito-positivo-dois-dias-greve>.

²¹⁶⁰ Lei n.º 3/2013 - Primeira alteração ao Decreto-Lei n.º 280/93, de 13 de agosto, que estabelece o regime jurídico do trabalho portuário.

abolished the monopoly of formerly union-controlled pool companies, grants access to the labour market to all qualified workers and to temporary work agencies, and brings the organisation of port labour closer to general labour law.

The new law, which entered into force on 1 February 2013, brings more flexibility and makes it possible for regular workers, who are not dockers, to fulfill certain tasks in ports which they were not allowed to perform before. The adoption of the new law caused a wave of strikes in the ports of Lisbon, Setubal, Aveiro and Figueira da Foz²¹⁶¹. The trade unions condemn the fact that the new law is in breach of ILO Convention C137²¹⁶². In the meanwhile, the new law has been complemented by new local collective agreements.

The European Commission evaluated the reforms as follows:

The first milestone of maritime port reform has been accomplished. The draft law on port work entered into force on 1st February 2013. The government has demonstrated determination and effectiveness during its adoption process and it would be important that this commitment is maintained also for the adoption of other crucial components of the port reform package. The historical collective bargaining contracts for port labour are expected to be revised without delay to ensure their compliance with the new port labour law. The draft Decree Law on port governance that was expected by the end of the year has not been presented yet. The goal of this draft law is to increase efficiency of Portuguese ports by making the operation concessions more performanceoriented, opening up the activity to new operators and ensuring that cost savings are passed on to port customers. The government will explore the scope for a revision of new concession schemes. A significant part of cost reductions in ports (around 25 to 30 percent compared with the present situation) are expected to come from the reform of concessions. In order to further alleviate the burden on Portuguese tradable sector the tariffs levied by the port authorities (TUP Carga) were reduced by 20 percent²¹⁶³.

In the meantime, new legislation has been adopted for port governance matters as well²¹⁶⁴.

²¹⁶¹ See X., "Portugal: new port labour law causes wave of strikes", ESC 20 January 2013, <http://www.europeanshippers.eu/news/esc/esc-national-councils/portugal-new-port-labour-law-causes-wave-of-strikes/>.

²¹⁶² See X., "Joint ETF and IDC-E solidarity campaign in support of Portuguese port workers", 15 January 2014, <http://www.idcdockworkers.org/en/news/307-joint-etf-and-idc-e-solidarity-campaign-in-support-of-portuguese-port-workers>.

²¹⁶³ European Commission, *European Economy. The Economic Adjustment Programme for Portugal. Seventh Review – Winter 2012/2013*, Occasional Papers no. 153, European Commission, Brussels, 2013, http://ec.europa.eu/economy_finance/publications/occasional_paper/2013/pdf/ocp153_en.pdf, 36.

²¹⁶⁴ See, *inter alia*, Decreto-Lei n.º 78/2014 – Estatutos da Autoridade da Mobilidade e dos Transportes.

9.17.9. Synopsis

1603.		
SYNOPSIS OF PORT LABOUR IN PORTUGAL²¹⁶⁵		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 5 main mainland seaports • Landlord model • 68m tonnes • 10th in the EU for containers • 46th in the world for containers • 21 employers • 796 port workers • Trade union density: 100% 	<ul style="list-style-type: none"> • <i>Lex specialis</i> (Decree-Law of 1993, Decrees of 1994 and 2013) • Party to ILO C137 • No national CBA, but port CBAs • Regulations of Labour Pools • Local usages • Reforms in 1989, 1993 and 2013 • Labour pools must be licensed • One labour pool in every major port, with some exceptions • Shares in Labour Pools owned by stevedoring companies • No hiring halls 	<ul style="list-style-type: none"> • Practical implementation and enforcement of liberalised regime • Compliance with ILO C137
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Training courses organised at port and company level 	<ul style="list-style-type: none"> • Training requirements in local CBAs • No national certification • Multi-skilling encouraged 	<ul style="list-style-type: none"> • No specific issues
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No specific statistics available 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • Provisions in port CBAs • No Party to ILO C32 or C152 	<ul style="list-style-type: none"> • Lack of statistics

²¹⁶⁵ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.18. Romania

9.18.1. Port system²¹⁶⁶

1604. 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. Constanța has become a major distribution centre serving Central and Eastern Europe.

The Danube ports mainly handle inland barge traffic but also accommodate seagoing vessels.

In 2012, the Port of Constanța handled 50.5 million tonnes of cargo, of which over 38.8 million tonnes of maritime cargo²¹⁶⁷. The Danube ports of Galati, Braila and Tulcea handled at least 0.7 million tonnes of seaborne cargo. As a result, total maritime traffic in Romanian ports amounted to some 39.5 million tonnes in 2012²¹⁶⁸. As for container throughput, Romanian ports ranked 16th in the EU and 67th in the world in 2011²¹⁶⁹.

1605. Romanian ports are owned by the State and managed by state-owned companies.

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

The same system applies in other Romanian ports.

²¹⁶⁶ For general information on Romanian ports, see www.portofconstantza.com and www.romanian-ports.ro; also X., "Maritime Harbor Activities In Romania. Social Dialogue", 2009, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158937.pdf; Martens, R., *Empowering Romania as the Eastgate trade hub of Europe. Joint Taskforce PESP Constanta*, September 2010, 279 p., [http://www.archicom.nl/media/Downloads/Expansion%20Port%20of%20Constanta%20\(PESP%20Constanta\).pdf](http://www.archicom.nl/media/Downloads/Expansion%20Port%20of%20Constanta%20(PESP%20Constanta).pdf); for statistics, see <http://www.mt.ro/web14/strategia-in-transporturi/statistici>; http://www.romanian-ports.ro/html/trafic_portuar.html; http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

²¹⁶⁷ See the *Annual Report 2012*, <http://www.portofconstantza.com>, 13.

²¹⁶⁸ See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled\).png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled).png&filetimestamp=20140228161723).

²¹⁶⁹ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

9.18.2. Sources of law

1606. 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')²¹⁷⁰ regulates the management of Romanian ports and contains a separate chapter on port labour (Chapter X). As we shall explain below²¹⁷¹, the Ordinance was repeatedly revised, most recently, after a protracted process, in 2010²¹⁷².

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 Operators')²¹⁷³ 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')²¹⁷⁴.

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 which are however beyond the scope of the present study. The free zones at Sulina, Constanța / Basarabi, Galatzi, Braila and Giurgiu are located in or close to port areas. Reportedly, the laws and regulations on labour in ports equally apply in the free zones.

1607. Health and safety in port labour is governed by Act No. 319/2006 on Safety and Health at Work²¹⁷⁵ which was implemented by Government Decree No. 1425 of 2006²¹⁷⁶.

²¹⁷⁰ Ordonanța 22 (r. 2) din 29 ianuarie 1999 (Ordonanța 22/1999) privind administrarea porturilor și a căilor navigabile, utilizarea infrastructurilor de transport naval aparținând domeniului public, precum și desfășurarea activităților de transport naval în porturi și pe caile navigabile interioare. The Ordinance was approved by Lege nr. 528 din 17 iulie 2002 pentru aprobarea Ordonanței Guvernului nr. 22/1999 privind administrarea porturilor și serviciile în porturi.

²¹⁷¹ See *infra*, para 1612.

²¹⁷² Lege nr. 108 din 3 iunie 2010 privind aprobarea Ordonanței de urgență a Guvernului nr. 86/2007 pentru modificarea și completarea Ordonanței Guvernului nr. 22/1999 privind administrarea porturilor și a căilor navigabile, precum și desfășurarea activităților de transport naval în porturi și pe căi navigabile. On the background of the latter Act, see *infra*, para 1612.

²¹⁷³ Ordinul 287 din 27 februarie 2003 (Ordinul 287/2003) privind autorizarea agenților economici care desfășoară activități de transport naval.

²¹⁷⁴ Metodologia din 5 aprilie 2011 (Metodologia din 2011) de eliberare a carnetelor de lucru în port și de înregistrare a muncitorilor portuari.

²¹⁷⁵ Legea nr. 319 din 14 iulie 2006 securității și sănătății în muncă.

²¹⁷⁶ Hotărârea de Guvern 1425 din 2006 pentru aprobarea Normelor metodologice de aplicare a prevederilor Legii securității și sănătății în munca nr. 319 din 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"²¹⁷⁷.

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 2003²¹⁷⁸.

1608. Romania ratified ILO Convention No. 137²¹⁷⁹, but it is not bound by ILO Conventions Nos. 32 or 152.

1609. 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 UPIR²¹⁸⁰. We were unable to consult this document.

We were also informed that company collective agreements were concluded at every port operator. We were unable to consult such agreements. Trade union FNSP confirmed that today all collective agreements are concluded at company level.

²¹⁷⁷ Hotărâre nr. 1051 din 9 august 2006 privind cerințele minime de securitate și sănătate pentru manipularea manuală a maselor care prezintă riscuri pentru lucrători, în special de afecțiuni dorsolombare.

²¹⁷⁸ Ordin nr. 320/2006 din 03/03/2006 pentru modificarea și completarea Ordinului ministrului lucrărilor publice, transporturilor și locuinței nr. 727/2003 privind aprobarea cerințelor și procedurilor armonizate pentru încărcarea și descărcarea în siguranță a vrachierelor; Ordin nr. 727/2003 din 21/05/2003 privind aprobarea cerințelor și procedurilor armonizate pentru încărcarea și descărcarea în siguranță a vrachierelor.

²¹⁷⁹ Decret nr. 83 din 23 iulie 1975 privind ratificarea unor conventii ale Organizației Internaționale a Muncii.

²¹⁸⁰ On these organisations, see *infra*, para 1625.

9.18.3. Labour market

- Historical background

1610. To our knowledge, 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 vote²¹⁸¹.

1611. 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 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.

1612. 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 legislation²¹⁸².

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 2004²¹⁸³. The founding partners were the trade union FNSP, 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

²¹⁸¹ X., "Maritime Harbor Activities In Romania. Social Dialogue", 2009, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158937.pdf, unpaginated, item 4.2.

²¹⁸² The following notes are to a large extent literally based on Ciutacu, C., "Port workers initiate protest action against illegal work", 11 January 2008, <http://www.eurofound.europa.eu/eiro/2007/10/articles/ro0710029i.htm>, X., "Maritime Harbor Activities In Romania. Social Dialogue", 2009, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158937.pdf and FNSP's reports and positions posted on <http://fnspc.ro>.

²¹⁸³ Ordinul nr. 2024 din 1 noiembrie 2004 (Ordinul 2024/2004) privind furnizarea fortei de munca de rezerva, in Portul Constanta, de catre Agentia pentru Ocuparea si Formarea Profesionala a Muncitorilor Portuari - Port Constanta.

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 FNSP 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.

ETF supported FNSP's case in the following open letter to the Prime Minister of Romania:

The ETF affiliated member, Federatia Nationala a Sindicatelor Portuare Constanta (FNSP), informs us of severe problems faced by the legally employed labour force of Constanta Port, namely: the gradual spread of casual work – nearly half of cargo traffic is handled by workers without legal contracts; that port operators systematically employ workforce from companies which are not authorised to supply labour for main port activities; that the use on a large scale of casual work – particularly by transnational port operators - have already set ground for deep-rooted, unfair competition, in the detriment of traditional port operators, who play by the law. I am informed that so critical the situation is, that FNSP has decided to mobilise port workers for a protest action on 10 May.

Vis-à-vis the above mentioned I must emphasise that all above practices – illegal and abusive – pose a serious threat to safety and security of port operations, of cargo and of people. It is shocking that, in a country aspiring to become a full EU member, law-binding practices put workers and port operations in a totally disadvantaged position! I therefore urge you and your government to engage in a dialogue with FNSP in order to eradicate casual work and illegal practices in the Constanta Port and to reinstate a climate of safety and security for port activities.

Meanwhile, the ETF will inform all affiliated port workers' unions of the labour situation in the Port of Constanta. We will closely monitor the way the dialogue with the FNSP develops. To this end I inform you that in the last year the ETF has been permanently in touch with the European Commission – the Directorate General for Employment, Social Affairs and Equal Opportunities – regarding the malfunction of social dialogue in transport in Romania. A delegation of Romanian transport workers will possibly visit Brussels in the near future in order to have an exchange of views with the European Commission on the question of sectoral social dialogue.

I would be grateful to hear from you what exactly are the concrete steps that your government is going to take in order to meet the claims of the FNSP²¹⁸⁴.

²¹⁸⁴ <http://www.itfglobal.org/etf/romanian-port-workers.cfm> (last sentence bold in the original).

Trade union FNŞP demanded the re-establishment of the Port Labour Agency which would after all only "[follow] 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 benefit²¹⁸⁵.

After an initial strike by harbour workers in the spring of 2006 in protest against illegal work, an agreement was signed between the trade unions, employers and other organisations involved in harbour work to eradicate the illegal work forms at the Port of Constanţa. The agreement was signed by trade union FNŞP, the National Trade Union Bloc (Blocul Naţional Sindical or BNS, to which FNŞP is affiliated), the Constanţa County Labour Inspectorate (Inspectoratul Judeţean de Muncă Constanţa, IJMC), the Romanian Naval Authority (Autoritatea Navală Română, ANR), the National Company Maritime Ports Administrations Constanţa, 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 Ordinance²¹⁸⁶. 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 Constanţa 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

²¹⁸⁵ See, for example, Samoila, C., "Fobia lui Petre Costel are la origini interese materiale", *Ziua de Constanţa* 11 May 2006, <http://www.ziuaconstanta.ro/rubrici/deschidere-editie/fobia-lui-petre-costel-are-la-origini-interese-materiale.html>; Samoila, C., "Munca la negru este speculata in favoarea SRL-ului sindicalistilor din port", *Ziua de Constanţa* 12 May 2006, <http://www.ziuaconstanta.ro/stiri/actualitate/munca-la-negru-este-speculata-in-favoarea-srl-ului-sindicalistilor-din-port-42116.html>.

²¹⁸⁶ Ordonanţă de urgenţă 86 din 5 septembrie 2007 (OUG 86/2007) pentru modificarea şi completarea Ordonanţei Guvernului nr. 22/1999 privind administrarea porturilor şi a căilor navigabile, precum şi desfăşurarea activităţilor de transport naval în porturi şi pe căi navigabile.

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; and (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. Following this strike, the Minister for Transport, Ludovic Orban, visited Constanța harbour to carry out inspections for illegal work and announced future visits to the port even at night.

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, Minister Orban declared 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 the Minister, the trade unions do not need a special legal provision in this respect. Concerning the existence of illegal work in harbours, Minister Orban demonstrated to the trade unions during his port visits his willingness to ascertain the level of such activities, and to act accordingly in order to eradicate the problem.

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 employers²¹⁸⁷.

²¹⁸⁷ See *Parliamentary Documents*, Camera Deputaților, Comisia pentru muncă și protecție socială, *Aviz asupra proiectului de Lege privind aprobarea Ordonanței de urgență a Guvernului nr.86/2007 pentru modificarea și completarea Ordonanței Guvernului nr.22/1999 privind administrarea porturilor și a căilor navigabile, precum și desfășurarea activităților de transport naval în porturi și pe căi navigabile.*

Reportedly, in 2009 a number of employers were fined for having employed illegal workers²¹⁸⁸. 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 employment²¹⁸⁹. It should be noted that the fight against undeclared labour in all sectors of the national economy has been a priority of the Romanian Labour Inspectorate since its establishment in 1999²¹⁹⁰.

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. We will summarise the current legal regime below²¹⁹¹ and explain that the law now provides for the mandatory establishment of a Port Labour Agency in the port of Constanța.

By April 2011, the Port Labour Agency had not yet been established. FNSP reiterated that the Agency is necessary to eradicate illegal and unskilled work and that similar pools operate in other major European ports. A spokesman from employers' organisation OPOP confirmed its support for the creation of the Agency²¹⁹².

- Regulatory set-up

1613. Today, the ports of Constanța, Mangalia and Midia are owned by the Romanian State which has charged the National Company Maritime Ports Administration (MPA) S.A. Constanța with their regulation and management. The MPA of Constanța is listed on the stock exchange, but the majority of shares (80 per cent) continue to belong to the State.

The ports situated on the Danube River between Sulina and Harsova are managed by the National Company Maritime Danube Ports Administration S.A. Galati.

Other river ports are managed by the Administration of the Ports on the Fluvial Danube S.A. Giurgiu.

²¹⁸⁸ See Marinescu, A., "Munca la negru, combătută cu rezerva de... muncă", *Liderul de Opinie- Stiri din Constanta* - 21 October 2009, <http://lideruldeopinie.ro/19395/munca-la-negru-combatuta-cu-rezerva-de-munca>.

²¹⁸⁹ See once more X., "Maritime Harbor Activities In Romania. Social Dialogue", 2009, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158937.pdf, unpagged, Conclusions.

²¹⁹⁰ See Ciutacu, C., "Sectoral campaigns of the Labour Inspectorate, Romania", 29 October 2009, <http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/ro002.htm>.

²¹⁹¹ See *infra*, para 1613 *et seq.*

²¹⁹² Tița-Călin, I., "Sindicatelor portuare cer ajutorul ministrului Anca Boagiu", *Cuget Liber Online* 5 April 2011, <http://www.cugetliber.ro/stiri-economie-sindicatelor-portuare-cer-ajutorul-ministrului-anca-boagiu-80105>.

1614. The Ports and Waterways Ordinance identifies cargo handling services including loading and unloading from ships, stowage, storage, lashing, sorting, labeling, palletising, packing, stuffing and stripping of containers and other cargo related activities as shipping activities (Art. 19(1), 3, b), 2).

The latter may only be performed by authorised economic operators (*operatori economici autorizati*); the procedure and conditions for authorisation are set by the Ministry (Art. 19(2)). The criteria include the possession of the necessary port facilities and technical equipment and the use, in accordance with legal requirements, of qualified and registered personnel (see Art. 5 of Annex 2 to the Order on Authorisation of Port Operators).

The Ports and Waterways Ordinance expressly authorises Port Authorities to grant rights of use on port land to port operators (see Art. 29).

However, publicly owned port authorities are not allowed to perform cargo handling activities (Art. 20(2) of the Ports and Waterways Ordinance).

1615. Cargo may only be loaded and discharged, and passengers may only embark and disembark, at ports open to the public as designated 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 authorised (Art. 21).

1616. The Ports and Waterways Ordinance provides that 'specific port labour' (*munca specifica in porturi*) is performed by port workers (*muncitorii portuari*) (Art. 60(2))²¹⁹³.

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 (Art. 60(1)).

²¹⁹³ The full text reads as follows:

Munca specifica in porturi este prestata de muncitorii portuari.

1617. 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 (Art. 61(2)). Reportedly, no specific laws or regulations are currently in force.

Some public authorities responding to the questionnaire added that workers must not have a criminal record and that for some jobs training is required. Some added that trade union membership is a legal requirement, but other experts denied this.

1618. Port workers may only carry out their profession in a port if they are registered and possess a work book (Art. 62(1)).

The Port Authorities are charged with maintaining a list of workers performing port labour on the basis of an individual employment contract (Art. 24(1), f).

The Port Authority registers the worker on the basis of a written request from the Port Labour Agency or from an employer – who is duly authorised as an economic operator in the port (Art. 62(3)) – with whom the worker has concluded a contract of employment which was duly registered with the local Labour Inspectorate (Art. 62(2)).

Work books are issued and workers are registered in accordance with procedural rules approved by the Minister of Transport and Infrastructure (Art. 62(4)). The Port Authority shall determine a tariff of fees for the issuance of work books (Art. 62(5)).

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 (Art. 62(6)).

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 (Art. 62(7)). Work books that have been handed in are kept by the Port Authority (Art. 62(8)). 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 (Art. 62(9)).

Port operators shall register with the Port Authority all workers with whom they have concluded an individual contract of employment (Art. 63(1)). 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 (Art. 63(2)).

1619. The register of port workers is considered a register within the meaning of ILO Convention No. 137.

1620. 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 (*agenție de ocupare și formare profesională a muncitorilor portuari*, 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 (Art. 63(1) of the Ports and Waterways Ordinance).

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 (Art. 63(2)).

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;
- (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 (Art. 64(1)).

Reserve port workers are supplied on the basis of a contract concluded by the economic operator and the Port Labour Agency (Art. 64(2)).

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 (Art. 64(3)).

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 (see Art. 65(1)).

To our knowledge, as yet no Port Labour Agencies are operational.

1621. There are no hiring halls in Romanian ports.

1622. Infringements of the main rules of the Ports and Waterways Ordinance relating to port labour, including the employment of unregistered workers and the performance of port labour without registration or possession of a work book, are criminally sanctioned (see Art. 67, especially t), u), x) and ad)).

Port Authorities responding to our questionnaire mentioned among the competent enforcement bodies the port authority, the harbour master, national agencies and the terminal operators.

1623. The Procedural Rules on Port Labour reiterate a number of provisions contained in the Ordinance and regulate *inter alia* the application for registration as a port worker and the keeping of the register of port workers.

In addition, they state that workers may be registered for occupations mentioned in the legal classification of professions in Romania²¹⁹⁴ and for any other port-specific profession (Art. 2(4) of the Procedural Rules on Port Labour). In practice, the registration system is not applied for all jobs.

They also note that the register must mention specialisations of port workers, if any (Art. 4(1), d)).

Every year, the port worker's book must be stamped by the Port Authority (Art. 5(5))

1624. Unemployed port workers receive unemployment benefit.

²¹⁹⁴ Order No. 1832/856 of 6 July 2011 for the Approval of the Classification of Professions in Romania (Ordin nr. 1832/856 din 6 iulie 2011 privind aprobarea Clasificării ocupațiilor din România — nivel de ocupație (sase caractere)) identifies several categories of port workers' jobs such as stevedore, port crane operator, port forklift operator and foreman. The Order gives effect to European Commission Regulation no. 1022/99 of 29 October 2009 on the implementation of ISCO 08 within the national occupational classification system and the adaptation of statistical surveys in accordance with the ISCO 08 structure (see *supra*, paras 82 and 236).

- Facts and figures

1625. We could collect no precise data on the number of port employers in Romanian ports. However, we were able to identify some 35 individual terminal operators in Romanian ports²¹⁹⁵.

In addition, confusion reigns over the organisational structure of the private port sector in Romania. It seems that today, a number of private operators along the Danube, the river port administrations of Galati and Giurgiu and the Danube-Black Sea Canal Administration are members of the Union of Romanian Inland Ports (Uniunea Porturilor Interioare Romanesti, UPIR), which is affiliated to the European Federation of Inland Ports (EFIP). UPIR claims to be the main association of Romanian port operators. Reportedly, almost all port operators have left the Romanian Association of Inland Shipowners and Port Operators (Asociația Armatorilor și Operatorilor Portuari-Fluviali din România, 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)²¹⁹⁶. A small number of employers is represented by the Port Operators Employer Organisation (Organizația Patronală Operatorul Portuar, OPOP)²¹⁹⁷. Yet another relevant organisation is the Employer Association in Maritime Transport and Port Exploitations (Asociația Patronală din Transportul Naval și Exploatari Portuare, APTNEP)²¹⁹⁸.

1626. There are no nation-wide statistics on the total number of port workers in Romania.

According to information received from the port authorities in 2012, there are 3,619 registered port workers in the port of Constanța, and about 568 port workers in the ports of Galati, Braila and Tulcea, resulting in an estimated total for the country of 4,187 port workers involved in the handling of seaborne cargo²¹⁹⁹.

²¹⁹⁵ Caution is needed, however, because (1) we might have overlooked some companies, and (2) some identified terminals may not employ port workers for the purpose of the present study. Data on individual port terminals in Constanta can be found in Martens, R., *Empowering Romania as the Eastgate trade hub of Europe. Joint Taskforce PESP Constanta*, September 2010, 279 p., [http://www.archicom.nl/media/Downloads/Expansion%20Port%20of%20Constanta%20\(PESP%20Constanta\).pdf](http://www.archicom.nl/media/Downloads/Expansion%20Port%20of%20Constanta%20(PESP%20Constanta).pdf).

²¹⁹⁶ See Chivu, L., "Representativeness of the European social partner organisations: Inland water transport – Romania", 31 August 2010, <http://www.eurofound.europa.eu/eiro/studies/tn0809017s/ro0809019q.htm>.

²¹⁹⁷ Ciutacu, C., "Port workers initiate protest action against illegal work", 11 January 2008, <http://www.eurofound.europa.eu/eiro/2007/10/articles/ro0710029i.htm>.

²¹⁹⁸ Ciutacu, C., "Romania: representativeness of the European social partner organisations – Sea and coastal water transport", 4 September 2008, <http://www.eurofound.europa.eu/eiro/studies/tn0707017s/ro0707019q.htm>.

²¹⁹⁹ The Port Authority of Giurgiu and the Administration of Navigable Canals were unable to provide information on the number of port workers in their ports. See also Chivu, L., "Representativeness of the European social partner organisations: Inland water transport – Romania", 31 August 2010, <http://www.eurofound.europa.eu/eiro/studies/tn0809017s/ro0809019q.htm>, where figures are given

1627. Port workers are represented by the trade union National Union Federation 'The Navigator' (Federația Sindicală Națională 'Navigatorul', FSNN). FSNN is a founding member of the Alliance of Trade Unions of Transport Operators in Romania (Alianța Sindicatelor Transportatorilor din România, ASTR), which is representative in the transport sector. At national level, FSNN is affiliated to the National Trade Union Confederation 'Meridian' (Confederația Sindicală Națională Meridian, CSN Meridian). At international level, FSNN is affiliated to the International Transport Workers' Federation (ITF)²²⁰⁰ (the latter information was disputed in a confidential statement that neither FSNN nor ASTR are representing any port workers at all).

The National Federation of Port Unions (Federația Națională a Sindicatelor Portuare Constanța, FNSP) claims that it is the only representative federation for the sector "water transport and related activities". 26 trade unions are affiliated to FNSP. In 2014 FNSP stated that 3,758 active workers possess a 'work book'. FNSP is a member of the National Trade Union Bloc (Blocului Național Sindical, BNS) and of the National Trade Union Conference of Romanian Transport Workers (Convenției Sindicale Naționale a Transportatorilor din România, CSNTR)²²⁰¹.

Yet another workers' organisation representing port workers is the National Trade Union Confederation Cartel Alfa (Confederația Națională Sindicală Cartel Alfa, Cartel Alfa). Further (unverified) information suggests that in Constanța, 1,000 workers have joined Cartel Alfa, while 3,758 workers are affiliated members of FNSP.

According to one local expert, it is impossible to provide even the slightest guess on trade union density among Romanian port workers, as there is no clear organisational structure at national level and relations between individual unions are rather strained.

on the number of employees in maritime and river transport working at least 21 days in 1999 and 2005, among whom a category of "Dockers, machine operators (port workers)" is identified, numbering 2,301 in 1999 (2,271 men and 30 women) and 2,241 in 2005 (2,197 men and 44 women). According to an ILO report, 3,595 dock workers were registered in January 2003 and 3,722 in June 2007 (International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), 97th Session, 2008, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf, 693). Yet other sources from 2008 mention 9,000 workers in the Port of Constanța and 18,000 "harbour workers" in Romania as a whole (see X., "DP World - Europe's Eastern gateway blocked: Strike in the docks of Constanta", 22 July 2008, <http://archives.econ.utah.edu/archives/aut-op-sy/2008m07/msg00036.html>, footnote (2); Ciutacu, C., "Port workers initiate protest action against illegal work", 11 January 2008, <http://www.eurofound.europa.eu/eiro/2007/10/articles/ro0710029i.htm>; compare also Ciutacu, C., "Romania: representativeness of the European social partner organisations – Sea and coastal water transport", 4 September 2008, <http://www.eurofound.europa.eu/eiro/studies/tn0707017s/ro0707019g.htm>).

²²⁰⁰ See Chivu, L., "Representativeness of the European social partner organisations: Inland water transport – Romania", 31 August 2010, <http://www.eurofound.europa.eu/eiro/studies/tn0809017s/ro0809019g.htm>.

²²⁰¹ See <http://fnspc.ro>; see also X., "DP World - Europe's Eastern gateway blocked: Strike in the docks of Constanta", 22 July 2008, <http://archives.econ.utah.edu/archives/aut-op-sy/2008m07/msg00036.html>, footnote (2).

9.18.4. Qualifications and training

1628. As we have mentioned²²⁰², 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 applicable²²⁰³.

1629. 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 Mangalia²²⁰⁴.

The 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 (Art. 5(4) of the Procedural Rules on Port Labour).

Reportedly, the provisions above do not prevent other entities from providing training, and the registration of the attendance of training course in worker's books is not generally applied.

1630. The general Romanian Safety and Health at Work Act obliges employers to ensure sufficient and adequate safety and health training (see Art. 20).

1631. In 1997, a PHARE project resulted in the establishment of a Port School in Constanța. Its Board of Directors is made up of two representatives of the employers' organisations, two representatives of the unions and a representative of the Maritime Ports Administration. The Port School has become the main provider of continuous formation for port professions. So far, it has developed occupational standards for the following port jobs: port truck driver, auto trailer driver, stevedoring port operator, port loading truck driver, foreman of dockers,

²²⁰² See *supra*, para 1617.

²²⁰³ See *infra*, para 1623.

²²⁰⁴ See *supra*, para 1620.

forwarding port operator, lashing man and stevedore. Mid 2009, 5,463 port workers had attended the courses of the Port School, representing more than half of the port workers²²⁰⁵.

In 2014, we obtained the following data on the numbers of students at the Port School:

Table 98A. Number of students at the Port School of Constanța, 1997-2013 (source: confidential)

<i>Year</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>
	29	268	358	485	308	532	479	369	515
<i>Year</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	
	583	795	839	719	789	872	1138	1210	

To our knowledge, the Port School does not provide training for workers in the river ports.

1632. Port worker training is also offered by the National Company for Control of Boilers, Lifting Equipment and Pressure Vessels (Compania Națională pentru Controlul Cazanelor, CNCIR). To date, this state-owned entity has trained some 150 port workers from Constanța, Midia and Tulcea. Reportedly, the Port School and CNCIR compete.

1633. Responses to our questionnaire indicate that the following types of formal training are available for port workers in Constanța (and some of them also in other ports):

- specialised training as part of a regular educational programme (secondary school);
- induction courses for new entrants (compulsory);
- courses for the established port worker (compulsory);
- training in safety and first aid (compulsory);
- specialist courses for certain categories of port workers, including container equipment operators, ro-ro truck drivers, forklift operators, lashing and securing personnel, tallymen, signalmen and reefer technicians (all compulsory);
- training aimed at the availability of multi-skilled workers (compulsory);
- retraining of injured and redundant port workers (compulsory).

The Romanian Labour Inspectorate specified that the Port School, which is authorised by the Ministry of Education, Research, Youth and Sports organises courses to obtain the qualification of port worker for the following jobs:

²²⁰⁵ X., "Maritime Harbor Activities In Romania. Social Dialogue", 2009, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158937.pdf, unpaginated, item 5.5.

- load binder workers on lifting equipments (certified by CNCIR);
- machine workers: electric and motor forklift workers (CNCIR) and tractor drivers in port facilities (with driving licence) or on roads (with driving licence);
- lashing workers for general goods and containers;
- crane workers (CNCIR)²²⁰⁶.

1634. In 2010, Constanța South Container Terminal was awarded a grant from the European Social Fund. The funds were spent on implementing a project at CSCT entitled 'Internal Partnership for Health & Safety'. The overarching objective of the project was to reduce the probability of workplace injuries and to improve workplace conditions, leading to improved productivity and to make the business even more competitive²²⁰⁷. We are unaware of the results of this project.

9.18.5. Health and safety

- Regulatory set-up

1635. The Safety and Health at Work Act applies in all sectors, both public and private (Art. 3(1)); 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 (see Art. 6 *et seq.*).

The Regulations annexed to Government Decree No. 1425 of 2006 provide, *inter alia*, 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 (Art. 3). It also elaborates on health and safety training for workers (Art. 74 *et seq.*).

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" is also relevant to ports.

However, neither of those laws and regulations contains rules that are specific to port labour.

²²⁰⁶ For more information on CNCIR training courses for port workers, see http://www.cncir.eu/index.php?option=com_content&view=article&id=73&Itemid=109.

²²⁰⁷ See the press release of 27 August 2010 on <http://www.csct.ro/en/anunt/show/slug/press-release/slug-stire/csct-implements-internal-partnership-for-health-safety-project>.

1636. The Romanian Labour Inspectorate has published a number of Guidelines on best practices²²⁰⁸, but these do not include any port-specific instrument either.

1637. 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 (Art. 2(4)).

1638. We were informed that health and safety rules pertaining to port labour are enforced by various entities, including national authorities responsible for transport and labour, the port authority and the terminal operators.

1639. In 2003, due to the special health and safety risks inherent in port labour, port workers, among other special categories of workers, were granted the right to retire earlier than ordinary employees²²⁰⁹. We were informed that this scheme has been abolished since, in the light of technological developments, many port jobs are no longer considered particularly strenuous.

- Facts and figures

1640. The Romanian Labour Inspectorate maintains aggregate statistics on occupational accidents in the sector of storage and services ancillary to transportation²²¹⁰. The Inspectorate provided as with the following statistics:

Table 99. Number of accidents at port operations in Romanian ports, 2011 (source: Labour Inspection of Romania)

	Specific port operations (general cargo)	Specific port operations (containers)

²²⁰⁸ See <http://www.inspectmun.ro/site/Legislatie/legislatie.html>.

²²⁰⁹ See especially Hotărâre nr. 1025 din 28 august 2003 privind metodologia și criteriile de încadrare a persoanelor în locuri de muncă în condiții speciale.

²²¹⁰ See, for example, the Annual Report for 2011 on http://www.inspectmun.ro/site/RAPORT%20ANUAL/RaportIM_2011.pdf.

Accidents with temporary incapacity to work	20	5
Accidents with permanent incapacity to work	1	1
Fatal accidents	3	0

For 2012 and 2013 the Romanian Labour Inspectorate provided the following statistics:

Table 99A. Number of accidents at port operations in Romanian ports, 2012-2013 (source: Labour Inspection of Romania)

	2012	2013
Accidents with temporary incapacity to work	5	2
Accidents with permanent incapacity to work	0	0
Fatal accidents	0	2

Another source referred confidentially to a report of the Constanța Territorial Labour Inspectorate which reportedly contains the following data:

Table 99C. Number of accidents in the port of Constanța, 2009-2014 (received from a third party who attributed the data to Constanța Territorial Labour Inspectorate)

Accident type	2009	2010	2011	2012	2013	2014 (part ial)
Fatal accidents at work	4	4	3	4	0	0
Fatal accidents outside of work	1	2	0	2	2	2
Accidents with disability	4	4	2	3	0	0
Accidents with temporary disability	15	20	21	12	20	4

9.18.6. Policy and legal issues

- Restrictions on employment

1641. Replying to our questionnaire, the Port Authority of Constanța stated that service providers from other EU countries are not allowed to establish themselves in the port. The other three responding Port Authorities reported the opposite. All Port Authorities agreed that undertakings from other EU Member States are free to provide services and to choose their workers, as long as the latter are registered. We could trace no legal provisions reserving authorisations for port operators or registration as a port worker to Romanian nationals.

1642. In 2010, the Romanian Competition Council (RCC) received signals that in specific situations, port operators holding monopoly positions for operating a specific category of commodities tie the provision of stevedoring with the purchasing of a different service such as ship's agency. At the level of the stevedoring services, RCC found that the small number of port operators specialising in the handling of certain categories of goods and the large quantities of goods actually handled by some of them suggest the existence of dominant or even monopolistic positions in the markets of these services²²¹¹.

1643. Port operators or employers are not obliged to join a professional organisation. Neither are they obliged by law to join the Port Labour Agency.

1644. Some replies to the questionnaire suggest that Romanian ports are closed shops. We were unable to verify this. Other experts denied that port workers must join a trade union. Generally, trade union density in Romania is estimated at between 40 and 50 per cent²²¹².

1645. The questionnaire resulted in contradictory statements by Port Authorities on the possibility of using workers supplied by temporary work agencies.

²²¹¹ See OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>, 261-262.

²²¹² See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

1646. The Port Authority of Constanța confirmed that port workers can be transferred temporarily from employer to employer and to other ports. However, the Ports and Waterways Ordinance expressly states that a registration as a port worker is only valid in the port for which it was issued.

1647. The Port Authority of Giurgiu and the Administration of the Navigable Canals informed us that self-handling is prohibited²²¹³. They also mention a restriction resulting from the mandatory use of port workers for non-port work. We could obtain no further explanation.

1648. All four Port Authorities that responded to our questionnaire assert that applicable rules on employment of port workers are properly enforced. Another expert said that the rules are unclear and have lacunae.

- Restrictive working practices

1649. In the Constanța Port Authority's reply to the questionnaire, the following restrictive working practices are listed:

- limited working days;
- inadequate duration of shifts;
- late starts, early knocking off;
- unjustified interruptions of work and breaks;
- unauthorised absences;
- overmanning;
- inadequate composition of gangs;
- ban on mobility between hold and hold, ship and ship, ship and shore and between shore jobs.

These practices are, however, not considered a major competitive disadvantage.

²²¹³ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

- (a) *All longshore activities.*
- (b) *Exceptions:*
 - (1) *Operation of specialized shipboard equipment, and*
 - (2) *Loading and discharge of cargo requiring special operations.*

1650. The Port Authority of Giurgiu and the Administration of the Navigable Canals indicate that the following restrictive working practices are applied in their ports:

- limited working days and hours;
- late starts and early knocking off;
- limitations on use of new techniques.

According to both respondents, these issues do not result in major competitive handicaps however.

- Issues relating to working conditions and health and safety

1651. According to the union FNSP's website, company-specific collective bargaining agreements tend to lower the level of working conditions set out in the sectoral agreement for the transport sector.

1652. In 2008, a large number of container terminal workers in Constanța went on strike over working conditions. They complained that, when hired five years earlier, people were promised that the work would be done according to European standards and that soon (western) European wages would be paid, but that the latter had not happened. According to the workers, the only increase was an increase in pressure of work, together with an increase in numbers of containers, which had to be shipped or unloaded per shift, and an increase in over-time, which was still paid without any bonus payments. One of their most important demands was the adherence to the standard working-time. A media report described this issue as follows:

The terminal runs on a 12/24-hours shift-scheme, which means that a single shift is twelve hours long, after that the worker has got a 24-hours break. After each fourth shift there is a break of 48 hours. The workers have to switch constantly between day- and night-shift. The management does not stick to this scheme, workers are often called to work on their day off; they are supposed to start work within an hour. They have to be available on their mobile phones at all times. If they don't answer the phone the management puts it as 'unmotivated attitude', meaning that in the 'cartea de munca', the employee's record book, the remark 'absent without valid excuse' will be entered. After three of these 'unauthorised absences' you get the sack. The striking workers tell that due to being permanently 'on call' they are not able to make plans for

*thier free time with their families. Or as a docker puts it straight: "The work fucks you up and you are not even paid properly for it"*²²¹⁴.

After the first week of the strike, the leadership of the trade union confederation Cartel Alfa stated about the situation: 'We cannot possibly accept that huge profits are made without any incentive for the workers, who are treated like slaves at the beck and call of troubled-waters profiteers'. Cartel Alfa demanded an emergency fact-finding inspection by the Labour Inspectorate into the operations of the terminal, alleging breaches of the Labour Code, including the use of illegal work during the strike.

After 12 and a half days of strike, and after 6 days of collective bargaining, the terminal management and the FNSP trade union agreed on a wage increase amounting to 35-45 per cent, one extra day of annual leave and a regular working schedule of 12 hours in each 24 or 48 hours. On the shift system, the strikers were ultimately unable to prevail. Reportedly, it was only noted down that the shift system of 12/24 and 12/48 (*i.e.* twelve hours work, 24 hours break, 12 hours work, 48 hours break) must be adhered to. Also, a list was to be compiled of all the workers generally willing to work overtime, thus making themselves available to the company at all times. Refusing overtime will apparently not be penalised. Extra pay for overtime was not arranged. And shift cancellations during low periods will still not be paid²²¹⁵. Yet, the leader of FNSP commented on the agreement:

*the first to gain from this will be the company itself, because the workers will be more motivated, better fed, healthier, more devoted and more faithful to the company, and this will boost work efficiency and profits*²²¹⁶.

1653. According to the Port Authority of Constanța, the following sub-standard or otherwise unacceptable labour conditions prevail:

- job insecurity;
- temporary unemployment;
- unfavourable employment practices;
- lack of social security;
- unhealthy working conditions;
- unsafe working conditions;
- lack of training.

²²¹⁴ See Cisel, A., " DP World – Europe's Eastern Gateway blockiert: Streik im Hafen von Constanta", 20 July 2008, <http://archiv.labournet.de/internationales/rumae/constantia.html>; X., "DP World - Europe's Eastern gateway blocked: Strike in the docks of Constanta", 22 July 2008, <http://archives.econ.utah.edu/archives/aut-op-sy/2008m07/msg00036.html>; see also Ouared, S., "Dockers d'Alger et de Constanza (Roumanie) Le capitalisme esclavagiste des Emirs du Golfe à visage découvert", 8 August 2009, <http://www.alger-republicain.com/spip.php?article18>.

²²¹⁵ Cosel, A., "DP World Constanta South Container Terminal: The strike has ended", 2 August 2008, http://archiv.labournet.de/internationales/rumae/constantia3_engl.html.

²²¹⁶ See Chivu, L., "Container terminal workers get pay rise in deal following strike", 9 September 2008, <http://www.eurofound.europa.eu/eiro/2008/08/articles/ro0808029i.htm>.

1654. On the basis of the questionnaire, the Port Authority of Galati identified the following sub-standard or otherwise unacceptable labour conditions:

- job insecurity;
- lack of social security;
- unhealthy working conditions;
- unsafe working conditions;
- lack of training.

1655. The Port Authority of Giurgiu and the Administration of Navigable Canals, too, mention problems relating to job insecurity and temporary unemployment.

1656. In the light of the foregoing it may sound surprising that all four responding Port Authorities confirmed that rules on health and safety in port labour are properly enforced.

1657. For want of port labour-specific statistics, it is hard to draw any conclusion on the safety level in ports. However, media reports suggest that in Romanian ports, too, accidents regularly do occur. In 2010, for example, a port worker died after being crushed by a 20 tonne-steel coil which fell from a hoist in the port of Constanța, and his colleague was severely injured²²¹⁷.

1658. In 2012, the media reported about the bad state of repair of the drinking water network in the port of Constanța which prevents port workers from drinking tap water or taking a shower²²¹⁸. We are unaware of which authority bore responsibility for this situation.

²²¹⁷ Cical, F., "Docheri striviți de o rolă de 20 de tone", *Telegraf* 24 February 2010, http://www.telegrafonline.ro/1266962400/articol/113185/docheri_striviti_de_o_rola_de_20_de_tone.html.

²²¹⁸ Tița-Călin, I., "Mii de docheri din portul Constanta sunt nevoiti sa bea apa scumpa, de la dozor", *Cuget Liber* 31 May 2012, <http://www.cugetliber.ro/stiri-economie-mii-de-docheri-din-portul-constanta-sunt-nevoiti-sa-bea-apa-scumpa-de-la-dozator-133455>.

9.18.7. Appraisals and outlook

1659. In 2005, an EU-funded project on the development of competition authorities identified transport, including ports, as an economic sector which is essential for the Romanian economy from the competition point of view. The Report stressed the importance of free and non-discriminatory access to ports and referred to the then still pending proposal for an EU Port Service Directive including its provisions on free access to port services and self-handling²²¹⁹.

1660. In 2010, the Romanian Competition Council decided to open a sector inquiry into ancillary port services, with a particular attention to stevedoring services and ship's agency services in order to identify and sanction alleged anticompetitive practices²²²⁰.

1661. According to all four Port Authorities that filled out the questionnaire, the current port labour regime is satisfactory and offers sufficient legal certainty. They also agreed that the current relationship between port employers and port workers and their respective organisations can be described as good, with the exception, however, of the Administration of the Navigable Canals, who label these relations only 'satisfactory', because the remuneration of port workers is inadequate.

1662. For the Port Authority of Constanța, the port labour regime has a positive impact on the competitive position of the port, especially because suitably qualified employees reduce the number of accidents. The Port Authority considers the port of Rotterdam a model.

The Port Authority of Giurgiu thinks that its port labour system does not impact on port competitiveness at all, yet mentions Constanța as the preferable model.

The Administration of the Navigable Canals states that the current regime of port labour impacts negatively on its competitive position. They also refer to Rotterdam as a best practice.

²²¹⁹ See X., "The list of sectors essential for the Romanian economy from the competition point of view", Bucharest, 2005, http://www.adrvest.ro/attach_files/Esential_sectors_in_Romanian_economy_1146141250.pdf, 10-12, paras 27-31.

²²²⁰ OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>, 262.

1663. An individual expert from the sector of river ports said that there is no need whatsoever to set up Port Labour Agencies and that port operators should be free to choose their workers. Trade union FSNP advocates the establishment of these Agencies because it wishes to gain full control over the labour market. Still according to our informant, the private port operators do not support the creation of such Agencies. Casual employment of pool workers is a thing of the past as it is incompatible with the use of modern port technologies and equipment and the need for special skills which can only be acquired through training, which the cash-strapped Agencies would be unable to provide anyway. Furthermore, workers should be free from the pressure to join a union, and they will feel more secure if they are employed under a normal employment contract for an indefinite term. Moreover, the trade unions are constantly quarelling among themselves. In Galati, one experiment with an special agency for temporary workers failed as the unqualified workers were causing damage to port equipment. This agency had not been established on the basis of the Ports and Waterways Ordinance, but of general laws.

1664. To an extent, the Port Authorities of Romania would favour future EU initiatives in the field of port labour.

The Port Authority of Constanța mention the possibility of adopting minimum rules concerning port operations.

According to the Port Authority of Galati, a good practice manual could be adopted at EU level.

The Port Authority of Giurgiu and the Administration of the Navigable Canals believe that in the field of port labour, every port should apply the same rules.

9.18.8. Developments between January 2013 and September 2014

1664A. According to information obtained anonymously, in 2013 the Labour Ministry withdrew the classification of a large part of port work as work to be performed under special conditions, entitling workers to early retirement.

1664B. In August 2013, the labour inspection of Romania organised and coordinated an inspection campaign on health and safety at work and labour relations. The goal was to verify the contractual relationships and working conditions of the workers operating in the port of Constanța.

9.18.9. Synopsis

1665.		
SYNOPSIS OF PORT LABOUR IN ROMANIA²²²¹		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 6 ports • Landlord model • 39,5m tonnes • 16th in the EU for containers • 67th in the world for containers • Appr. 35 employers (?) • 4,187 port workers • Trade union density: 60-100% (?) 	<ul style="list-style-type: none"> • <i>Lex specialis</i> (Ports and Waterways Ordinance and Regulations) • Party to ILO C137 • Company CBAs • Reforms between 1999 and 2010 • Port operators must be authorised • 2 categories of workers: <ul style="list-style-type: none"> (1) permanent and temporary workers employed by authorised operator (2) workers employed by Port Labour Agency (pool) • All port workers must be registered by Port Authorities • Port Labour Agencies must be established for Constanta, Midia and Magalia • No hiring halls • Criminal sanctions 	<ul style="list-style-type: none"> • Port Labour Agencies not operational • Port Labour Agencies not accepted by all parties • Closed shop in Constanta (?) • Ban on self-handling • Restrictive working practices • Job insecurity
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Two competing training providers (Port School in Constanta, CNCIR) 	<ul style="list-style-type: none"> • Training requirement for poolin national law but no implementing regulations • Port Labour Agencies must provide training 	<ul style="list-style-type: none"> • Lack of training
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No specific statistics 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • No Party to ILO C32 or C152 	<ul style="list-style-type: none"> • Lack of statistics • Unsafe and unhealthy working conditions

²²²¹ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.19. Slovenia

9.19.1. Port system²²²²

1666. The most important port and, in fact the only cargo port, of Slovenia is the port of Koper. As a multi-purpose port, it serves mainly the Slovenian, Austrian, Italian, Hungarian and Slovakian markets.

In 2012, the port of Koper handled 16.9 million tonnes of maritime goods²²²³. In the container trade, in 2011 Slovenia held the 17th position in the EU and the 73th in the world²²²⁴.

1667. The primary port infrastructure of the port of Koper is state-owned. The Republic of Slovenia has granted the company Luka Koper ('Port of Koper') a concession to manage, develop and maintain this infrastructure. The Republic of Slovenia holds 51 per cent of the shares in Luka Koper. In total, some 67 percent of the shares are state-controlled. Luka Koper is listed on the Ljubljana Stock Exchange.

1668. Through a number of entities forming part of the Luka Koper Group, Luka Koper provides all cargo handling services in the port itself. More in particular, it operates 12 different port terminals organised in 5 independent profit centres. As a result, there is no competition from third parties in the cargo handling market at Koper. In addition, the Luka Koper Group comprises a number of associated and jointly-controlled companies. The latter do not perform cargo handling services.

²²²² For general information on the port of Koper, see www.luka-kp.si where detailed annual and interim reports are posted; see also ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 46-70; for statistics, see also http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

²²²³ See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

²²²⁴ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

9.19.2. Sources of law

1669. The Slovenian Maritime Code of 23 March 2001²²²⁵ contains a number of basic provisions on the legal regime of ports (Art. 32 *et seq.*).

The Port of Koper is managed under Decree No. 721-9/2008/11 of 10 July 2008 on the management of the cargo port of Koper, port operations and the granting of concessions for the management, administration, development and maintenance of port infrastructure in the port (hereinafter: 'Port Decree')²²²⁶ and laid a basis for the granting of a concession by the State to Luka Koper. Neither the Decree, nor the Concession Agreement regulates port labour.

The port of Koper was declared open to international maritime traffic by a Decree of 30 January 2002²²²⁷.

1670. Port labour in Slovenia is governed by general labour law. The main legislative instrument is the Employment Relations Act of 24 April 2002²²²⁸.

1671. Slovenia has no specific laws or regulations on port labour.

According to a 2002 ILO survey, neither Slovenian law, nor Slovenian practice provides a definition of port labour²²²⁹. The absence of such a definition was confirmed in the replies to our questionnaire.

1672. Port labour in Slovenia is governed by general laws and regulations on professional qualifications and on health and safety. The most important instruments are the Health and Safety at Work Act of 24 May 2011²²³⁰ and the National Professional Qualifications Act of 20 December 2006²²³¹.

²²²⁵ Pomorski Zakonik (PZ).

²²²⁶ Uredba o upravljanju koprskega tovornega pristanišča, opravljanju pristaniške dejavnosti, podelitvi koncesije za upravljanje, vodenje, razvoj in redno vzdrževanje pristaniške infrastrukture v tem pristanišču.

²²²⁷ Uredba o določitvi pristanišč, ki so namenjena za mednarodni javni promet.

²²²⁸ Zakon O Delovnih Razmerjih (Zdr).

²²²⁹ International Labour Conference (90th Session 2002), *General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, <http://www.ilo.org/public/english/standards/re/m/ilc/ilc90/pdf/rep-iii-1b.pdf>, 48-49, para 110.

²²³⁰ Zakon O Varnosti In Zdravju Pri Delu (ZVZD-1).

²²³¹ Zakon o nacionalnih poklicnih kvalifikacijah.

Slovenia transposed Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers as late as 2006²²³².

1673. Slovenia has ratified neither ILO Convention No. 137, nor ILO Convention No. 152. Apparently, the country is still bound by ILO Convention No. 32²²³³.

1674. On 18 September 2008, a new collective labour agreement was concluded between Luka Koper and the two representative trade unions²²³⁴. The collective labour agreement deals with:

- the contract of employment;
- working time, breaks and vacation;
- education and training;
- health and safety;
- responsibility of workers to meet their obligations;
- wages and other compensations;
- activities of trade unions.

The collective labour agreement does not include a definition of port labour. The agreement applies to all workers employed in the company Luka Koper (with some exceptions for employees with individual contracts and manager contracts). Formally, it is not a nationwide collective agreement; therefore it was not registered with the Ministry of Labour. The agreement does not apply to any other companies than Luka Koper, not even to its associated companies.

According to Luka Koper's Annual Report for 2011, the Port Authority called upon the representative trade unions to give their consent to the publication of the collective agreement at the website of Luka Koper, but the trade unions responded negatively²²³⁵.

²²³² Pravilnik o varnem nakladanju in razkladanju ladij za prevoz razsutega tovora, 18. maja 2006.

²²³³ According to the website of ILO, since 29 May 1992.

²²³⁴ On these unions, see *infra*, para 1689.

²²³⁵ Port of Koper, *Annual Report 2011*, <http://www.luka-kp.si/eng/investors/annual-reports>, unpagged, item 6.1.

9.19.3. Labour market

- *Historical background*

1675. Whereas the port of Koper can pride itself on a centuries old history dating back to Roman times, the modern Port Authority of Koper was only established in 1957. Under the socialist constitutional system, it was run as a 'socially owned and managed company'²²³⁶.

Through a protracted process which lasted from 1991 to 1996, the Port Authority was transformed into a joint stock company and partly privatised.

In 2008, the Slovenian Republic granted Luka Koper an exclusive concession to operate the port.

- *Regulatory set-up*

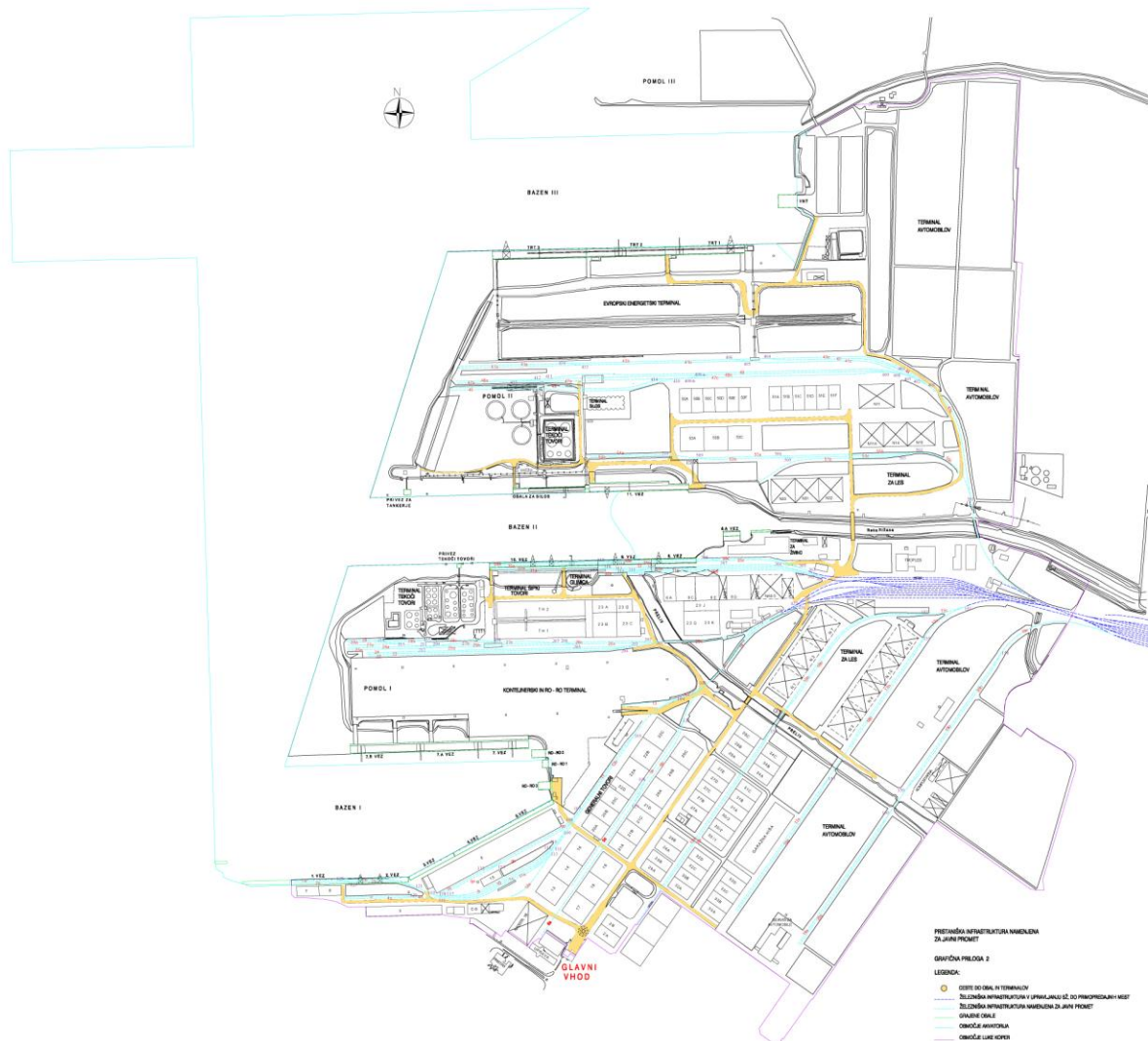
1676. The Slovenian Maritime Code mentions the provision of stevedoring services among the duties of a port operator (Art. 41).

1677. The Port Decree expressly stipulates that the concessionaire of the port of Koper enjoys an exclusive right to perform cargo and passenger handling services including, *inter alia*, stevedoring, warehousing (as far as it is ancillary to stevedoring), intra-port transportation and the handling of baggage; moreover, the concessionaire is entitled to perform additional logistics services necessary for the smooth and efficient provision of services (Art. 10). Luka Koper enjoys no exclusive right to provide logistics services, which can also be performed by third parties which comply with applicable port regulations. The scope of these rights is further defined in the Concession Agreement (see Art. 5.2).

²²³⁶ See Gestrin, F., "Pregled pomorstva v slovenskem primorju", in X., *Pomorski Zbornik*, II, Zagreb / Zadar, Institut za Historijske i Ekonomske Nauke, 1962, 1489-1515.

Figure 112. The port area of Koper as defined in the Slovenian Port Decree, upon its adoption in 2008.

PRILOGA 2



1678. According to its Statute, the primary objective of Luka Koper d.d. is "to engage in profit generating activities which shall maximize the value of the company", in accordance with the Companies Act (Art. 2).

The company's employees are represented in the Supervisory Board by three members out of nine (Art. 16 of the Statute). The company's Management Board is composed of four

members²²³⁷: the President, the Vice-President, one member and the Workers Director. The latter represents the interests of employees in relation to personnel and social issues (Art. 27). In accordance with the Law on worker participation in profits and on condition that a special agreement is concluded between the company and representative trade unions, a portion of the company's profits may be disbursed to employees (Art. 39).

1679. As we have mentioned above²²³⁸, no specific port labour legislation applies in Slovenia. Port labour is regulated neither by the Maritime Code nor by the Port Decree.

1680. As all cargo handling services (and, for that matter, passenger embarkation and disembarkation services) are directly provided by Luka Koper Group, there is no further requirement on individual employers of port workers to join an employers' organisation or association.

1681. Port workers in Slovenia do not have to be registered and are not employed under a pool system. Port workers in Slovenia do not enjoy a specific legal status²²³⁹ and the law sets out no specific qualification criteria. No distinction is made between workers at the ship/shore interface and warehouse or logistics workers. However, the Collective Agreement sets out a classification of workers according to their education level (Art. 7).

1682. As a rule, port workers are employed on a permanent basis (contracts for an indefinite term), but there are also casual temporary workers (fixed-term contracts) and occasionally employed workers.

By end 2012, 97 per cent of the Group employees and 93 per cent of the Company employees held a permanent employment contract. The average salaries are said to exceed the Slovenian average²²⁴⁰. Job categories and their pay rates are defined in the collective agreement.

There is no hiring hall in the port of Koper.

The Collective Agreement contains no mandatory manning scales.

²²³⁷ Currently, the Board is composed of only 3 members, including the Workers Director.

²²³⁸ See *supra*, para 1671.

²²³⁹ Jerman, B., "Some labour and social questions in the European Union port sector", *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 2009, (986), 1004.

²²⁴⁰ Port of Koper, *Annual Report 2012*, <http://www.luka-kp.si/eng/investors/annual-reports>, 81.

Temporary workers can only be employed when conditions set out under general labour law or applicable collective agreements are met²²⁴¹. Workers can be hired from temporary work agencies, again on condition that the rules of general labour law are complied with.

1683. In the case of unemployment, port workers are entitled to the same unemployment benefits as other workers.

1684. As a rule, port workers can be transferred temporarily to another employer. Here as well, general labour law provisions must be reckoned with.

As Slovenia has only one commercial port, the hypothesis of a temporary transfer to another port has no relevance.

1685. Practically, laws on employment may be enforced by the public prosecutor, the police, the national employment authorities (Labour Inspectorate), the employer and the unions.

1686. Luka Koper mentions that if a port terminal is transferred to a new operator or employer, the latter is not obliged to take over the port workers²²⁴². In this respect, it should be noted that Luka Koper cannot transfer its concession to another party, but also that this concession has a limited duration.

- Facts and figures

1687 All port workers are employed by Luka Koper.

In addition, Luka Koper has approximately 40 subcontractors, who are either independent entrepreneurs (*samostojni podjetniki*) or limited liability companies (*družbe z omejeno odgovornostjo*). Luka Koper stresses that these subcontractors operate on the basis of service contracts and cannot be considered labour agencies. It added that the Labour Inspectorate endorses this. Luka Koper further specified that subcontractors are used for the following tasks:

²²⁴¹ See *infra*, para 1703.

²²⁴² See, however, on general EU law in this respect, *supra*, para 165.

- loading and unloading of cars;
- movement of cars;
- unskilled and skilled cargo handling work (the latter includes on-board lashing and securing on board);
- operation of port equipment;
- checking of containers.

In addition, some easier warehousing and weighing jobs are performed by invalid workers of the sister company Luka Koper Inpo d.o.o.

1688. In 2011, the Port of Koper employed a staff of 729, of whom some 352 workers can be considered port workers for the purposes of the present study²²⁴³.

*Table 100. Number of employees and port workers (indicated with *) at the Port of Koper, 2011 (source: Luka Koper)*

Job category	Number of employees
Foreman*	47
Dispatcher	69
Fireman / Security man	12
Controller*	9
Stevedore*	23
Forklift driver*	23
Operator manager	34
Technologist*	22
Warehouseman*	69
Security man	13
Salesman	16
Crane operator*	159
Lawyer	3
Accounting clerk	3
Member of the Management Board	4
Shift manager*	30
Unit manager	21
Junior expert	26
Senior expert	26
Other	150
Total	729
of whom port workers (marked with *)	352

²²⁴³ On the definition of a port worker, see *supra*, para 8 *et seq.*

In addition, Luka Koper's subcontractors employ some 290 (or, according to another source, 550) workers.

As a result, the overall number of port workers in Koper can be estimated at between 640 and 900 persons.

1689. 363 out of 729 staff at Luka Koper are unionised, which represents 46.1 per cent (which is higher than the national average of 30 per cent²²⁴⁴). Luka Koper has no information on the union density among port workers as defined above. This percentage can only be determined on the basis of data on the deduction of union membership fees for individual workers, which would be at odds with rules on the protection of privacy.

According to Luka Koper, the main trade unions are the Trade Union of Maritime Crane Operators of the Port of Koper (Sindikat Žerjavistov Pomorskih Dejavnosti – Luka Koper, SŽPD) with 268 members and the IDC-affiliated Trade Union of Slovenian Port Workers (Sindikat Pristaniških Delavcev Slovenije, SPDS) with 95 members. These organisations are officially considered representative trade unions. The former union is affiliated to the federation Alternativa (Slovenska Zveza Sindikatov Alternativa).

During a major industrial dispute in 2011, the workers employed by the subcontractors of Luka Koper were defended by the Trade Union of Performers of Port Services (Sindikat izvajalcev pristaniških storitev, SIPS) and the Invisible Workers of the World (IWW)²²⁴⁵.

9.19.4. Qualifications and training

1690. In 2006, Luka Koper, in cooperation with the National Institute for Vocational Education and Training, developed a professional standard (National Vocational Qualifications or Nacionalnih Poklicnih Kvalifikacij, NPK) for crane operators. Also relevant is the national professional qualification of NPK mechatronic which is based on a combination of engineering, electronics and informatics skills²²⁴⁶.

²²⁴⁴ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

²²⁴⁵ See *infra*, para 1706.

²²⁴⁶ Luka Koper, *Annual Report 2006*, <http://www.luka-kp.si/eng/investors/annual-reports>, 63.

The National Professional Qualifications Act of 20 December 2006 regulates the acquisition of professional qualifications which are necessary for the exercise of a profession or of individual sets or responsibilities within a profession at a specified level of difficulty.

On the basis of this Act, National Professional Qualification Standards were developed for, among others, forklift drivers and warehousemen, while the standards for crane drivers are reportedly still in preparation. Awaiting their adoption, general principles are applied with respect to the latter category of workers.

The general regulations on qualifications are also applied by the Luka Koper Group. Pursuant to the National Professional Qualifications Act, specific training and exams are now mandatory for the handling of certain types of equipment in the port.

However, no specific National Professional Qualification Standards were developed for general port workers. As a result, there are today no specific regulations or curricula on the training of general port workers in Slovenia.

1691. The general Health and Safety at Work Act obliges all employers to provide training on health and safety matters²²⁴⁷.

The Act also provides that education and training concerning health and safety at work shall form an integral part of educational programmes provided by universities and schools of all types and levels and that training for safety and health at work shall form an integral part of the induction of workers (Art. 16). It further stipulates, *inter alia*, that employers must ensure that each employee receives adequate health and safety training on recruitment, in the event of a transfer to a new workplace, in the event of the introduction of any new technology or new means of work, and in the event of any modification of the work process which may alter the level of safety at work. Health and safety training must be adjusted to the specificities of the workplace and carried out according to a programme which shall be, where appropriate, renewed and modified with regard to new forms and types of threat (see Art. 38).

Luka Koper confirmed that it adheres to these requirements and that it monitors whether its workers are fit to carry out their job.

1692. Practically speaking, training of port workers is to a large extent organised by Luka Koper itself and training was made compulsory for all categories of port workers employed by it. As there are no other cargo handling companies in the country, there are no other training providers either, and Luka Koper is unable to outsource this activity. However, other institutions do provide training for general jobs such as truck or forklift driver.

²²⁴⁷ See *infra*, para 1695.

Training and certification of workers employed by Luka Koper's subcontractors are a responsibility of the latter, but Luka Koper provides safety training for these workers. Exceptionally, if no training can be procured from external partners, Luka Koper also organises specific training on the use of specific port technologies.

1693. Replying to the port labour questionnaire, Luka Koper informed us that the following types of formal training are available and indeed compulsory:

- continued or advanced training after regular educational programme;
- induction courses for new entrants;
- courses for the established port worker;
- training in safety and first aid;
- specialist courses for certain categories of port workers such as crane drivers, container equipment operators, ro-ro truck drivers, forklift operators, lashing and securing personnel, tallymen, signalmen and refer technicians.

1694. Today, the level of education of Luka Koper's employees is highly diverse²²⁴⁸.

On its website, Luka Koper informs the public that it is a learning organisation, devoting, in 2009, on average 16 hours to functional training per employee, and that employees participate in more than 150 different forms of education²²⁴⁹.

In its 2012 Annual Report, Luka Koper mentions that it realised 16.2 hours of training per employee in the parent company, and 15.2 in the Group. Over 81 per cent of training was organised in-house²²⁵⁰. We have no specific information on the training of port workers as defined in the present study.

²²⁴⁸ See detailed information in Port of Koper, *Annual Report 2011*, <http://www.luka-kp.si/eng/investors/annual-reports>, unpaginated, item 19.4.

²²⁴⁹ <http://www.luka-kp.si/eng/about-us/employees/education-and-training>.

²²⁵⁰ Port of Koper, *Annual Report 2012*, <http://www.luka-kp.si/eng/investors/annual-reports>, 79.

9.19.5. Health and safety

- Regulatory set-up

1695. The Health and Safety at Work Act, which also applies in ports, provides, *inter alia*, that every employer has a duty to ensure the health and safety of his employees in every aspect related to the work. Within the context of his responsibilities, the employer must take the measures necessary to ensure safety and health of workers and other persons present in the work process, including prevention, elimination and management of occupational risks, provision of information and training of workers, as well as provision of the necessary organisation and means (Art. 5). The Act further elaborates on these basic duties of employers and also describes the rights and duties of workers, for example in relation to the observation of health and safety measures and the use of personal protective equipment (see Art. 12).

1696. Since the entry into force of the Health and Safety at Work Act 2011, the Rules on Hygienic and Technical Safety Measures for Work in Port Transport of the SFR of Yugoslavia have ceased to apply (Art. 83 of the Act)²²⁵¹. Consequently, today no specific rules on health and safety in port labour apply.

1697. The Concession Agreement charges Luka Koper with, *inter alia*, maintaining order and safety in the port (Art. 4.2.1) and the provision of first aid services (Art. 4.2.4.2).

1698. Luka Koper maintains its health and safety at work system in accordance with the Guidelines of the international standard OHSAS 18001:2007²²⁵².

1699. Luka Koper informed us that health and safety rules are enforced by the national employment authorities (the Labour Inspectorate) and the terminal operator. Accidents resulting in serious injuries and fatal accidents must be reported to the Labour Inspectorate²²⁵³.

²²⁵¹ See also Art. 65 of the previous Health and Safety at Work Act of 30 June 1999 which provided that, until the adoption of regulations governing health and safety at work, said Rules remained in force.

²²⁵² Port of Koper, *Annual Report 2011*, <http://www.luka-kp.si/eng/investors/annual-reports>, unpagged, item 19.3.

²²⁵³ On the latter, see *infra*, para 1700, footnote.

- Facts and figures

1700. According to the Ministry of Labour of Slovenia²²⁵⁴, employers reported the following occupational accidents between 2009 and 2011²²⁵⁵:

Table 101. Number of occupational accidents in the port of Koper, 2009-2014 (source: Port of Koper through the Labour Inspectorate of the Republic of Slovenia)

	2009	2010	2011	2012	2013	2014 (Jan-Sep)
Luka Koper	22 (all minor)	18 (1 fatal and 4 major)	18 (all minor)	17 (1 major, others minor)	20 (1 major, others minor)	7 (all minor)
Luka Koper Inpo (i.e. a separate legal entity employing disabled persons)	7 (all minor)	6 (all minor)	10 (all minor)	6 (all minor)	3 (all minor)	8 (all minor)
Subcontractors operation in the port of Koper	31 (all minor)	48 (all minor)	47 (all minor)	50 (all minor)	39 (all minor)	12 (all minor)

These figures do not distinguish between port workers in the strict sense and other employees. In the same period, no occupational diseases were officially reported.

The Labour Inspectorate contributed the following figures:

²²⁵⁴ According to the statistics of Luka Koper, there were 22 occupational accidents in 2009 (18 in 2010), and between 2009 and 2010 1 fatal accident and 6 accidents resulting in serious physical injury occurred. See also the figures for January-March 2012 in Luka Koper Group, *Non-audited interim report of Luka Koper d.d. and Luka Koper Group. January - March 2012*, <http://www.luka-kp.si/eng/investors/annual-reports>, 30. It also informed us that in the first eight months of 2011, 53 work injuries occurred, which number fell to only 43 in the same period in 2012.

²²⁵⁵ Pursuant to the Health and Safety at Work Act 2011, employers are obliged to report immediately to the Labour Inspection any fatal accident at work or any accident at work rendering a worker incapable of work for more than 3 working days, or any collective accident, dangerous occurrence or an established occupational disease (Art. 41(1)).

Table 102. Number of occupational accidents in the port of Koper, as reported to the Labour Inspectorate, 2002-2014 (source: Port of Koper through the Labour Inspectorate of the Republic of Slovenia)

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014 (Jan-Sep)
Port of Koper d.d.													
Occupational accidents	28	35	49	34	38	44	28	29	24	28	23	23	15
Fatalities	0	0	0	0	0	0	0	0	1 ²²⁵⁶	0	0	0	0
Subcontractors													
Occupational accidents	18	23	30	36	25	56	46	46	54	52	52	48	20
Fatalities	0	1	0	0	2	2	0	0	2	0	0	1	0

Table 102A. Number of occupational accidents in the port of Koper, as officially reported to the Labour Inspectorate, 2004-2014 according to Framework Directive 89/391 (source: Labour Inspectorate of the Republic of Slovenia)

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014 (1-9)
Port of Koper d.d. + Luke Koper Inpo (i.e. a separate legal entity employing disabled persons)													
Occupational accidents			44 +18	38 +6	20 +14	22 +1	17 +2	10 +3	11 +6	9 +5	9 +4	21 +2	5 +6
Fatalities			0	0	0	0	0	0	1	0	0	0	0
Subcontractors													
Occupational accidents (without "external" enterprises)	/	/	0	3	0	1	6	4	0	4	6	5	1
Fatalities	/	/	0	0	0	0	0	0	0	0	0	0	0

²²⁵⁶ Commuting accident.

9.19.6. Policy and legal issues

- Restrictions on the provision of port services and the hiring of port workers

1701. Replying to our questionnaire, the port of Koper reports that service providers from other EU countries are allowed to establish themselves in the port, and they also enjoy a right to offer services in it. Moreover, these service providers can freely choose their workers.

In this respect, we should again point out that the market for cargo handling in the port of Koper is organised as a legally protected monopoly which is based on a concession for a fixed term granted by the State to Luka Koper. Prior to this concession, Luka Koper and its predecessors constructed the port facilities and also invested in its equipment.

1702. Still in response to the port labour questionnaire, Luka Koper mentions two restrictions that prevail in the port labour market: a ban on self-handling²²⁵⁷ and limited working days and hours. However, the Port does not consider these restrictions a competitive disadvantage. What is more, the limitation of working time is also regarded as beneficial, because it enhances productivity and helps reduce accident rates.

1703. Still, Luka Koper believes that the current regime of port labour is unsatisfactory, because it does not allow sufficient flexibility in the event of extra demand for workers in peak times. Slovenian labour law does not contain specific provisions on the employment of temporary workers in case of an unexpected increase in the work volume. Neither does it contain specific rules for the port sector.

Slovenian labour legislation leaves room for further regulation of such matters through collective agreements. However, collective agreements must always conform to mandatory provisions of general labour legislation. This is the case, for example, with the rules on working time. The Employment Relations Act obliges employers to notify the workers in writing on the temporary redistribution of working time not later than one day before the redistribution of working time of an individual worker and three days before the redistribution of working time of more than ten workers (Art. 147(3)). In practice, however, it is difficult to predict an increase

²²⁵⁷ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) *All longshore activities.*

(b) *Exceptions:*

(1) *Opening and closing of hatches, and*

(2) *Rigging of ship's gear.*

The ban on self-handling is confirmed in European Sea Ports Organisation, *Factual Report on the European Port Sector*, Brussels, 2004-2005, 161.

in the volume of port work 3 days in advance. Also, in case of an increased volume of work, Slovenian legislation permits the employment of additional workers for a definite time on the basis of fixed-time contracts. However, Slovenian courts are reluctant to accept the emergence of an increase of work and for this reason often classify these fixed-time contracts as permanent employment contracts²²⁵⁸.

- Issues concerning working conditions, especially health and safety and training

1704. Responding to our questionnaire, Luka Koper informed us that, whereas the current relationship between port employers and trade unions can be described as satisfactory, there are some problems among certain groups of workers (in particular among qualified port workers operating port equipment such as cranes and transtainers) who enjoy a strong bargaining position because they have the power to disrupt port operations and who have managed to obtain better conditions than other workers.

Luka Koper also mentions the job insecurity of temporary workers which might become a serious issue in times of economic crisis. However, the policy of Luka Koper is to promote permanent employment as much as possible. It also stated that Slovenian law on the termination of employment contracts is the second most protective for workers in the entire EU.

As regards the enforcement of general labour law provisions, Luka Koper did not report any specific issues. It confirmed that the rules on health and safety in the port of Koper are satisfactory and properly enforced. Recent inspections by the Labour Inspectorate revealed no significant infringements, and all minor issues could be solved. Luka Koper considers the lack of specific rules on port work problematic and identifies respect of working and rest times as the greatest difficulty.

In its Annual Report for 2011, Luka Koper states that recent HR measures involved increased in-house mobility of employees, the temporary introduction of a new crane operators' work organisation system, additional recruitments outside the HR annual plan, and intensive training of crane operators through the tutoring system²²⁵⁹.

1705. The Ministry of Labour / Labour Inspectorate informed us that it enforces labour legislation in the port "within its powers and within its objective abilities" and that its inspectors "consistently consider all received complaints and in cases of identified breaches act in

²²⁵⁸ Jerman, B., "Some labour and social questions in the European Union port sector", *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 2009, (986), 1003-1004.

²²⁵⁹ Port of Koper, *Annual Report 2011*, <http://www.luka-kp.si/eng/investors/annual-reports>, unpagged, item 19.

accordance with their powers". It states that applicable rules on health and safety are satisfactory and that they are properly enforced by the Labour Inspectorate. The latter may issue regulatory or prohibitory orders and file criminal complaints against employers.

However, the Labour Inspectorate have detected breaches of labour regulations in the port of Koper, among others breaches of rules on remuneration, payment of holiday pay, illegal employment, daily and weekly rest, *etc.* The Labour Inspectorate also detected inadequacies concerning proper safety training and the use of personal protective equipment. It mentions that it continuously carries out inspections in the port, including with the other service providers. These inspections will continue in the future, within the limits of available human resources and taking into account other priorities.

The Annual Report of Luka Koper for 2011 confirms that the Labour Inspectorate issued a regulatory order, demanding additional training of employees. Luka Koper states that it is trying "to decrease the number of accidents at work and at the same time to perform the work quickly and in a quality manner"²²⁶⁰. Recent training initiatives focused on the safe crossing of railway lines, the operation of forklifts, tractors and trucks and the appointment of traffic wardens.

1706. The information above should be interpreted against the background of a serious labour dispute that occurred in the port of Koper in the course of 2011²²⁶¹.

The crane operators' union SŽPD downed tools at Luka Koper because of a decline in working conditions, the breaking of maximum working hour restrictions and an unacceptable increase of the accident rate. Apparently, the immediate cause of the strike was the introduction of a new (yet only temporary) work regime with a team of 3 crane operators switching on 2 cranes in the course of 1 shift, whereas the previous regime was 2 operators working on 1 crane. The same regime would apply to transtainer drivers. The new system was based on a comparison of arrangements in other ports but the union vigorously opposed it and also demanded that crane,

²²⁶⁰ Port of Koper, *Annual Report 2011*, <http://www.luka-kp.si/eng/investors/annual-reports>, unpagued, item 19.3.

²²⁶¹ See, in addition to the background documents quoted below, Parisien, "Double Strike of Workers in Luka Koper (Port of Koper), Slovenia. Call for Support (Invisible Workers of the World)", 1 August 2011, <http://njetwork.org/Double-strike-of-Workers-in-Luka>; X., "Luka Koper to Fire Organisers of Crane Operators' Strike", *Slovenian Press Agency* 1 August 2011, <http://www.sta.si/en/vest.php?s=a&id=1661953>; X., "Negotiators in Seaport Strike Near Positions", *The Slovenia Times* 2 August 2011, <http://www.sloveniatimes.com/no-mercy-for-the-crane-operators-on-strike>; X., "Slovenian crane operators strike over health and safety", 3 August 2011, <http://www.itfglobal.org/news-online/index.cfm/newsdetail/6269/>; X., "No Mercy for the Crane Operators", *Diplomatic Corporate Services* 3 August 2011, <http://www.diplomatic-corporate-services.si/news/no-mercy-for-the-crane-operators/>; Parisien, "Workers on strike ever more determined", 3 August 2011, <http://njetwork.org/Workers-on-strike-ever-more>; Parisien, "Appeal of the Subcontracting Workers", 4 August 2011, <http://njetwork.org/Appeal-of-the-Subcontracting>; Parisien, "First negotiations between subcontracting workers and employers", 4 August 2011, <http://njetwork.org/First-negotiations-between>; X., "Strike of Crane Operators at Koper Port Ends (adds)", *Slovenian Press Agency* 6 August 2011, <http://www.sta.si/en/vest.php?id=1663528>; X., "Strike ends in victory for Slovenian crane operators", 17 August 2011, <http://www.itfglobal.org/news-online/index.cfm/newsdetail/6307/>;

vehicle and machinery operators, as well as foremen and warehousemen, working in the Fruit Terminal be paid a supplement due to their exposure to more difficult working conditions, that a number of functions such as crane operator, foreman and locomotive driver be occupied exclusively by employees of Luka Koper and that new Luka Koper employees be primarily recruited from the staff of port service providers. The union also opposed the cutting of breaks for crane operators from 2 hours to 1. The port workers organised in the trade union SPDS and non-unionised workers did not join the strike.

However, about one third of the workers employed by the port's subcontractors, organised in the non-representative trade union SIPS, went on strike as well, complaining about underpayment and unreasonable working hours and demanding working conditions and pay equal to those of employees of Luka Koper. Legally, the latter action was not an official strike, but rather a form of civil protest.

The issues at stake are clearly explained in the following note published on Luka Koper's website, where each initial union demand is followed by a reply by the Management of the Port²²⁶²:

Strike demands of Luka Koper's Union of Crane Operators - the standpoints of the Management Board of Luka Koper d.d.:

Crane operations within Luka Koper Group companies are currently performed under the 2-1 system, i.e. two crane operators per crane; this regime also extends to transtainers which are - for this purpose - also considered a crane. Within the breaks aimed at augmenting operator concentration, a crane operator may be asked to perform one-off tasks (such as adjusting container spreader grips and other such equipment, movements of containers within the storage area and similar small tasks) for a maximum duration of 30 minutes. Luka Koper d.d. cranes may only be operated by crane operators employed by Luka Koper d.d.

Decisions as to the organisation of work at Luka Koper d.d. are exclusively the competence of the company's Management Board. The Management Board decided upon a new organisational regime – which was proposed to the Union in February – in order to allow workers to take summer holidays and compensatory hours, as well as to bridge the period until the arrival of 13 additional crane operators. The interim measures are of a temporary nature, namely for a period of four months. In addition, further rewards to crane operators are also anticipated.

The Union demanded the immediate elimination of tractor trailers which were not fitted with adequate braking systems.

²²⁶² Luka Koper, "Strike demands of Luka Koper's Union of Crane Operators – the standpoints of the Management Board of Luka Koper d.d.", www.luka-kp.si. Union demands are in italic (bold in the original), replies are in regular (italic in the original).

A while ago, the major portion (11) of the inappropriate trailers were fitted with new safe breaking systems. The remaining 7 trailers were eliminated from service.

In order to guarantee the occupational safety of subcontractors within the port, the Union demanded that the company take immediate action to ensure all working hours are compliant with the provisions of the Employment Relationships Act RS.

In relation to subcontractors, this demand surpasses the company's competence, and falls within the field of external inspection. By amending its Rules on Internal Order, the company has established better control over the movement of port service providers' personnel within the port zone.

The Union demanded that crane, vehicle and machinery operators, as well as foremen and warehousemen, working in the Fruit Terminal are acknowledged and paid a supplement due to their exposure to more difficult working conditions; this for the entire period since the new collective agreement came into force.

Difficult working conditions are considered within job and work-post evaluation, and the current systematisation of work-posts was corroborated by the adoption of the new collective agreement in 2008. In June 2011, Luka Koper engaged in a further comprehensive review of operative work-posts and the respective working groups include representatives of both unions as well as the Workers' Council.

The Union demanded the immediate enforcement of the provisions of the Employment Relationship Act RS and the company's overtime agreement.

The March 2011 inspection did not establish any major deviations from the statutory provisions.

The Union demand that the Management Board immediately fully implement the findings of the commission for monitoring the enforcement of the collective agreement, and remunerate the pay escalator back-dated to 1st February 2011.

At its session of 20th May 2011, the Luka Koper Management Board endorsed the harmonisation of salaries in accordance with the rate of inflation. Employees will receive this balance with their August salaries.

The Union demanded that all management positions (from foreman and controller upwards) are occupied exclusively by employees of Luka Koper d.d.. In addition, rail track vehicles (locomotives) operating in the port zone should only be operated by drivers employed by Luka Koper d.d.

This demand usurps Management Board competences as to decision-making. In accordance with the human resource management strategy, which was adopted last

year and shall remain in force until 2012, Luka Koper employees shall continue to undertake the major portion of working processes within the Port of Koper.

The Union demanded that the Management Board ensures that all work posts less demanding than crane operator and port zone locomotive driver will be harmonised with the human resource management strategy 2010-2012, thereby ensuring the regular employment of an appropriate number of workers by the end of 2012.

As to the issue of personnel, certain employment positions were realised in late 2010 and early 2011. Additional recruitment is currently underway.

The Union demanded that new Luka Koper employees shall be primarily recruited from the staff of port service providers.

This demand usurps with (*sic*) the employer's legal right to select the most suitable candidates for work posts.

The Union demanded that foremen in charge of container movements are classified in a higher salary grade, due to the fact they also perform the tasks of a shift manager. Accordingly, they should be paid a 10% supplement for entire period since the new collective agreement came into force.

In May 2011, the Management Board adopted a resolution that foremen in charge of container movements were provisionally paid a 10% supplement for performing shift management tasks. Further to this, a cost-argued (*sic*) new systematisation, predicated on assessments as to work-load and professional responsibilities, should be prepared.

The Union demanded that the issue of holiday payments for shift workers - which was pointed out during previous industrial action – should be settled according to a standard system of working hours and holiday supplements for all employees (the same as in force for Slovenian Railways - SŽ).

The effective system at Luka Koper in no way breaches the provisions of labour legislation in relation to paid holiday.

The Union demanded that the rail container freight manipulator shall be afforded manager status due to the fact that he has been performing this job throughout his career at Luka Koper.

Said employee does not fulfil the education and qualification criteria to be afforded management status.

As a further background document, we quote in its entirety the document 'A Report to the State Labor inspection by the Union of Subcontracting Workers (SIPS) of Luka Koper (Port of Koper) on Strike', dated 2 August 2011²²⁶³:

Our union is the union of workers, employed by subcontractors of port services (SPPS) in Luka Koper. We have approximately 250 members.

In the port of Koper the unloading and reloading is performed by crane operators and supervisors, but also by workers, employed by so called "subcontractors" (as the management calls them). There are approximately 40 subcontractors, organized as "independent entrepreneurs" (samostojni podjetniki) or "companies with limited responsibility" (družbe z omejeno odgovornostjo). Those subcontractors employ approximately 550 workers that work in unloading and reloading of goods from the ships.

Our union is an urgent response to inhuman and horrifying working conditions that we, the subcontracting workers, have to endure since several years. Let us briefly sum up only the most common and most urgent breaches of the work legislation:

We don't have regular working time, so we have to be at the disposal of the employer 24 hours per day, seven days in a week, for the whole month during the entire year. All the time. We don't have a working schedule, we have to be available "on demand". We have to respond to the call of the employer within one hour. When we arrive to work we don't know when the work will be over. On quite (sic) regular basis we are obliged to make several shifts in a row, also 4 shifts at once, which makes 32 continuous working hours. Sometimes our work lasts for 10 consequent shifts, so that we work continuously for 3 to 4 days. We have to note at this point that the working hours of individual workers are evidenced in detail by entrance cards (the time of the entrance and exit of the worker), but also by port workers on individual work places. The total number of working hours of an individual worker amounts to 250 per month, in accordance with the needs of the port, but often we can make up to 300 or even 350 hours per month.

The same "flexibility", valid for the "regular working time", is applied also to the payment of the work done. Work contracts, usually printed on predefined forms, are incomplete, since they do not include provisions on additional payments (dodatki). This means that overtime work is payed (sic) the same as regular work, from 2,5 to 4 Euro per hour. Employers do not pay us transport expenses and our food expenses are "covered" with vouchers for the port canteen (in the value of 3 to 4 Euro). On our pay roll our income is accounted in the following manner: salary is shown as the prescribed minimum wage in regular working hours and the payment for overtime work is presented as transport expenses (even if the worker lives only 200 meters from the port), as additional payment for separate household and food expenses (in the maximum amount).

We believe that the work in the port through subcontractors is illegal. Namely, the working process is under exclusive supervision and leadership of the workers of Luka

²²⁶³ Parisien, "A Report to the State Labor inspection by the Union of Subcontracting Workers (SIPS) of Luka Koper (Port of Koper) on Strike", 2 August 2011, <http://www.njetwork.org/A-Report-to-the-State-Labor>.

Koper. Our employer is not in charge of our arrival to work and during the work we have no further contact with him, even if our work place changes.

We are constantly exposed to mobbing from the side of our employers but also from the workers, employed directly by Luka Koper. Any expression of discontent or resistance, even to illegal orders, is sanctioned with temporary or permanent removal from the work place (they force us to quit). All this (sic) circumstances force the workers into obedience, especially those workers that have a temporary work contract or temporary work permit. This is an advantage of employers, that they thoroughly exploit.

Due to the described circumstances it was not realistic to expect that we would be able to establish a worker's union. But we have managed to do it this year. Nevertheless the management of the port was constantly informed about our problems, since it received - together with the labor inspectorate in Koper - regular reports on violations of labor legislation from the Union of Crane Operators (Sindikat žerjavistov). Their only response was silence or incapability to find any irregularities if they would make an inspection. The management of the port does not react to numerous calls (ore (sic) even strike demands) of the Union of crane operators regarding our situation. They continue to push their heads in the sand by claiming that their hands are tied since we are supposedly not employed by them..

You have been probably already informed through the media that the vast majority of subcontracting workers has - parallel to the strike of crane operators that started on July 29th - spontaneously stopped working and gathered in front of the administrative building of the port, where we continue to persist without interruption the fifth day in a row. Workers are tired of the arrogance of the state firm Luka Koper, of inspections and other state bodies and they are fed up. We have informed also the labor inspection in Koper about the situation.

We turn to you since we have no reason to believe, that someone in Koper will reply to our grievances. But we demand that state bodies will not allow such grave breaches of the basic human rights in a country, that is a member of the European union (sic). Namely, this kind (sic) of conditions were outdated even in the 19th century.

On the same day, a delegation of the union IPS presented its case to the Office of the Human Rights Ombudsman in Ljubljana. IPS reported on this meeting in the following terms²²⁶⁴:

A delegation of the IPS Union, the union of the subcontracting Luka Koper (Port of Koper) workers on strike, has presented today at 12.00 the situation of severe breaches of rights of workers in Luka Koper to the Office of the Ombudsman in Ljubljana. Workers of the port, that are hired via subcontractors, are in an unequal position, since they are - due to the systemic arrangements of the labor and migration regime in Slovenia - forced to do the same work for substantially lower wages and higher working hours in intolerable and precarious working conditions. In such a regime of dependency the systematic denial of rights of the workers is manifested in various ways: from overtime and unpaid working hours to increased numbers of work injuries.

²²⁶⁴ "Luka Koper workers on strike met with the ombudsman", 2 August 2011, <http://njetwork.org/Luka-Koper-workers-on-strike-met>.

The delegation of workers was received by the deputy Ombudsman. During the conversation the workers thoroughly explained the practices of the systematic denial of the rights of the workers in the port. The deputy Ombudsman has promised, among other things, that the Ombudsman office will require detailed information from the state labor inspection about the reasons of its inactivity in the case of Luka Koper. He has also encouraged the workers to regularly inform the Ombudsman about the activities of state institutions in charge of the monitoring of the requirements of labor legislation. The conversation also touched upon the responsibility of the Slovene government and the respective minister for transport, dr. Patrick Vlačič. Workers will establish contact with him and the office will demand an official explanation by the minister about concrete measures of his ministry to enact the rights of the workers in the port of Koper.

The Ombudsman reported as follows on this meeting²²⁶⁵:

The representatives of the workers employed by the contractors providing their services for the needs of Luka Koper today visited the Slovenian Human Rights Ombudsman (HRO). They stated that their employers who contractually provide workers for Luka Koper's activities do not observe their rights, contracts and regulations, particularly regarding working hours, breaks and rest, and payment for the work performed. They also said that thus far, the labour inspectorate has been inefficient in its supervision and has not improved their situation; therefore, they feel deprived of their rights. This was also the reason for their spontaneous strike.

In view of the HRO's powers, it was agreed that all irregularities will again be reported to the Slovenian Labour Inspectorate. The HRO expects the Labour Inspectorate to thoroughly examine all their statements and to adopt measures necessary to end the infringements, should it prove that the allegations are true. In this context, the HRO takes the view that the Republic of Slovenia, as the majority owner of Luka Koper, and the port's management should not remain ignorant of the situation and the level of respect of fundamental rights of the workers employed by contractors. Therefore, the HRO expects the competent ministries and the port's management to assume a more active role in regulating the rights of these workers.

Also on 2 August, the Invisible Workers of the World (IWW) sent the following Open Letter to the President of the Republic of Slovenia²²⁶⁶:

Honorable President of the Republic of Slovenia, dr. Danilo Türk!

It has already been brought to your attention that the movement Invisible Workers of the World (IWW) is closely following the situation of migrant workers and that one of the main goals of our effort is the immediate abolition of their discrimination, which is the result of a systemic (state) arrangement of their unequal position in regard to other (citizen and EU) workers. In the past you have already expressed your support for the

²²⁶⁵ X., "Ombudsman Receives Representatives of Workers Employed by Luka Koper's Contractors", 2 August 2011, <http://www.luka-kp.si/eng/about-us/employees/education-and-training>.

²²⁶⁶ <http://www.njetwork.org/Open-Letter-of-the-IWW-to-the>

demands of our movement (in the struggle of the self-organized group of SCT (a construction firm) workers on the 18th of February 2011 and during the rent strike of Vegrad (another construction firm) workers, inhabitants of Vegrad's worker dormitory in Ljubljana on 15th of July 2011). On both occasions you have expressed your desire - since this topic is of your great concern - that we keep you informed about the developments of both struggles and the existing difficulties of workers, who are in their greatest despair completely marginalized and ignored, although their only demand is equality and just payment for their work.

Recently, we have actively supported the strike of workers in Luka Koper (Port of Koper). Our support and active engagement arise out of our deepest belief, that the demands of the workers on strike are just and legitimate, but most of all because of the fact, that Luka Koper employs a large group of people, hired through subcontractors. These workers are subject to similar statutory restrictions and working conditions as other migrant workers in Slovenia, like the ones from SCT and Vegrad for example. This group of workers has joined the strike of other port workers on Friday, the 29th of July. Their demands are equal employment contracts (direct contract, i.e. collective agreement with the Port of Koper) and equal working conditions for all the port workers (the same working hours and payments). Namely, the existing labor regime in the port (with different subcontractors for different jobs) enables the port management to systematically exploit the completely precarious workers, which are - because of their consequent position - pushed into inhumane working and living conditions, with overtime working hours, underpaid wages and substantially lower worker and social rights. Similarly as other workers on strike they are subject to various forms of pressure from the side of the state, the port management and their employers, but their situation is even more difficult.

Despite the ongoing strike the management of the port claims it has no direct responsibility for the workers of its subcontractors and continuously avoids any negotiation with them. For the obvious reasons we feel obliged to repeat the fact, that the Slovenian state is the largest owner of Luka Koper and at the same time the most responsible for the establishment of a labor regime that enables such exploitation. Therefore it must react to the recent events and contribute to the enhancement of the situation of the workers, employed by the port via subcontractors.

The first necessary step in this effort would be the start of the negotiations between the management of the port, the subcontractors and the organized port workers, employed by them. Therefore, we appeal to your authority to intervene within the broadest limits of your jurisdiction into the stalemate of the situation and in this way contribute to the beginning of its unfolding. The subcontracting workers and their demands are surrounded by the silence of the management, the state and the broader public. But your position and your intervention could contribute substantially to overcome their distress.

Reportedly, on 3 August 2011 the President replied with the following words²²⁶⁷:

²²⁶⁷ <http://njetwork.org/President-of-the-republic-supports>.

Let me express my gratitude for your letter in which you highlight the problem of salaries of workers, employed by various subcontractors in Luka Koper. As you have already mentioned, these workers are - due to their position - forced into very hard labor, frequently overtime and for a much lower payment and less rights than workers, that do the same work and are employed directly by Luka Koper. There can be no reason or excuse for such situation.

I am closely following the strike of crane operators and its economic and other consequences. All legal provisions on the regime of an organization of a strike should be strictly applied. I agree with you that the only solution for the present situation is an immediate agreement between representatives of employers and workers, which would point toward the best solution of the misunderstandings in the framework of legislation and the collective agreement.

As far as the workers that work in Luka Koper via subcontractors are concerned, I believe that the management of Luka Koper is obliged to make such contracts with subcontractors that would prevent salary anomalies and the discrimination of subcontracting workers.

Therefore I appeal to the management of Luka Koper, the subcontractors and the organized port workers to start an open dialog (sic) in good faith in order to find an appropriate solution as soon as possible.

On 5 August 2011, the Human Rights Ombudsman issued a news release on a letter it had sent to the Management of Luka Koper²²⁶⁸.

After having requested information on the activities of the Labour Inspectorate of the Republic of Slovenia regarding a strike by the employees of companies providing services for Luka Koper d.d. (Port of Koper), the Slovenian Human Rights Ombudsman (HRO) also sent a letter to the port's management. Despite the fact that the operations of companies do not fall within the competence of the HRO, she nevertheless submitted her view on the issue in question, since the Republic of Slovenia is the majority owner of Luka Koper d.d. A copy was also sent to the company's supervisory board and the Ministry of Transport, for their information.

The HRO's assistance was sought by workers employed by Luka Koper contractors; they went on strike due to unbearable conditions. The initiators stated that the provisions of the Employment Relationships Act regulating the employees' right to a break and rest during work (lunch break, a break between two working days, etc.) are as a rule not observed. Moreover, they referred to a monthly workload of over 300 hours and uninterrupted working days sometimes lasting 24 hours and more. They claim that the workers are permanently at the employer's disposal (stand-by), but do not receive adequate reimbursement for this.

In addition, several issues in the field of safety at work allegedly remain unresolved. The ever-increasing workload is reflected in unbearable working conditions. Furthermore, they report several accidents at work in the area of Luka Koper. The

²²⁶⁸ X., "Ombudsman's Letter to the Management of Luka Koper", 5 August 2011, <http://www.varuh-rs.si/media-centre/work-and-news/news/detail/ombudsmans-letter-to-the-management-of-luka-koper/?L=6&cHash=dbe5658761cfe947c84fd5d279577f9a>.

initiators also allege certain other irregularities, particularly regarding payment for the work provided.

The HRO welcomed the decision of the Luka Koper management board to actively take part in addressing these issues. She also expressed her satisfaction with the decision that the new contracts concluded with providers of port services would include a provision requiring the observation of the labour legislation. She also suggested that the addressee takes any possible measures in order to ensure that labour and other relevant legislation will be observed regarding employees performing their work in the area of Luka Koper in the future. The implementation of these arrangements will be monitored by the HRO within her competences.

The strike of the crane operators ended with an agreement confirming that the new crane manning system would only apply for a limited period and granting the operators additional pay for it.

The protest action of the subcontractors, which was not an official strike, resulted in the conclusion of an 'Agreement concerning the Conditions to Terminate the Protest' by Luka Koper, the Association of Subcontractors, individual subcontractors and the trade union SIPS. Luka Koper undertook not to discriminate against subcontractors whose workers had been protesting, while the subcontractors agreed that they would not discriminate against protesting workers. Luka Koper also promised that it would no longer order services from subcontractors who do not pay salaries or social contributions, and that it would control respect of working times and remove workers who are found working in the port for more than 12 hours. Even if Luka Koper is not acting as an employer of these workers, it is, by its concession agreement, entitled to take such measures in order to ensure overall safety of port operations. Particularly dangerous situations had been created by workers holding a permit to enter the port area to work for one subcontractor who took on a second 8-hour task for another subcontractor in the port for whom they possess no port permit at all. Not all workers of subcontractors welcomed the new restriction. Luka Koper did not agree to the demand of the union to control compliance by the subcontractors with employment conditions relating to, for example, wage supplements, duration of breaks and rests, leave *etc.*, because Luka Koper is not a party to the employment contracts between the subcontractors and their workers. Luka Koper accepted to mediate between the parties but declined to participate in collective bargaining between the subcontractors and the union.

1707. In 2012, the Luka Koper Group launched a project entitled *Comprehensive Employee Health and Occupational Safety within the Luka Koper Group* in order to promote a healthy attitude to work and the physical and mental welfare of personnel²²⁶⁹.

²²⁶⁹ Luka Koper Group, *Non-audited interim report of Luka Koper d.d. and Luka Koper Group. January - March 2012*, <http://www.luka-kp.si/eng/investors/annual-reports>, 31.

1708. Slovenia is still bound by the outdated ILO Convention No. 32.

9.19.7. Appraisals and outlook

1709. On 1 September 2011, after a meeting with activists from IWW, the President of the Republic of Slovenia issued a press release in which he called the exploitation of migrant workers “a national disgrace” and called for a faster, more effective and dynamic operation of labour inspection services. The press release also mentions that the participants presented the situation of the workers employed by Luka Koper contractors, who participated in the dialogue between the employers and the port's management after the strike had been concluded. They pointed out that the dialogue was not running smoothly. President Türk called for its intensification²²⁷⁰.

1710. Whereas Luka Koper mentions a number of issues surrounding port labour arrangements in the port (mainly lack of flexibility, working time restrictions, the strong position and privileged conditions of crane drivers and job insecurity of temporary workers), it sees no indication that the current labour regime impacts (either positively or negatively) on the competitive position of the port. Luka Koper informed us that recent safety measures adopted after the 2011 strike have already demonstrably improved the safety record.

Generally speaking, Luka Koper believes that the ideal port labour system is one that enhances productivity and competitiveness while respecting basic rights of workers and preventing their exploitation.

In an interview, one other expert mentioned that the high wages of the strongly organised crane operators are a major competitive issue which is threatening the port's future.

²²⁷⁰ X., “President Türk describes exploitation of migrant workers as a national disgrace”, 1 September 2011, <http://www2.gov.si/up-rs/2007-2012/turk-ang-arhiv.nsf/dokumentweb/7ECFD5358C04CB2BC125792E00326E0E?OpenDocument>.

Figure 113. On 1 September 2011, Slovenian President Dr Danilo Türk met activists from the Invisible Workers of the World (IWW) who presented the situation of temporary workers employed by the contractors of Luka Koper (photo: Stanko Gruden/STA).



1711. In January 2012, after a meeting with Luka Koper, the Capital Assets Management Agency of the Republic of Slovenia, which periodically monitors, with due diligence, the operations of state-owned enterprises, reported, *inter alia*²²⁷¹:

Given the information on possible abuses supposedly occurring in Luka Koper, d. d., on 9 November 2011 the Agency submitted a request for a special audit of the company to the supervisory board. The request to conduct the audit referred to the real-estate activity at home and abroad, timber terminal operations, business transactions with port-service providers (contracts with port-service providers) and other company contractors, investments, guarantee and pledge transactions, transactions related to the provision of loans and further loan-related activities, purchase and sales of shares and business shares, employment operations.

The request for an audit was rejected by the supervisory board.

²²⁷¹ Agencija za upravljanje kapitalskih naložb Republike Slovenije, "A quarterly meeting held with Luka Koper, d.d.", 27 January 2012, <http://www.so-druzba.si/en-us/Novica/413>.

The Agency expected that the audit would be carried out nevertheless.

On the 2011 strike, it stated:

Because of the strike, the company suffered irreparable damage, which will be difficult to assess. Subsequently, the workers who are employed with the port-service providers also expressed their dissatisfaction with working conditions. We expect that the company's management board pay on-going attention to all open matters concerning the company workers and, if necessary, take appropriate steps.

1712. In the opinion of several local observers, the port of Koper should in the long run be transformed to a landlord port authority, in order to conform to the model found in most other ports of the EU and to attract a strategic partner with a view to further infrastructure investment projects. At the same time, cargo handling should be entrusted to at least 2 concessionaires and the state stake in the port authority should be reduced to around 25 per cent²²⁷². To our knowledge, the current Slovenian Government is not intending to launch any such reform scheme however, but in an interview a local expert on port matters supported the idea.

1713. Luka Koper is of the opinion that there is no need or scope for any EU action in the field of port labour.

9.19.8. Developments between January 2013 and September 2014

1713A. We have no information on any major developments.

²²⁷² See, for example, X., "Port of Koper looking for strategic partners", *Slovenia Times* 23 May 2012, <http://www.sloveniatimes.com/port-of-koper-looking-for-strategic-partners>.

9.19.9. Synopsis

1714.		
SYNOPSIS OF PORT LABOUR IN SLOVENIA²²⁷³		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 1 seaport • Service port • 17m tonnes • 17th in the EU for containers • 73th in the world for containers • Appr. 41 employers • Between 640 and 900 port workers • Trade union density: 46% (?) 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • No Party to ILO C137 • CBA for port authority staff • All permanent and temporary workers employed under general labour law • No registration • No pool or hiring hall • No ban on temporary agency work 	<ul style="list-style-type: none"> • Exclusive right of Port Authority to provide all services • Inflexible hiring rules of general labour law • High labour cost of crane drivers • Ban on self-handling • Job insecurity of temporary workers, esp. workers of subcontractors • Proposals to adopt landlord model
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Training by Port Authority • Training by other providers for general jobs (forklift drivers) 	<ul style="list-style-type: none"> • National Professional Qualifications for equipment operators and warehousemen, but not for general port workers 	<ul style="list-style-type: none"> • Lack of qualification system for general port workers
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Accident statistics for the port available (but not for port labour as such) 	<ul style="list-style-type: none"> • No <i>lex specialis</i> (specific regulations abolished 2011) • No Party to ILO C152 	<ul style="list-style-type: none"> • Substandard treatment of subcontractors' staff and inadequacies detected by Labour Inspectorate, but addressed in recent safety measures • Still bound by outdated ILO C32

²²⁷³ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.20. Spain

9.20.1. Port system²²⁷⁴

1715. The state-owned port system in Spain consists of 46 Ports of General Interest (*puertos de interés general*), managed by 28 Port Authorities. The overall coordination and control is the responsibility of the public entity Puertos del Estado ('Ports of the State').

The three largest Spanish ports are Barcelona, Valencia and Algeciras.

In 2012, the gross weight of seaborne goods handled in Spanish ports was about 422.2 million tonnes²²⁷⁵. As for container throughput, Spanish ports ranked 2nd in the EU and 10th in the world in 2011²²⁷⁶.

1716. Today, Spanish ports operate under a landlord model, with all cargo handling activities being carried out by licensed private sector firms.

9.20.2. Sources of law

1717. Port labour in Spain is governed by the Act on the Ports of the State and on Merchant Shipping, a consolidated version of which was enacted by Royal Decree No. 2/2011 of 5 September 2011²²⁷⁷ (hereinafter: 'Ports and Merchant Shipping Act'). The Ports and Merchant Shipping Act regulates the granting of licences to cargo handling companies as well as the organisation of port labour.

²²⁷⁴ For general information on Spanish ports, see www.puertos.es; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 389-423; for statistics, see also http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

²²⁷⁵ See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

²²⁷⁶ Container ranking based on UNCTAD, *Review of Maritime Transport 2011*, New York and Geneva, UNCTAD / UN, 2011, http://unctad.org/en/Docs/rmt2011_en.pdf, 201-203.

²²⁷⁷ Real Decreto Legislativo 2/2011, de 5 de septiembre, por el que se aprueba el Texto Refundido de la Ley de Puertos del Estado y de la Marina Mercante.

1718. The main source of general labour law is the Statute of Workers which was adopted in 1995²²⁷⁸ and last revised in 2012²²⁷⁹. The Statute of Workers classifies port labour performed by pool workers among the special employment relationships (*relaciones laborales de carácter especial*) which further comprise the work performed by, among others, senior management staff, domestic servants, prisoners in penal institutions, professional athletes, performing artists and disabled workers in special employment centres²²⁸⁰.

1719. Port labour qualifications are governed by the recent Royal Decree No. 1033/2011 of 15 July 2011²²⁸¹ which lays down requirements for four professions in the maritime and fishing sector, including that of port workers²²⁸².

1720. Health and safety of workers in Spain is governed by the general Act No. 31/1995 of 8 November 1995 on Labour Risk Prevention²²⁸³. This Act also applies to port workers but it does not contain any port-specific provisions.

Spain has enacted National Regulations on the Handling of Dangerous Goods in Ports²²⁸⁴ and has transposed Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers²²⁸⁵.

1721. Spain has ratified both ILO Conventions No. 137²²⁸⁶ and No. 152²²⁸⁷. Previously, it was a Party to ILO Convention Nos. 28 and 32.

²²⁷⁸ Real Decreto legislativo 1/1995, de 24 de marzo, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores.

²²⁷⁹ See especially Real Decreto-ley 3/2012, de 10 de febrero, de medidas urgentes para la reforma del mercado laboral; see further *infra*, para 1729.

²²⁸⁰ Art. 2 of the Estatuto de los Trabajadores.

²²⁸¹ Real Decreto 1033/2011, de 15 de julio, por el que se complementa el Catálogo Nacional de Cualificaciones Profesionales, mediante el establecimiento de cuatro cualificaciones profesionales de la familia profesional Marítimo-Pesquera.

²²⁸² See further *infra*, para 1761.

²²⁸³ Ley 31/1995, de 8 de noviembre, de Prevención de Riesgos Laborales; see also Real Decreto 39/1997, de 17 de enero, por el que se aprueba el Reglamento de los Servicios de Prevención.

²²⁸⁴ See Real Decreto 145/1989, de 20 de enero, por el que se aprueba el Reglamento Nacional de Admisión, Manipulación y Almacenamiento de Mercancías Peligrosas en los Puertos.

²²⁸⁵ Real Decreto 995/2003, de 25 de julio, por el que se establecen los requisitos y procedimientos armonizados para las operaciones de carga y descarga de los buques graneleros.

²²⁸⁶ Instrumento de Ratificación de España [de 22 de marzo 1977] del Convenio número 137 de la Organización Internacional del Trabajo sobre las Repercusiones Sociales de los Nuevos Métodos de Manipulación de Cargas en los Puertos, hecho el 25 de junio de 1973.

²²⁸⁷ Instrumento de Ratificación de 13 de febrero de 1982 del Convenio de la OIT número 152, sobre «Seguridad e Higiene en los Trabajos Portuarios», hecho en Ginebra el 25 de junio de 1979.

1722. Port labour in Spain is furthermore governed by collective labour agreements which regulate not only the organisation of work but also holidays, salaries, trade union rights, *etc.*²²⁸⁸

The Agreement for the Regulation of Labour Relations in the Port Sector of 27 September 1999 governs labour relations between companies and workers in all the commercial ports of Spain²²⁸⁹. An attempt at introducing a new national agreement in 2008 failed, after it was held incompatible with competition law by the Competition Authority and several of its articles were annulled; as a result, the remaining articles are only valid as between the contracting parties. For these reasons, we decided not to analyse the latter agreement in detail and to focus on the 1999 Agreement²²⁹⁰.

The national collective agreements are supplemented by collective agreements per port most of which are publicly available on the internet and which are regularly revised. To get a first impression, we browsed the agreements for the ports of Algeciras²²⁹¹, Almería²²⁹² and Barcelona²²⁹³. Most local agreements reiterate provisions of the national agreement and then elaborate on local specificities.

1723. Several collective agreements on port labour²²⁹⁴ but also general labour law²²⁹⁵ recognise customs and usages as a supplementary source of law.

²²⁸⁸ For an exhaustive analysis of collective bargaining in the Spanish stevedoring sector, see Castro, J.G., Pereiro, J.C., Carbajo, P.R. and Méndez, L.M., *La negociación colectiva en el sector de la estiba de buques*, Madrid, Ministerio de Trabajo y Asuntos Sociales, 2004, http://www.empleo.gob.es/es/sec_trabajo/ccncc/descargas/Estiba.pdf.

²²⁸⁹ III Acuerdo para la regulación de las relaciones laborales en el sector portuario, Madrid, 27 September 1999.

²²⁹⁰ See *infra*, para 1776.

²²⁹¹ Convenio Colectivo de Sociedad de Estiba y desestiba del Puerto de Algeciras-La Línea (published on 10 February 2009).

²²⁹² Estibadores portuarios Sociedad de Estiba y Desestiba del Puerto de Almería (SESTIALSA). Convenio colectivo (valid from 1 January 2006 to 31 December 2011).

²²⁹³ Convenio Colectivo de trabajo del sector portuario de la Provincia de Barcelona para el período 18.6.2010-31.12.2014. Whilst this heading refers to the 'Provincia' of Barcelona the agreement applies to the port of Barcelona only. A separate collective agreement regulates work performed at stevedoring companies by workers who are not registered as port workers (mainly, but not only, office staff): Convenio Colectivo Provincial regulador de las condiciones de trabajo en las empresas estibadoras portuarias de la provincia de Barcelona y los trabajadores de las mismas. Barcelona, 1 de enero de 2008.

²²⁹⁴ See, for example, Art. 5.2.4 of the Collective Agreement for Algeciras.

²²⁹⁵ Art. 3(4) of the Estatuto de los Trabajadores.

9.20.3. Labour market

- Historical background

1724. In Spain, too, port labour law rests on a centuries-old tradition. By 1268, a porters' corporation (the *bastaix de ribera*) operated in Barcelona, and it continued its existence well into the 19th century. Barcelona, for that matter, was also the cradle of the legislative regulation of the commercial responsibilities of masters and merchants with regard to stevedoring operations²²⁹⁶.

1725. In his World Bank paper on restrictive labour practices in ports²²⁹⁷, Alan S. Harding explains that, up to 1986, labour in Spanish ports was organised, under a paternalist policy, through the Port Labour Office (Oficina de Trabajo Portuario, OPT) of the Ministry of Labour, the origins of which can be traced back to 1944. The office allocated labour to the cargo handling firms on the basis of a daily rotation in order to equalize work opportunities²²⁹⁸, and it paid a fall-back wage when there was no work. This situation proved unsatisfactory on three counts: first, the OPT was not directly concerned with the profitability of cargo operations, so tended to give in to labour's demands; second and related, there was no effective labour discipline; finally, the fall-back wage was paid by the State with an open-ended commitment and without any self-controlling cost-driven mechanism on the size of the labour force²²⁹⁹. Also,

²²⁹⁶ For example, the Consulate of the Sea, the highly influential 15th-century compilation of maritime law from Barcelona, obliged masters to provide merchants with skilled stevedores:

Capitol LXXV: Destibadors e de vitualla quel mercader metra en nau
 Senyor es tengut de donar homes qui sapien stibar si la nau estiba a trau. Capitol de nau qui stibara a trau
Encara es tengut lo senyor als mercaders de donar homes qui sapien la nau stibar si la nau stiba a trau e los mercaders deuen los pagar e lo senyor de la nau es tengut al mercader de aportarli la sua roba, caxes, vianda de menjar tanta que sia bastant al mercader. Mas si lo mercader volia metre vianda per revendre o altres coses en la companya o hom per ell, deu ne donar nolits a la nau.

²²⁹⁷ See already *supra*, para 118.

²²⁹⁸ In the 1980s, the allocation of jobs was described as follows:

Dockers point with great pride to the rows and columns of tags which each bear one longshoreman's number. Those at the top of the list receive the first jobs that come in. Job dispatchers of the Office for Port Labor (OTP), a division of the Spanish Labor Ministry, then move the tags of those who are hired to the bottom of the list.

If this were all there were to the system, shippers could look at the tags and hold back on a job request if known militants were next in line. To prevent this, there is assignment of work to each employer by chance. The Valencia system involves writing a number on each shippers' job request form, putting ping pong balls with corresponding numbers in an old Clorox bottle, and shaking out the ping pong balls one at a time to decide which employer gets the next set of workers.

(Fitz, D., "Coordinadora - Spanish dock workers build union without bureaucrats", <http://libcom.org>).

²²⁹⁹ Harding, A.S., *Restrictive Labor Practices in Seaports*, s.l., World Bank, October 1990, 37; see also, briefly, Barzman, J., "States and dockers: from harbour designers to labour managers", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, II, Aldershot, Ashgate, 2000, (627), 648, referring to Ibarz-Gelabert; see also Saundry, R. and Turnbull, P., "Contractual (In)Security, Labour Regulation and Competitive Performance in

workers' registers were increasingly occupied by relatives of workers who then enjoyed unemployment benefits as well. The system rested on corporatism and nepotism²³⁰⁰.

1726. In 1986, by Act No. 2/86 of 23 May 1986²³⁰¹, as implemented by Royal Decree No. 371/1987 of 13 March 1987²³⁰², new bodies were created in each of the major ports to take over the labour function from the OTP. These new bodies were constituted as non-profit State Stevedoring Corporations (Sociedades Estatales de Estiba y Desestiba, SEED), with participation from the public sector (51 per cent) and the private sector (49 per cent). Membership in the Sociedad was obligatory for every company that worked in the port. The Sociedades had to fix their tariffs so as to cover their costs including fall-back pay, so that they had an incentive for efficient operation, and it was claimed that successive improvements had been made in the labour agreements concerning gang size. The first activities of the new Sociedades were to compensate by premature retirement a certain number of excess personnel and to authorise the contracting by the individual member companies of a certain number of fixed employees, up to a maximum agreed in each port (for example 38 per cent in the case of Bilbao). Thus the employers had designated a number of registered workers as *fijos* or 'fixed' (permanent) employees, but they were not ready to make the final step to an all permanent labour force; which in any case was strongly resisted by the union, which feared a loss of influence. There were strong differences in working practices between the ports, for example, tonnage (incentive) payments were made at Barcelona but not at Bilbao. Union opposition to the formation of the Sociedades was strong²³⁰³.

the Port Transport Industry: A Contextualized Comparison of Britain and Spain", *British Journal of Industrial Relations* 1999, Vol. 37:2, (271), 280-284.

²³⁰⁰ See Suárez Bosa, M., González de la Fé, P. and Jiménez González, J.L., *Introduction of New Techniques and Changes in Work Organization at the Port of Las Palmas: An Historical Review*, Documento de trabajo 2002-01, La Laguna / Las Palmas de Gran Canaria, Fac. CC. Económicas y Empresariales Universidad de La Laguna / Fac. CC. Económicas y Empresariales Univ. de Las Palmas de Gran Canaria, <http://fceye.ull.es/invest/docum/ull-ulpgc/2002-01.pdf>, 18. For interesting historical background on trade unionism in Spanish ports, see X., "International Dockers' Struggles in the Eighties: Workers of the World, Tonight!", http://www.reocities.com/cordobakaf/blob_docks.html.

²³⁰¹ Real Decreto-ley 2/1986, de 23 de mayo, sobre el servicio público de estiba y desestiba de buques.

²³⁰² Real Decreto 371/1987, de 13 de marzo, por el que se aprueba el reglamento para la ejecución del Real Decreto-ley 2/1986, de 23 de mayo, de estiba y desestiba.

²³⁰³ Harding, A.S., *Restrictive Labor Practices in Seaports*, s.l., World Bank, October 1990, 37; see also Arroyo, I., *Curso de derecho marítimo*, Barcelona, José María Bosch Editor y Alferal, 2001, 881; Gallais Bouchet, A., "Les réformes des ports espagnols", in ISEMAR, *L'organisation sociale de la manutention: exemples européens*, ISEMAR, Note de Synthèse n° 139, <http://www.isemar.asso.fr/fr/pdf/note-de-synthese-isemar-139.pdf>; Saundry, R. and Turnbull, P., "Contractual (In)Security, Labour Regulation and Competitive Performance in the Port Transport Industry: A Contextualized Comparison of Britain and Spain", *British Journal of Industrial Relations* 1999, Vol. 37:2, (271), 278; Turnbull, P., *Social dialogue in the process of structural adjustment and private sector participation in ports: a practical guidance manual*, Geneva, ILO, 2006, 19.

1727. Pursuant to Act No. 48/03 of 26 November 2003 on the economic regime and the provision of services of in port of general interest²³⁰⁴, each Sociedad Estatal De Estiba was due to be converted into a Port Grouping of Economic Interest (Agrupación Portuaria de Interés Económico, APIE). The aim of this reform was to privatise the pools. The port authorities would withdraw from them, and the APIEs were conceived as groupings of private companies only. In practice, however, not all the pools were actually converted into an APIE.

1728. In 2010, the Spanish port sector underwent another legislative reform through Act No. 33/2010 of 5 August 2010²³⁰⁵ which is the main legislative source of the current port labour regime.

1729. General labour law was modernised in 2012. The enactment of these reforms will make it easier and cheaper for employers to lay off workers, will provide incentives for employers to hire younger workers, and is expected to increase employer confidence²³⁰⁶.

- *Regulatory set-up*

1730. Under the present Ports and Merchant Shipping Act, cargo handling is identified as a separate port service, the providers of which have to obtain a licence from the port authority. For the purposes of the relevant provisions, cargo handling services include loading, stowing, unstowing, unloading, maritime transit and transhipment of goods (Art. 108(2)(d)).

The Ports and Merchant Shipping Act expressly mentions that port services will be organised at the initiative of the private sector and guided by the principle of free competition (Art. 109(1)) and that the holders of a licence enjoy no exclusive right (Art. 109(2)). Practically, licensed cargo handlers will also hold an authorisation or a concession to use state-owned port property (see Art. 72 *et seq.* of the Act).

The Ports and Merchant Shipping Act also states that the port authority may authorise self-handling²³⁰⁷ and the integration of port services (Art. 109(2) *in fine*).

²³⁰⁴ Ley 48/03, de 26 de noviembre, de régimen económico y de prestación de servicios de los puertos de interés general. For a commentary, see Ortiz, G.A. et al., *La nueva legislación portuaria*, Barcelona, Consorcio Zona Franca de Vigo / Atelier Libros Jurídicos, 2004, 365 p.

²³⁰⁵ Ley 33/2010, de 5 de agosto, de modificación de la Ley 48/2003, de 26 de noviembre, de régimen económico y de prestación de servicios en los puertos de interés general.

²³⁰⁶ For an overview, see Caldwell, A.K., "Spain's Employment Law and 2012 Labor Reform", 6 June 2012, <http://www.crossborderemployer.com/post/2012/06/06/Spaine28099s-Employment-Law-and-2012-Labor-Reform.aspx>.

In exceptional circumstances, port services may be performed by the port authority (Art. 109(3)).

The Act ensures that port services will be provided at the request of users (Art. 112(1)).

It lays down maximum durations for licences (see Art. 114).

A number of these provisions seem to be inspired by earlier proposals for an EU Port Services Directive²³⁰⁸.

1731. Next, the Spanish Ports and Merchant Shipping Act contains elaborate specific provisions on cargo handling and port labour (Art. 130 and 142 *et seq.*).

First of all, the Ports and Merchant Shipping Act specifies that the service of cargo handling comprises the loading, stowage, unloading, and transshipment of goods carried by sea, which allow their transfer between vessels or between these and the land or other means of transport. However, these activities must be performed wholly within the service area of the port and bear a direct and immediate connection to a specific loading, unloading or transfer operation for a given vessel (Art. 130(1)).

The Spanish legislator goes on to define the concepts of loading and stowage in both very broad and detailed terms (same provision). Included are, for example, the collecting of goods from storage areas or warehouses and their horizontal transportation to the ship's side; the hooking up of the goods to lift or transfer the goods directly from a means of transport by land, or from the pier, or jetty, alongside the vessel; the hoisting or transfer of goods and their placement into the ship's holds or on its deck; the stowage of goods in the ship's hold or on deck, in accordance with the stowage plans and particulars of the master or officer in whom he delegates this responsibility; the shipment of goods by means of rolling on the vessel; the lashing or securing cargo on the ship to prevent shifting during shipping, provided that such operations are not carried out by the ship's crew (Art. 130(1)(a)).

Various other unloading and unstowing activities are mentioned as well: unlash (as far as it is not carried out by the crew); the unloading of goods from the ship's holds or from its deck, including all the operations necessary to bring them within reach of the lifting or transferring equipment; the hooking-up of the goods; the hoisting or transfer of the goods and their placement onto a means of transportation or onto the pier or jetty alongside the vessel; the unloading of the goods onto land transport vehicles, or on the dock or jetty for collection by vehicles or other means for horizontal transportation and, where appropriate, their transfer to

²³⁰⁷ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) *All longshore activities.*

²³⁰⁸ On these proposals, see *supra*, para 178 *et seq.*

the storage area or warehouse within the port, and the deposition and stacking of the goods in that area; and the unloading of rolling stock (Art. 130(1)(b)).

The activity of transshipment comprises the unstowing, transfer and stowing of the goods, as well as their unlashings and lashings as far as the latter are not carried out by the ship's crew (Art. 130(1)(c)).

A number of specific cargoes are excluded. These include goods owned by the port authorities, parcel-post packages, fresh fish and ship's waste (Art. 130(2)).

A number of other, very specific, exceptions concern the operation of equipment owned by the port authorities or of goods belonging to the Ministry of Defence; the operation of tractors and mobile cranes which are no part of the normal port equipment and which are manned by their regular drivers; the loading and unloading of lorries, cars and any other kind of motor vehicle with their trailers or semitrailers when realised by the owners, users or regular drivers; the loading and unloading of vehicles without plates; the driving, hooking and unhooking of trailers and semitrailers using tractors, provided there is uninterrupted transportation between the ship and a location outside the port area; the driving of vehicles carrying goods to or from the crane or loading or unloading facility or boarding ramp in a direct operation between land transportation and the ship, provided there is uninterrupted transportation between the ship and a location outside the port area; the lashing and unlashings of the cargo aboard the ship, when performed by the crew; the loading, unloading and transshipment of ship supplies; the loading, unloading and transfer by pipeline; and operations conducted in port facilities used under a concession or authorisation, when such facilities are related to transformation plants or facilities for industrial processing and the packing of self-owned goods which transit through such a marine terminal, unless these services are carried out by a stevedoring company; however, workers engaged in the latter activities must meet the conditions on training and qualifications imposed for port workers, but the employer is not obliged to participate in a SAGEP (Art. 130(3)).

The Ports and Merchant Shipping Act states that all cargo handling activities, as defined above, shall be performed by workers who have the qualifications required by it (Art. 130(5)).

However, the port authority may authorise the manager or operator of a ship to handle cargo using its own crew, without possession of a stevedoring company's licence, on condition that certificates issued by the competent authorities demonstrate the adequacy of the technical means and the personnel, particularly with a view to the prevention of occupational hazards. The port authority may impose conditions to ensure safety of operations and compliance with environmental standards. Under no circumstance may an authorisation be granted for vessels flying the flag of a State appearing in the black list of the Paris Memorandum of Understanding on Port State Control or, regardless of the flag, to ships described as high or very high risk under the applicable inspection regime (Art. 130(4))²³⁰⁹.

²³⁰⁹ U.S. law still mentions an absolute ban on self-handling for all longshore activities in Spanish ports: see 22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals.

1732. A separate provision authorises the Ministry of Industry, Tourism and Trade to issue technical instructions on specific mechanical equipment, but Puertos del Estado, the private sector organisations and the most representative trade unions must be heard (Art. 131). Such instructions have been adopted for mobile cranes; instructions for other port machinery still have to be developed²³¹⁰.

1733. In a separate chapter on port labour, the Ports and Merchant Shipping Act first of all states that In the ports of general interest private commercial limited companies may be created for the provision of workers to their shareholders in order to meet the demand for work. These companies are established through a transformation of the previously existing SEEDs and APIEs. In order to ensure professionalism, they also have as their task to provide permanent training of workers. The companies are designated as 'Public Company for the Management of Port Stevedores' (Sociedad Anónima de Gestión de Estibadores Portuarios, SAGEP) (Art. 142).

All companies wishing to provide cargo handling services and obtain the corresponding licence must participate in the capital of the local SAGEP. This obligation is however not applicable to self-handlers (Art. 143(1)). It should be noted that, contrary to the former APIEs, the SAGEPs are stock companies.

Fifty percent of the capital of each SAGEP will be distributed proportionally among the number of licensees for the provision of cargo handling services. The remaining fifty percent is distributed among the shareholders on the basis of their respective use of the workforce, calculated by sums invoiced (Art. 143(2)).

The port workers may be employed either by the SAGEP under a 'special labour relationship' (*relación laboral especial*) which is governed by Royal Decree No. 1/1995 of 24 March 1995 and Art. 151 of the Ports and Merchant Shipping Act; or directly, under a 'common labour relationship' (*relación laboral común*), by the holder of the cargo handling licence (Art. 149). Licensed cargo handling companies must employ at least 25 per cent of their workforce on the latter basis, but exemptions may be granted (Art. 150(4)). Pool workers engaged via the SAGEP can only be employed for an indefinite period, and will be assigned to the cargo handlers through a rotation system (Art. 151(1)-(2)). The relationship with the SAGEP may be terminated when the worker repeatedly rejects jobs appropriate to his working status (Art. 151(3)). Where for any reason the SAGEP is unable to offer sufficient workforce, the employer is entitled to employ, for one shift only, other workers who meet the qualifications required by the law (Art. 151(4)). The latter situation occurs regularly.

²³¹⁰ See *infra*, para 1767.

Licensed cargo handlers who are exempt from the obligation to participate in a SAGEP still must rely on pool workers where their permanent workers are unable to perform the task. If the SAGEP is unable to supply temporary pool workers, the company may hire other workers for one shift (Art. 151(5)).

The SAGEPs bear the responsibility to comply with all obligations in relation to wages and social security of pool workers (Art. 151(6)).

Where workers perform work on the basis of the 'special labour regime', the SAGEP continues to act as their employer, but the powers of direction and control are exercised by the user company. The latter may inform the SAGEP of any breaches of the contract and propose the imposition of a sanction. Concrete proposals for sanctions shall be binding (Art. 151(8)).

1734. As a result of the legislation summarised above, all port labour pools in Spanish ports (except one) are currently constituted as private enterprises under the form of a SAGEP²³¹¹, which are owned by the stevedoring companies and authorised by Spanish legislation to provide cargo handling services in ports. This type of legal entity was specifically created for the ports industry. The Board of Directors of each SAGEP is authorised to increase or reduce the number of port workers on the basis of its articles of association. The pools are financed by the employers.

1735. As a result of the above, port workers in Spain have to be registered in a register within the meaning of ILO Convention No. 137²³¹². In Spanish ports, no hiring halls are used (but there are some exceptions in smaller ports).

1736. The Ports and Merchant Shipping Act establishes sanctions for breaches of the provisions on stevedoring services. These are considered as formal (very often severe) sanctions and can result in substantial fines. In addition, provisions of general Spanish labour law may find application. Practically, enforcement is organised by the Labour Ministry, the port authorities, the terminal operators and the trade unions.

1737. The National Collective Bargaining Agreement starts out with a detailed definition of its scope²³¹³. The definition of its 'functional scope' contains a detailed description of relevant port

²³¹¹ The legal status of these entities is based on the general concept of 'Group of Economic Interest' (Agrupación de Interés Económico, AIE).

²³¹² However, one responding terminal operator denied that the Spanish regime can be regarded as a registration system in the sense of ILO Convention No. 137.

labour activities²³¹⁴ which appears to be inspired by the corresponding provisions of the Ports and Merchant Shipping Act (but is not fully up-to-date with its current version)²³¹⁵. For good measure, local collective agreements reiterate these definitions²³¹⁶.

1738. The National Agreement as well as local agreements confirm that port workers must be used for 'complementary services' (*las labores complementarias*) which are not considered port services and which include the reception and delivery of goods and their horizontal transportation, the sorting, unitisation, consolidation, counting and grouping of goods and the stuffing and stripping of containers (to the extent that these tasks are carried out by stevedoring companies)²³¹⁷. Attempts to reinforce the market position of stevedoring companies in this field through a further national agreement failed after an intervention by the national Competition Authority²³¹⁸.

1739. Some local agreements contain further regulations on self-handling. In Algeciras, for example, a list is maintained of ships on board of which the crew performs the lashing and securing of containers under an agreement between the crew and the ship owner. In the absence of such an agreement, the work is reserved for local pool workers²³¹⁹.

1740. According to the National Collective Bargaining Agreement on Port Labour, decisions on the admission of additional pool workers will be taken on the basis of the criterion of the average 'optimum employment' of the pool workers, which is set at 85 per cent of the working time at port level²³²⁰. Proposals to admit new pool workers may be made by the SAGEP or by the unions²³²¹. Current legislation, however, reserves the right to admit new workers for the Board of Directors of the SAGEP.

²³¹³ Art. 1-4 of the III Acuerdo of 27 September 1999.

²³¹⁴ Art. 3 of the III Acuerdo of 27 September 1999.

²³¹⁵ On the latter, see *supra*, para 1717.

²³¹⁶ See, for example, Art. 1-3 of the Collective Agreement for Algeciras; Art. 1-3 of and the 'Disposiciones adicionales' to the Collective Agreement for Almería; Art. 1-3 of the Collective Agreement for Barcelona.

²³¹⁷ See Art. 3(4) of the III Acuerdo of 27 September 1999; Annex II to the Collective Agreement for Algeciras; Art. 1(2) of the Collective Agreement for Barcelona.

²³¹⁸ See *supra*, para 1722 and *infra*, para 1776.

²³¹⁹ See Annex I to the Collective Agreement for Algeciras.

²³²⁰ See Art. 6(1) of the III Acuerdo of 27 September 1999; compare Art. 8 of the Collective Agreement for Almería.

²³²¹ Art. 6(2) of the III Acuerdo of 27 September 1999.

1741. Still according to the National Collective Agreement²³²², pool workers must be recruited on the basis of the principles of equality, merit and ability, through a public call.

In order to obtain registration as port worker, candidates have to fulfil the following minimum conditions:

- minimum age of 18 years (which is the general age limit under Spanish labour law);
- possession of a school graduation certificate or equivalent (*Título de Graduado Escolar o equivalente*) and, in certain cases, vocational training;
- possession of a truck driver's licence.

Equipment operators, cargo controllers and foremen must have secondary education and a driver's licence.

Moreover, candidates have to pass physical, psycho-technical and medical tests, following which candidates are ranked according to their marks. For certain groups, additional requirements apply. Candidates are also interviewed by employers' association and the unions. The Ports and Merchant Shipping Act also regulates the training of port workers²³²³.

The selection process must be carried out by an external recruitment company. Reportedly, this also happens in practice, except when only very few persons have to be selected.

Several stakeholders and experts added that there is an unwritten, factual requirement to be a member of a trade union.

ANESCO adds that proficiency in professional and technical English is required for cargo controllers and foremen. Reportedly, this requirement is not based on any specific legal provision. It is however a prerequisite with a view to promotion of the worker to a higher rank.

1742. The collective agreements confirm that pool workers are employed by the SAGEPs on the basis of a contract of employment for an indefinite term²³²⁴ and that, as a rule, the SAGEPs assign the pool workers to individual companies on the basis of a rotation system and only for one shift²³²⁵. Some local agreements contain Model Clauses for the contract of employment²³²⁶.

1743. Some local agreements further regulate the registration of port workers by the SAGEP²³²⁷.

²³²² Art. 7 of the III Acuerdo of 27 September 1999; see also, for example, Art. 9 of the Collective Agreement for Almería; Art. 9 of the Collective Agreement for Barcelona.

²³²³ See *infra*, para 1759.

²³²⁴ See, for example, Art. 44-45 of the Collective Agreement for Barcelona.

²³²⁵ See Art. 10(1) of the III Acuerdo of 27 September 1999.

²³²⁶ See, for example, the additional clauses to the Collective Agreement for Almería and Annex IV to the Collective Agreement for Barcelona.

²³²⁷ See, for example, Art. 48 of the Collective Agreement for Barcelona.

1744. Local agreements set out the procedure for the ordering and assignment of pool workers²³²⁸. In Algeciras, Santander and Valencia, pool workers are informed on their next job via electronic communication. The agreements confirm that in the case of a shortage of pool workers, other workers may be employed²³²⁹.

1745. The National Collective Agreement describes the procedure which employers must follow to integrate pool workers as permanent workers or *fijos* (at least 25 per cent). Working conditions must not be lower than those for pool workers²³³⁰. If a pool worker joins an individual company as a permanent worker, his employment relationship with the SAGEP is suspended, and he maintains his seniority rights²³³¹. Some local agreements confirm the obligation on employers to employ 25 per cent of *fijos*²³³².

1746. The stevedoring companies exercise authority and control over operations²³³³. In a number of ports, orders may however only be transmitted to the workers through their immediate hierarchical superior²³³⁴.

1747. It is common that local collective agreements regulate working time and shift systems²³³⁵.

1748. As a rule, workers must not perform double shifts in one day where other workers are available²³³⁶. Workers must be available the whole day but they must not be moved to another task unless it is within the scope of their professional group and their qualifications and their

²³²⁸ See, for example, Art. 13 of the Collective Agreement for Algeciras; Art. 15 of the Collective Agreement for Almería; Art. 15 of and Annex I to the Collective Agreement for Barcelona.

²³²⁹ See, for example, Art. 50 of the Collective Agreement for Barcelona.

²³³⁰ See Art. 9 of the III Acuerdo of 27 September 1999; compare Art. 10 of the Collective Agreement for Algeciras; Art. 11 of the Collective Agreement for Almería; Art. 10 and 14 of the Collective Agreement for Barcelona.

²³³¹ See Art. 8 of the III Acuerdo of 27 September 1999; compare Art. 10 of the Collective Agreement for Almería; Art. 11, 14 and 46 of the Collective Agreement for Barcelona.

²³³² See, for example, Art. 11 of the Collective Agreement for Algeciras; Art. 13 of the Collective Agreement for Almería; Art. 12 of the Collective Agreement for Barcelona.

²³³³ See, for example, Art. 13 of the Collective Agreement for Algeciras; Art. 51 of the Collective Agreement for Barcelona.

²³³⁴ See, for example, Art. 52 of the Collective Agreement for Barcelona.

²³³⁵ See, for example, Art. 16 *et seq.* of the Collective Agreement for Almería; Art. 16 *et seq.* of the Collective Agreement for Barcelona.

²³³⁶ See Art. 10(2)(d) of the III Acuerdo of 27 September 1999.

initial task is completed²³³⁷. According to some local agreements, handlers of equipment working for one ship may be interchanged²³³⁸.

To finish a job, two hours of overtime may be imposed, in which case extra pay is ensured²³³⁹.

In order to ensure an equitable distribution of the work, permanent workers have priority except in the case of repeat hiring (*doblaje*)²³⁴⁰. With a view to repeat hiring, and in the absence of other local stipulations, the gang working at a particular ship enjoys priority²³⁴¹.

The working day ends as soon the job is completed or the operations cease or cannot start for reasons beyond the will of the worker²³⁴².

1749. The National Collective Bargaining Agreement on Port Labour²³⁴³ lays down the following basic classification of port workers:

Figure 114. National classification of port workers in Spain (source: National Collective Agreement on Port Work of 27 September 1999, Art. 12(1))

GROUP	CLASS (IN SPANISH)	CLASS (IN ENGLISH)
Group 0	<i>Auxiliar</i>	Auxiliary (trainee)
Group I	<i>Especialista</i>	Specialist
Group II	<i>Oficial Manipulante</i>	Handler of mechanical equipment
Group III	<i>Controlador de Mercancía</i>	Cargo controller
Group IV	<i>Capataz</i>	Foreman

²³³⁷ See Art. 10(3)(a) of the III Acuerdo of 27 September 1999; compare, for example, Art. 52(6) and 52(9) of the Collective Agreement for Barcelona.

²³³⁸ See, for example, Art. 52(13) of the Collective Agreement for Barcelona.

²³³⁹ See Art. 10(3)(b) of the III Acuerdo of 27 September 1999; compare, however, Art. 37 of the Collective Agreement for Algeciras; Art. 19 of the Collective Agreement for Almería; Art. 18 of the Collective Agreement for Barcelona.

²³⁴⁰ See Art. 10(3)(c) of the III Acuerdo of 27 September 1999; compare Art. 12(3) of the Collective Agreement for Almería; Art. 52(10) and 52(16) of the Collective Agreement for Barcelona.

²³⁴¹ See Art. 10(3)(d) of the III Acuerdo of 27 September 1999.

²³⁴² Art. 10 of the III Acuerdo of 27 September 1999; compare further details in Art. 18 of the Collective Agreement for Algeciras.

²³⁴³ See Art. 12 of the III Acuerdo of 27 September 1999; see on this matter also Art. 54 and 97 of the Collective Agreement for Algeciras; Art. 24 *et seq.* of the Collective Agreement for Almería; Art. 30-31 of the Collective Agreement for Barcelona. The national classification was introduced under the 1992 collective agreement which reduced 38 different job categories to just 4 grades (Saundry, R. and Turnbull, P., "Contractual (In)Security, Labour Regulation and Competitive Performance in the Port Transport Industry: A Contextualized Comparison of Britain and Spain", *British Journal of Industrial Relations* 1999, Vol. 37:2, (271), 282-283).

The National Collective Agreement describes in a detailed manner the tasks which may be performed by each of these groups of workers. Under the principles of functional mobility and multi-skilling (*movilidad funcional y polivalencia*), workers can be employed for all the tasks within their specialty. Workers are obliged to carry out all jobs which belong to the tasks of their group, with the sole limitation that, where applicable, they must possess the relevant certification. If no workers of the group are available, jobs may be assigned to workers of another group who possess the required certificate (this rule does not apply to auxiliaries however). Permanent workers may only be used for tasks of another group where no pool workers are available. The professional classification of port workers is the sole remit of the SAGEP. The promotion of permanent and pool workers is organised on the basis of equal opportunities for all.

Local agreements contain further details on job classification²³⁴⁴ and on manning scales²³⁴⁵.

1750. Some local agreements contain specific provisions on the productivity of pool workers, in particular on their effective availability for work²³⁴⁶ and on productivity bonuses²³⁴⁷.

On the other hand, port workers in Spain enjoy an income guarantee for periods of inactivity which is financed by the SAGEPs. In the event of unemployment, general national social security law applies²³⁴⁸.

1751. The National Collective Bargaining Agreement on Port Labour sets out a detailed disciplinary regime on the basis of which various sanctions may be imposed upon workers (warning, suspension or dismissal). Disciplinary authority over permanent workers rests with the individual companies; authority over pool workers is exclusively assigned to the SAGEP²³⁴⁹. Further details are contained in the local agreements²³⁵⁰ which also regulate proceedings in the event of it coming to light that non-registered workers are employed (*intrusismo*)²³⁵¹.

²³⁴⁴ See, for example, Art. 89, 93 and 94 of the Collective Agreement for Algeciras; Art. 30 and 73 of the Collective Agreement for Barcelona.

²³⁴⁵ See, for example, Annex II to the Collective Agreement for Barcelona.

²³⁴⁶ See, for example, Annex VIII to the Collective Agreement for Barcelona.

²³⁴⁷ See, for example, Art. 25 and also 42 and 45 of the Collective Agreement for Algeciras.

²³⁴⁸ Recently, Barcelona's SAGEP ESTIBARNA had to invoke a third ERE (Expediente de Regulacion de Empleo) or temporary unemployment of workers due to a drop in cargo volumes. Under this scheme, terminal operators pay one part of the salary and the State (via the unemployment benefit) the other one.

²³⁴⁹ See Art. 18 of the III Acuerdo of 27 September 1999.

²³⁵⁰ See, for example, Art. 57 *et seq.* of the Collective Agreement for Algeciras; Annex III to the Collective Agreement for Almería; Art. 32 *et seq.* of and Annex III to the Collective Agreement for Barcelona.

²³⁵¹ See, for example, Art. 56 of the Collective Agreement for Algeciras; Art. 54 of the Collective Agreement for Barcelona.

1752. In practice, cargo handlers in some Spanish ports also employ, in addition to their permanent workers and the temporary pool workers allocated on a daily basis by the SAGEPs, so-called *rojillos* (pinkoes) or *adscritos* (assigned workers). These workers are also members of the pool and hired on a daily basis, but always by the same employer.

In Barcelona, where this alternative form of employment was first introduced, some 25 per cent of all port workers are *rojillos*. The *rojillos* have a position somewhere in between permanent and pool workers.

The collective agreement for Algeciras provides that workers may be assigned to the stevedoring companies for a shift, for a fixed term of between one month and one year, or for an indefinite term; the latter categories are considered as permanent workers for the purposes of meeting the legal 25 per cent minimum of permanent employment²³⁵².

1753. In the larger ports, cargo handlers call upon general temporary work agencies to meet shortages of regular pool workers (Adecco in Barcelona, Malaga and Seville, Randstad in Gijón, Aviles and Bilbao, Tempo in Valencia and Creyf's in Sagunto). Reportedly, the temporary work agencies are contracted by the SAGEP, and only one such agency is designated per port. According to a trade union representative, the agency workers are mostly used for manual work such as lashing and unlashing and twistlock work and receive a basic training at the SAGEP. Puertos del Estado specifies that temporary agency workers may only perform tasks reserved to Groups I and II (general workers and handlers of mechanical equipment) and that they must be hired by the stevedoring company (not by the SAGEP).

In smaller ports, employers maintain informal lists of occasional workers. In some ports, this system is referred to as *La Bolsa* ('The Exchange'), but it cannot be considered an official second pool.

- *Facts and figures*

1754. According to the Spanish Association of Stevedoring Companies and Ship Agencies (Asociación Nacional de Empresas Estibadoras y Consignatarias de Buques, ANESCO), in 2012 Spain counted 159 employers of port workers in Spain. ANESCO represents more than 50 per cent of companies, which together employ more than half of all port workers²³⁵³.

²³⁵² See Art. 9.1 and 9.2 of the Collective Agreement for Algeciras.

²³⁵³ See National Competition Commission, 24 September 2009, Expte. 2805/07 Empresas Estibadoras.

1755. According to ANESCO, Spanish ports in 2012 employed approximately 6,500 port workers. The trade union TCM-UGT confirmed this estimate. The figure comprises all port workers (permanent and as well as casually employed pool workers).

Puertos del Estado specified that on 31 December 2010 Spanish ports employed 6,659 port workers in Spain. At the time of writing, neither Puertos del Estado, nor ANESCO were able to update these figures.

Table 103. Number of port workers in Spain, 2005-2010 (source: Puertos del Estado)

Year	2005	2006	2007	2008	2009	2010
Number of port workers	6,245	6,343	6,666	5,653	6,564	6,659

1756. For the period 2008-2012, details for individual ports were as follows:

Table 104. Number of port workers registered with the port labour pool in individual Spanish ports, 2008-2012²³⁵⁴ (source: ANESCO)

Port	2008	2009	2010	2011	2012
Alcudia	9	9	n.a.	n.a.	n.a.
Algeciras	1,232	1,204	1,188	1,153	1,566
Alicante	70	82	n.a.	n.a.	n.a.
Almeria	23	21	n.a.	n.a.	n.a.
Arrecife	14	14	13	13	13
Aviles	64	64	63	63	62
Barcelona	1,128	1,109	1,086	1,081	1,078
Bilbao	425	403	387	369	362
Cádiz	86	96	76	64	62
Cartagena	41	31	n.a.	n.a.	n.a.
Castellón	160	162	n.a.	n.a.	n.a.
Ceuta	0	0	n.a.	n.a.	n.a.
Coruña	48	44	42	39	34
Ferrol	20	19	18	18	17
Gandia	16	17	16	16	16
Gijón	46	41	42	42	42

²³⁵⁴ Data as available on 6 November 2012.

Huelva	90	75	59	56	53
Ibiza	21	21	n.a.	n.a.	n.a.
Las Palmas	511	508	500	497	494
Mahon	16	16	n.a.	n.a.	n.a.
Málaga	173	174	n.a.	n.a.	n.a.
Melilla	20	20	20	18	18
Motril	20	22	n.a.	n.a.	n.a.
P. Mallorca	96	106	n.a.	n.a.	n.a.
Palamos	0	5	n.a.	n.a.	n.a.
Pasajes	144	136	135	128	107
Pontevedra	14	14	n.a.	n.a.	n.a.
Pto. Rosario	11	11	11	10	10
S.C. de La Palma	12	11	11	11	11
Sagunto	162	150	n.a.	n.a.	n.a.
San Carlos	0	11	n.a.	n.a.	n.a.
Santander	85	75	71	68	58
Port	2008	2009	2010	2011	2012
Sevilla	68	68	67	65	63
Tarragona	214	206	204	192	179
Tenerife	222	209	208	205	203
Valencia	1,267	1,251	1,239	1,284	1,295
Vigo	134	153	149	140	137
Villanova	0	8	n.a.	n.a.	n.a.
Villagarcia	8	11	n.a.	n.a.	n.a.
TOTAL	6,670	6,577	n.a.	n.a.	n.a.

1757. According to Estibarna, Barcelona's SAGEP, the number of port workers in Spain's biggest port evolved as follows:

Table 105. Number of port workers in Barcelona, 2005-2012 (source: Servicio de Prevención Mancomunado de las empresas estibadores del Puerto de Barcelona, PREVESTIBA)

Year	2005	2006	2007	2008	2009	2010	2011	2012
Number of port workers	957	924	1,069	1,125	1,111	1,108	1,105	1,091

In 2012, the total number of workers in the port of Barcelona (1,091 persons) comprised 1,049 male and 42 female workers. 158 workers were under the age of 30, 909 between 30 and 50

years old and 24 older than 50. Further, the total comprised 156 male container inspectors, and 893 male as against 42 female workers belonging to the categories of twistlock removers, crane or truck drivers, checkers and tallymen and foremen and coordinators. According to a trade union representative, Barcelona employs about 700 pool workers, 300 *fijos* and 120 apprentices.

The table below shows the distribution of Spanish port workers by professional group.

*Table 106. Number of port workers in Spanish ports by professional group, 31 December 2010
(source: Puertos del Estado)*

Port	Group IV	Group III	Group II	Group I	Group 0	Total
	Foreman	Cargo controller	Handler of mechanical equipment	Specialist	Auxiliary (trainee)	
Alcudia	1	0	8	0	0	9
Algeciras	77	121	992	39	0	1,229
Alicante	10	14	43	0	15	82
Almeria	4	2	7	0	5	18
Arrecife	2	0	5	0	3	10
Aviles	9	2	48	33	0	92
Barcelona	98	146	700	3	151	1,098
Bilbao	39	66	298	22	0	425
Cadiz	10	9	33	67	6	125
Cartagena	5	3	29	7	0	44
Castellon	10	12	104	0	20	146
Ceuta	1	0	2	0	0	3
Coruña	4	1	24	20	0	49
Ferrol	0	0	17	4	0	21
Gandia	4	1	11	0	0	16
Gijon	8	3	23	8	0	42
Huelva	10	2	45	40	0	97
Ibiza	2	3	17	0	0	22
Las Palmas	47	62	278	12	120	519
Mahon	2	0	9	0	3	14
Malaga	14	12	69	76	0	171
Melilla	0	0	7	8	5	20
Motril	2	2	9	6	1	20
P. Mallorca	11	16	57	0	9	93
Pasajes	11	5	110	7	0	133
Pontevedra	6	0	11	7	0	24
Pto. Rosario	1	0	6	0	4	11
Sagunto	10	28	65	18	36	157
S.C. de La Palma	4	1	3	0	9	17
Santander	9	6	53	6	0	74
Sevilla	9	5	36	20	0	70
Tarragona	28	27	148	1	0	204
Tenerife	21	35	131	0	15	202
Valencia	172	172	898	12	0	1,254

Port	Group IV	Group III	Group II	Group I	Group 0	Total
	Foreman	Cargo controller	Handler of mechanical equipment	Specialist	Auxiliary (trainee)	
Vigo	11	10	118	3	0	142
Villagarcia	1	0	5	0	0	6
Total	653	766	4,419	419	402	6,659

1758. According to ANESCO, all Spanish port workers are members of a trade union, the biggest union being the independent State Coordinator of Port Workers (Coordinadora Estatal de Trabajadores Portuarios, CETP, commonly referred to as Coordinadora), with a 73.12 per cent share, followed by the State Federation for Transport, Communication and Sea of the General Workers' Union (Federación Estatal de Transportes, Comunicaciones y Mar de UGT (Unión General de Trabajadores), in short TCM-UGT) and the Communist Workers' Commissions (Comisiones Obreras, CC.OO) which represent 16.29 per cent and 7 per cent of port workers respectively. Coordinadora is IDC-affiliated while TCM-UGT and CC.OO are members of ITF. Smaller regional unions of port workers include the Interunion Confederation of Galicia (Confederación Intersindical Galega, CIG), The Basque Nationalist Workers Commission (Langile Abertzaleen Batzordeak, LAB), the Basque Workers' Solidarity (Eusko Langileen Alkartasuna, ELA), which represent 1.76, 1.32 and 0.44 per cent respectively. All these membership percentages were provided by ANESCO, but other sources mention slightly different ones²³⁵⁵.

The situation in ports sharply contrasts with the relatively low trade union density in Spain as a whole, which is estimated at a mere 16 per cent²³⁵⁶.

²³⁵⁵ Puertos del Estado estimates that 99 per cent of all port workers are union members and stated the following percentages: Coordinadora 77.63, TCM-UGT 10.96, CC.OO 4.57, others 6.85 per cent. TCM-UGT itself claims a 16 per cent share among stevedores (1,000 members). CC.OO asserts that more than 95 per cent of all port workers (stevedores) are unionised and that IDC unites more than 4,000 stevedores, TCM-UGT 500, and 300. A terminal operator reported as follows: Coordinadora almost 80 per cent, CC.OO 4 per cent, UGT 7 per cent, ELA, LAB and CIG the remainder. Yet another company stated that Coordinadora controls at least 95 per cent of the dockers, with CC.OO and UGT only representing white collar workers. Coordinadora gives detailed figures on its representativeness in Spanish port regions on www.coordinadora.org. In September 2009, the Spanish Competition Authority found that Coordinadora represented 73.127 per cent of port workers, CIG 1.763 per cent and LAB 1.322 per cent (National Competition Commission, 24 September 2009, Expte. 2805/07 Empresas Estibadoras). Local container terminal operators confirmed that in Barcelona and Valencia, all port workers have indeed joined a trade union.

²³⁵⁶ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

9.20.4. Qualifications and training

1759. The Ports and Merchant Shipping Act expressly provides that all port workers must possess a vocational training certificate according to rules issued by the Ministry of Public Works (Art. 153(1)).

However, a large number of exemptions apply, including for workers who have been employed previously (see Art. 154).

The implementing decree was issued on 23 October 2012²³⁵⁷, only a few weeks after the European Commission had sent a reasoned opinion stating that the Spanish port labour regime is incompatible with freedom of establishment²³⁵⁸.

1760. The National Collective Bargaining Agreement on Port Labour specifies that permanent training programmes must be established²³⁵⁹. All new auxiliary workers (trainees) must be trained for at least six months following which they have to pass an objective test²³⁶⁰. Local agreements specify training requirements and provide, for example, for procedures to organise additional training in the event that new handling technologies are introduced²³⁶¹.

1761. Today, the training of port workers is governed by Royal Decree No. 1033/2011 of 4 August 2011 complementing the national catalogue of professional qualifications²³⁶². Importantly, this Decree has no mandatory character.

The Decree offers detailed qualification requirements and corresponding vocational training modules for port labour. It also sets out possible requirements on training in technical-maritime English.

So far, the Royal Decree has not yet been fully implemented.

1762. The SAGEPs provide training for their own workers.

²³⁵⁷ Orden FOM/2297/2012, de 23 de octubre, por la que se determinan las titulaciones de formación profesional exigibles para la prestación del servicio portuario de manipulación de mercancías.

²³⁵⁸ See *infra*, para 1811.

²³⁵⁹ See Art. 13 of the III Acuerdo of 27 September 1999.

²³⁶⁰ Art. 6(3)(f) of the III Acuerdo of 27 September 1999.

²³⁶¹ See, for example, Art. 29 and 59 *et seq.* of the Collective Agreement for Barcelona; compare Art. 90 *et seq.* of the Collective Agreement for Algeciras; Art. 39 of the Collective Agreement for Almería.

²³⁶² See already *supra*, para 1719.

The Ports and Merchant Shipping Act obliges each SAGEP to reserve at least one per cent of its annual payroll for the purpose of continued training of the workers (Art. 152).

Practically speaking, training is organised by a Training Committee composed of trade union representatives and terminal operators who agree on the training programme based on the needs of the terminal operators.

All four professional groups of port workers²³⁶³ have their own specialist training.

1763. In Valencia, for example, training of port workers is organised by the SAGEP SEVASA and is managed by the eight terminal operators. SEVASA has a training division, which caters for the needs of the terminals. The collective agreement for Algeciras expressly charges the local SAGEP, which runs a training centre, with training and safety training of workers and also regulates continued training²³⁶⁴.

1764. The ports of Algeciras, Barcelona, Gijón and Valencia have crane simulators.

1765. Replies to our questionnaire indicate that in Spain (or at least in some individual ports) the following types of formal training are available:

- induction courses for new entrants;
- courses for the established port worker;
- training in safety and first aid; specialist courses for certain categories of port workers;
- specialist courses for certain categories of port workers such as crane drivers, container equipment operators, ro-ro truck drivers, forklift operators, lashing and securing personnel, tallymen, signalmen and reefer technicians;
- training aimed at the availability of multi-skilled or all-round port workers;
- retraining of injured and redundant port workers.

Each of the four professional groups has its own training programme. Whether courses are voluntary or compulsory seems to vary between ports.

²³⁶³ See *supra*, para 1749.

²³⁶⁴ See Art. 68.2, 75 and 97 *et seq.* and 107 of the Collective Agreement for Algeciras.

9.20.5. Health and safety

- Regulatory set-up

1766. As we have explained²³⁶⁵, safety and health in port work is mainly regulated by the general Labour Risks Prevention Act No. 31/1995²³⁶⁶. The Act establishes the general principles relating to the prevention of occupational risks for the protection of safety and health and also regulates the information, consultation, participation and training of workers. Higher standards may be laid down in collective agreements.

1767. As we have also mentioned²³⁶⁷, specific national technical instructions on mobile cranes were enacted²³⁶⁸.

1768. The Ports and Merchant Shipping Act expressly states that if a pool worker is employed, the user company bears the responsibility of complying with rules on safety and health (Art. 151(7)).

1769. The detailed National Regulations on the Handling of Dangerous Goods in Ports are based on the IMO Recommendations on this matter²³⁶⁹.

1770. The National Collective Bargaining Agreement on Port Labour and the local agreements also contain provisions on the prevention of labour risks²³⁷⁰.

1771. In Labour Inspection and the public prosecutor are in charge of the surveillance, with the help of the terminal operators and the unions.

²³⁶⁵ See already *supra*, para 1720.

²³⁶⁶ For general information on occupational safety and health in Spain, see www.insht.es.

²³⁶⁷ See already *supra*, para 1732.

²³⁶⁸ Real Decreto 837/2003 de 27-06 por el que se aprueba el nuevo texto modificado y refundido de la Instrucción técnica complementaria "MIE-AEM-4" del Reglamento de aparatos de elevación y manutención, referente a grúas torre móviles autopropulsadas.

²³⁶⁹ On the latter, see *supra*, paras 59 and 110.

²³⁷⁰ See especially Art. 14 of the III Acuerdo of 27 September 1999; see also, for example, Art. 67 *et seq.* of the Collective Agreement for Algeciras; Art. 37-38 of the Collective Agreement for Barcelona.

1772. In Barcelona, terminal operators may wish to seek assistance from the labour risk prevention service PREVESTIBA which is in charge of managing risks at the work place. PREVESTIBA issues a Risk Assessment Document for affiliated terminal operators and assists them in ensuring proper implementation of health and safety regulations. When a port worker encounters an accident, the terminal operator informs the SAGEP ESTIBARNA and at the same time, ESTIBARNA informs PREVESTIBA and the Spanish and Catalan Governments. PREVESTIBA registers the event, investigates the cause and proposes the necessary preventive measures. Finally, PREVESTIBA updates the Risk Assessment Document of the terminal operator concerned in order to prevent future accidents by identifying any measures that might have been omitted.

- Facts and figures

1773. Today, no nation-wide statistics on occupational accidents in ports are available.

Prior to the establishment of the SAGEPs, the governmental agency Puertos del Estado maintained detailed overall statistics on the number, types and causes of occupational accidents in Spanish ports. The most recent figures date from 2001 and are as follows:

Table 107. Accidents in Spanish ports, 2001, by type (source: Puertos del Estado)

	Total number of accidents	Percentage	Number of accidents with leave	Percentage	Number of accidents without leave	Percentage
Fractures	77	4.8	76	6.4	1	0.2
Dislocations	47	2.9	42	3.5	5	1.2
Sprains	483	30.0	388	32.5	95	22.7
Lumbagos	267	16.6	201	16.8	66	15.8
Slipped discs	3	0.2	3	0.3	0	0.0
Concussions	8	0.5	5	0.4	3	0.7
Amputations	1	0.1	1	0.1	0	0.0
Other injuries	210	13.0	170	14.2	40	9.6
Superficial traumatisms	93	5.8	52	4.4	41	9.8
Contusions	363	22.5	223	18.7	140	33.5
Objects in the eyes	29	1.8	15	1.3	14	3.3
Conjunctivitis	7	0.4	1	0.1	6	1.4
Burns	3	0.2	3	0.3	0	0.0
Poisonings	3	0.2	0	0.0	3	0.7
Exposure to the environment	1	0.1	0	0.0	1	0.2
Suffocations	1	0.1	0	0.0	1	0.2
Effects of electricity	0	0.0	0	0.0	0	0.0
Effects of radiations	0	0.0	0	0.0	0	0.0
Multiple injuries	8	0.5	8	0.7	0	0.0
Heart attacks, brain haemorrhages	7	0.4	5	0.4	2	0.5
Total	1,611	100.0	1,193	100.0	418	100.0

A great majority of these accidents (1,588 or 98.6 per cent) were minor. There were few serious (21 or 1.3 per cent) and very serious (2 or 0.1 per cent) accidents. In 2001, no fatal accidents occurred in Spanish ports.

The Spanish Labour Inspectorate informed us that it does not maintain specific accident statistics on port labour.

1774. Recent statistics on accidents involving port workers in the port of Las Palmas are provided in the table below:

Table 108. Accidents in the port of Las Palmas in 2011 (unknown source)

	Pool workers	Permanent workers
Number of workers	496	11
Lost Time Accidents (LTA)	243	0
Incidence rate (number of LTA / number of workers *1,000)	487.14	0.00
Frequency rate (number of LTA / number of hours worked * 1,000,000)	348.14	0.00
Severity rate (number of lost days / number of hours worked *1,000)	9.68	0.00
Duration rate (number of lost days / number of LTA)	27.80	0.00

9.20.6. Policy and legal issues

1775. Despite the implementation of various consecutive reform schemes, the Spanish port labour system has remained both highly restrictive and controversial. Our outline of applicable rules and regulations above²³⁷¹ indicates issues such as a priority right for port workers belonging to the pool, a broad definition of the notion of port labour, a probable closed shop situation, a (relative) ban on self-handling, an obligation for employers to hold shares in the SAGEP, an obligation to employ 25 per cent of port workers on a permanent basis, and a rotation system for pool workers. Responses to our questionnaire, media reports and interviews reveal that, particularly among terminal operators and port users, overall acceptance of the port labour system remains rather low. Moreover, disagreement over port labour arrangements regularly gives rise to industrial and legal disputes. Finally, whereas Puertos del Estado, ANESCO and CC.OO concurred that applicable rules on employment are properly enforced, trade union TCM-UGT and a number of terminal operators categorically deny this. Below, we

²³⁷¹ See *supra*, para 1730 *et seq.*

shall report on a number of recent difficulties and on assessments by stakeholders and experts.

1776. In 2007, ANESCO, Coordinadora and two regional trade unions signed a new national collective agreement to regulate the working conditions in the stevedoring sector. The National Competition Authority opened proceedings since it considered that the agreement established wages and working conditions that affected not only the stevedoring companies and the port workers but also providers of liberalised ancillary services such as the handling of frozen fish, horizontal intra-port transportation and the unloading of cars and trucks from ro-ro ferries, which could be carried out by other companies as well. In September 2009, the Competition Authority fined the stevedoring companies because they had infringed the prohibition on anti-competitive agreements laid down in the Spanish Competition Act and (current) Article 101 TFEU²³⁷². The Authority found that the objectives of the agreement went beyond the defence of the social rights of port workers and that it also aimed at reserving the market of ancillary services for the stevedoring companies by erecting entry barriers to competitors who had not been able to take part in the negotiations over the collective agreement yet were forced to comply with its provisions. The decision of the Competition Authority was appealed before the competent court (Audiencia Nacional) but finally upheld in September 2010²³⁷³. In addition, a number of provisions of the new agreement were annulled by the courts, so that the remaining articles only apply to the signatories and the previous National Collective Agreement on Port Labour remained in force until this day²³⁷⁴. The decision of the Competition Authority confirms that collective agreements on port labour are not *per se* beyond the reach of competition law²³⁷⁵.

1777. In 2010, Hanjin Shipping was forced to cancel the inaugural call at its new container terminal in Algeciras after port workers refused to work following a row over manning levels. Management and unions were at odds over the organisation of work teams in the semi-automated terminal, the first of its kind in Spain²³⁷⁶. Mid-2012, the company was still struggling with the manning level issue. According to a representative of the terminal, costs for shipping lines in Algeciras are 50 per cent more expensive than at Tanger-Med. "We therefore have to make a major effort to offset this difference. We need to attract more shipping lines and the best way of doing that is by offering good prices, whilst also providing service and productivity.

²³⁷² National Competition Commission, 24 September 2009, Expte. 2805/07 Empresas Estibadoras.

²³⁷³ Audiencia Nacional, 30 September 2010, No. 815/2009; for a summary of the case, see OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>, (185), 187-188.

²³⁷⁴ See, *inter alia*, Tribunal Supremo, Sala de lo Social, 11 November 2010, Recurso de casación No. 153/2009, http://www.iustel.com/diario_del_derecho/noticia.asp?ref_iustel=1047458; see already *supra*, para 1722.

²³⁷⁵ See *supra*, para 176.

²³⁷⁶ X., "Strike halts Algeciras box terminal", *Turkish Maritime* 29 April 2010, http://www.turkishmaritime.com.tr/news_detail.php?id=6079.

However, if we can't offer the prices lines are looking for, really, there's no point!", the terminal operator said. The port authority had already done a lot of work in getting rates down, but there was still a 10 - 15 per cent differential to be overcome. The terminal was therefore aiming to cut labour costs. Its workforce consisted of 1,200 permanent stevedores, with 420 more casual workers seeking to join this pool. But labour gangs, which consisted of 14-15 members, were larger than at either Barcelona or Valencia, with the Algeciras operator stressing that just 10 are needed. "Anything above that represents an additional cost for us," he said. Unless this downsizing could be achieved, a Phase B development would be dubiously profitable. "To go ahead, we either need a guarantee that gang sizes will fall or, at the very least, a stable functioning baseline that is acceptable to our business – and that will only come through an agreement with the workers," he said, adding that Algeciras' big plus is that, to date, it has had labour peace. Nevertheless, he emphasised that quite how much reliability will feature in any negotiations with potential new shipping line customers was hard to say²³⁷⁷.

1778. In 2011, trade union Coordinadora and their French colleagues from CGT took action in order to force the operators of a Motorways of the Seas line between Gijón and Nantes to use port workers for lashing and securing work instead of what was termed "unskilled and temporary staff", *i.e.* the ship's crew²³⁷⁸.

1779. In 2012, an old debate flared up again over whether port workers must be used to handle new cars without plates²³⁷⁹.

1780. In its reply to our questionnaire, Puertos del Estado identified the following restrictions on employment and restrictive working practices:

- mandatory use of port workers for non-port work;
- exclusive rights for certain categories of workers;
- mandatory composition of gangs (which is a factual situation);
- exclusive right of trade union members and control of the registration of new workers by the trade unions (closed shop);
- unjustified interruptions of work and breaks;
- unauthorised absences;
- inadequate composition of gangs.

²³⁷⁷ X., "Algeciras weighs up development potential", *Port Strategy* 25 June 2012, <http://www.portstrategy.com/news101/world/europe/west-med-transshipment-box>.

²³⁷⁸ See Valenmar, "The dockers from Barcelona and Nantes continue to work together to strengthen ties", *Odiseo* 8 June 2011, <http://www.2e3s.eu/odiseo/2011B01/ENn0.05.port.noti1.html>.

²³⁷⁹ See CdS, " Los sindicatos estibadores se reúnen el jueves con Llorca para que les explique dónde no se cumple la Ley de Puertos", *Cadena de Suministro* 22 May 2012, <http://www.cadenadesuministro.es/noticias/los-sindicatos-estibadores-se-reunen-el-jueves-con-llorca-para-que-les-explique-donde-no-se-cumple-la-ley-de-puertos/>; X., "La estiba de vehículos", May 2012, <http://hemeroteca.laestiba.info/spip.php?article923>.

For Puertos del Estado, these restrictions hardly need any further explanation and are major competitive issues. Corrective measures are impossible due to immediate threats to open an industrial conflict. Port workers do not feel any tie, either to the companies, or to their financial result.

1781. Also on the basis of the questionnaire, a terminal operator in the port of Valencia reported the following restrictions on employment:

- prohibition on employment of temporary workers through employment agencies;
- prohibition on self-handling;
- prohibition on employment of non-nationals or workers employed by employers from other EU or non-EU countries;
- exclusive rights for certain categories of workers;
- mandatory composition of gangs;
- exclusive rights of trade union members (closed shop).

The company confirmed that in Valencia only one temporary work agency is recognised (Tempo), that it supplies truck drivers and lower categories of workers. In practice, they only send relatives and friends of the port workers.

The mandatory composition of gangs was expressly abolished under the Second National Collective Bargaining Agreement on port labour²³⁸⁰ as well as Valencia's local collective agreement²³⁸¹. Moreover, a Court sentence expressly confirmed the sole authority and responsibility of the employer to decide on the organisation of work at its terminal and stressed that no rule of law imposes any minimum number of gang members²³⁸². Yet, in this respect too, the factual situation may not be in perfect conformity with the legal requirements.

As regards the closed shop, the terminal operator specified that not only is trade union membership a factual requirement to become a port worker, candidates also have to be "a friend or relative" of the union leaders.

The same employer mentions that whereas employers are supposed to set the number of pool workers, the unions time and again force them to increase it.

Exchanges of workers between employers are exceptional, and temporary transfers of workers between ports never happen as the the employers and the unions all have to agree (except in the ports of Gijón and Avilés).

²³⁸⁰ Art. 6 of the II Acuerdo para la regulación de las relaciones laborales en el sector portuario.

²³⁸¹ Disposiciones Adicionales, Segunda - Designación del personal necesario, Convenio colectivo para la regulación de las relaciones laborales del sector portuario del puerto de Valencia.

²³⁸² Generalitat Valenciana, Administración de Justicia, Sentencia nº 236/2001.

The same terminal operator furthermore mentions the following restrictive working practices which harm competitiveness:

- late starts, early knocking off;
- unjustified interruptions of work and breaks;
- unauthorised absences;
- overmanning;
- ban on mobility of labour between hold and hold, ship and ship, ship and shore and between shore jobs;
- limitations on use of new techniques.

The same terminal operator provided the following additional information:

- *The unions are obsessed by rejecting every initiative / proposal made by the terminals to change the gang composition or job definition*
- *Modern techniques, like L.E.D.'s for machines on the cranes are rejected*
- *The dockers systematically refuse to do jobs, like surveying / watching the crane movements on board of the ships, in order to avoid damage*
- *A shift in Spain is 6 hours: in the port of Valencia, most dockers are only 3 hours present (sic), especially at night and in the weekends.*

Furthermore, enforcement of rules on employment is controlled by the unions who stop operations whenever they do not agree. Enforcement efforts by employers are not very successful. Many provisions of applicable agreements are not respected by the unions. They only apply what is in their favour. It is impossible to impose disciplinary sanctions and as a result, the quality of the workforce cannot be improved.

Health and safety rules (as well as ISPS rules) are inadequately enforced because the workers lack discipline. If an employer insists on discipline, conflicts arise. On the other hand, the unions abuse safety rules for go-slow strikes.

1782. A terminal operator in another port reports that the current situation in most Spanish ports is not in line with legal requirements and that recent reforms had no practical effect whatsoever.

Although cargo handlers are obliged by law to employ a minimum of 25 per cent of their workforce on a long term contract, this is almost nowhere the case in practice. Our interviewee stated that for the whole of Spain, workers under a long term contract form only a small minority of the total work force. Figures provided by Anesco suggest that in 2009, only 89 out of 6,564 port workers, or 1.35 per cent, were *fijos* (however, Puertos del Estado claims that in 2010, 574 out of 6,659 workers had a long term contract, which represents 8.62 per cent). Still according to our interviewees, employers are not keen on employing staff on the basis of long-term contracts, as this staff can be up to three times more expensive than pool workers, which

is due to pressure from the unions who oppose fixed employment²³⁸³. Also, loopholes were created in order to enable employers (and unions) to comply with the said minimum. The system of *rojillos* or *adscritos* only offers a partial, precarious solution. Practically speaking, fixed contracts are reserved for special functions (for example, one company is reported to employ approximately 100 white collars and 300 dockers but only 11 fixed dockers, among which 3 foreman and 8 crane drivers). From a legal perspective, the status of the *rojillos* and *adscritos* seems rather ill-defined. Some, but not all interviewees, complained that various unwritten restrictions on the employment of *rojillos* apply (e.g. on the duration of assignments, shifts, working days, etc.).

Our terminal operator further complains that, while the pool companies or SAGEPs are fully owned and financed by the users, the employers have no real say in the organisation of port labour. The monopoly of the dockers, the obligation to negotiate collectively, *i.e.* together with competing firms, cost factors, the overall rigidity of the system, the fear of strikes and the strike funds of the unions result in an extremely weak bargaining position for employers. In the Spanish port sector, collective bargaining has no real meaning. All the power is in the hands of the unions but the employers have to bear all the costs of the system as well as its possible deficits.

Moreover, employers have no control over membership of the pool, and such membership is not granted on a transparent basis. In practice, membership is more often than not granted to relatives.

It is also observed that the Spanish port labour regime suffers from legal uncertainty, for example over the exact definition of cargo handling services (which was denied by Puertos del Estado). Collective agreements are not respected and everything is time and again subject to new negotiations. Many rules only rest on unwritten practices.

The terminal operator informed us of the following restrictions on employment:

- lack of control on membership of the pool (*cf. supra*);
- the employer has no say in the selection of its staff. The rotation system decides who works where and when, and under the current shift system, gangs are renewed four times a day;
- the employer has no control over pool workers working in his own terminal. In Valencia, the employer cannot give direct instructions to the pool workers but can only give instructions to the chief foreman who is then supposed to forward instructions to the next level and so on, which results in severe inefficiencies;

²³⁸³ Comp. the assessment of the situation under Act 2/86 by Saundry and Turnbull:

*As individual employers must guarantee their permanent workers a minimum of paid days each year (for example 222 days in the port of Bilbao), it is more cost-effective to hire casual labour from the Estiba and share the costs of surplus labour with other employers if traffic volumes will not support guaranteed employment (Saundry, R. and Turnbull, P., "Contractual (In)Security, Labour Regulation and Competitive Performance in the Port Transport Industry: A Contextualized Comparison of Britain and Spain", *British Journal of Industrial Relations* 1999, Vol. 37:2, (271), 282).*

- also in Valencia, it is reported that yard checkers decide where the containers are stacked, resulting in software planning systems remaining unused;
- mandatory composition of the gang, combined with overstaffing. The full gang must be paid even if a much smaller gang would be sufficient to cope with the work (as explained above²³⁸⁴, under the letter of collective agreements, rules on the composition of gangs are abolished);
- a cargo handler is obliged to hire and pay 1 foremen and 2 workers for the unloading of a grain bulker with the help of an elevator at a silo terminal, even if these employees perform no work whatsoever;
- the right to employ external workers in the event of a shortage of pool workers is never exercised in practice because this would not be accepted;
- in practice, pool workers are almost never removed from the pool; recently, 0.3 per cent of the complaints by the terminal operator have led to a sanction, which is considered a tremendous increase over the previous figure of 0.0 per cent.

Furthermore, the following restrictive practices were reported:

- ban on mobility of labour between ships, which means that if one ship is finished, the workers cannot be transferred to another ship;
- workers are always hired for a given ship; where this ship unexpectedly does not arrive on time, workers cannot be transferred to another job;
- pool workers must be hired either for a land-based job or for a job on board; as a result, a worker hired for quayside work can never be obliged to perform services on board and *vice versa*;
- similarly, workers (for example, straddle carrier drivers) hired in a given gang cannot be transferred to another gang if their shoreside crane runs down; as a result, software-based planning of terminal operations is often useless;
- limitations on the use of new and more reliable technologies such as OCR and GPS, given the mandatory composition of gangs per crane;
- cases of foremen enjoying the privilege of having a private car driver.

In addition, complaints on the behaviour of workers lodged with the pool by employers are not effectively dealt with. Although collective agreements describe numerous offences and provide for severe sanctions, the imposition of sanctions is in practice a matter of negotiation with the unions. On average, a complaint results in a sanction in only 2.5 per cent of the cases.

The workers do not identify with any of their employers, they believe that they only belong to themselves, and their productivity is poor in comparison with ports in other countries. Lack of personal commitment and identification with the employer contributes to poor quality of service and is conducive to errors, for example by container checkers. The poor performance of dock work in Spain is the main reason why massive cargo flows continue to be directed through North European ports. The inadequacy of the prevailing port labour regime has a devastating effect on the competitive position of Spanish port terminals, where labour costs can amount to 60 per cent of the overall cost of operations.

²³⁸⁴ See *supra*, para 1781.

The same terminal operator notes the lack of a safety culture in Spanish ports. Port workers hold on to their traditional macho culture and are willing to take unacceptable risks. Safety measures, such as the requirement to wear helmets, are not always complied with. Alcohol tests are refused. Furthermore, the risk of accidents is increased by the inadequately high number of workers per gang and by the continuous rotation of personnel who do not specialise in one company and, as a result, cannot be trained adequately. Rotation dockers have a much higher accident rate than fixed dockers. The intervention of independent safety prevention services is banned by the unions. On the other hand, national safety inspections are very stringent and employers have been rendered criminally responsible for occupational accidents by Act No. 5/2010 on the criminal liability of legal persons²³⁸⁵.

There are no qualifications for trainers. In practice, a trainer is a privileged docker who has received an exemption from daily port work. Training by independent service providers is not permitted. The national port work training programme is laid down in the law but is not implemented.

1783. Yet another company running a container terminal and belonging to a major international group reported that the port labour system in the port of Barcelona is functioning quite well and that port labour is highly productive at this port. This respondent states that no particular issues deserve priority attention from policy and law makers and that the current regime offers sufficient legal certainty. Moreover, it describes the current relationship between port employers and port workers and their respective organisations as good and sees a positive competitive impact of the labour system. On the latter point, the company elaborates as follows:

Port workers in Barcelona enjoy high salaries but at the same time, the system ensures high productivity. Port workers have a basic salary which is complemented on the basis of moves per container. As a result worker's salaries are high but they also translate into high levels of productivity and efficiency. The good training and selection regime of the pool system has resulted in dedicated and hard workers. This, plus a good retention and remuneration structure of skilled workers have benefited the port, operators and customers in achieving high productivity and efficient operations.

The same operator reports that recruitment via an employment agency is exceptional. In 2006-2007 a temporary working agency provided general port workers as well as a few mechanics and goods controllers in order to cope with growth in demand. This has been the only case to date (which information was disputed by Puertos del Estado who mention a regular use of temporary employment agencies²³⁸⁶). Accordingly, the same company mentions, among prevailing restrictions on employment, a prohibition on employment of temporary workers

²³⁸⁵ See Ley Orgánica 5/2010, de 22 de junio, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal.

²³⁸⁶ See *supra*, para 1753.

through employment agencies. Other such restrictions include a prohibition on self-handling, a prohibition on the employment of non-nationals or workers employed by employers from other countries (but only to the extent that the employer must become a member of the SAGEP), the mandatory use of port workers for non-port work, exclusive rights for certain categories of port workers, the mandatory composition of gangs and the exclusive rights of trade union members (closed shop). No restrictive working practices were reported however, and the reported restrictions on employment are not considered a major competitive disadvantage. Here, the respondent commented as follows:

The linkage between salaries and productivity as well as to the possibility of sharing the costs with the other terminal operators attenuates the situation. The port of Barcelona is very efficient and the quality of services is very high and improves our competitive position with other alternative ports. However, if the port operator would have the possibility to hire the vessel crew to perform the lashing/unlashing works the port of Barcelona could be more competitive.

With respect to the latter issue, Puertos del Estado added that lashing and unlashing is performed by the crews in Huelva and the Balearic Islands, whereas it is done by port workers in Algeciras and Santander. According to the law, stevedores may only perform lashing and unlashing operations where the crew is not carrying out this task. Practically speaking, the situation would often depend on the ship owner's own preference.

Asked which port labour regime can be considered a model or a best practice, the Barcelona terminal operator reacted as follows:

Each model is different and has advantages and disadvantages but we value the existence of different systems that use pools as well as their own staff. In both cases staff training and labour conditions are extremely important for workers. This ensures an efficient operation. Every port is different and every terminal is different and it is essential to ensure that labour arrangements suit the particularities of each port.

The company also stated that rules on health and safety as well as the level of their enforcement are satisfactory.

1784. In yet another talk with a global container terminal operator we noted again that the trade union Coordinadora is extremely powerful and that the most recent reform of port labour legislation had been a great success for them, because their monopoly is now entrenched in the law, whereas, in real terms, the privatisation of the SAGEPs changed nothing at all. Even if the local agreements do not impose manning scales, these matters are the subject of unwritten customs, so that there is very little room to manoeuvre. Because every change is subject to new negotiations, it is hard to implement new technologies and automation. Whereas a labour pool is an instrument of flexibility, its current monopolistic organisation leads to the opposite result. Opening up the market could be a first step towards real change. However, the current

infringement procedure against Spain may take several years, following which our interviewee expects further political delay, difficult negotiations and social unrest. A major difficulty is that Coordinadora is not interested in improvements of productivity and flexibility which will result in extra work volumes and job creation, and that it only defends the interests of existing workers. However, with the current unemployment rates in the country, the union is unlikely to find much support in public opinion.

1785. In a further interview, a major ro-ro operator in Valencia said that, with the exception of foremen who are employed on a permanent basis, it only uses pool workers. The foremen compose the gangs. Manning scales are rigorously enforced and strict job classifications apply, under which, unlike in many other ports, truck and tugmaster drivers do not belong to the same category. Lashing and securing of rolling stock is performed by the ship's crew, but for containers port workers must be hired.

1786. An individual ship owner replying to the questionnaire complained about the inflexibility of the shift system.

1787. According to still another interviewee, the exceptions to the exclusive rights of pool workers for lashing by the ship's crew and the handling of cars and trailers and of cargoes at industrial plants such as steel mills or refineries, which are laid down in express provisions of the current Ports and Merchant Shipping Act, have been accepted by the unions and are not controversial. It is also accepted that new, unmanned cars without plates can be loaded and unloaded by (fixed or temporary) non-pool workers recruited by cargo handlers on the private labour market. Discussions on such technicalities can be time-consuming and often result in irrational compromises. Recently, unions attempted to oblige cruise operators to hire pool workers for the loading of supplies onto cruise vessels.

Due to opposition by the unions, the possibility of allowing port users to self-handle, which is enshrined in the Ports and Merchant Shipping Act, has remained merely theoretical. As a result, the legally safeguarded exceptions to the prerogative of the SAGEPs to provide workers to cargo handling companies are leading nowhere.

The allegation by one terminal operator that fixed workers are more expensive than pool workers was vigorously denied by our interviewee, who moreover pointed out that non-compliance with the 25 per cent minimum of permanent employment can be sanctioned by heavy penalties and even the loss of the company's license to operate. Still, terminals prefer to recruit 5 or 15 per cent only of permanent workers, rather than the legally required minimum of 25 per cent, firstly because they do not want to disturb the peace with Coordinadora and secondly because the additional cost is passed on to the clients (*i.e.* the ship owners) anyway.

Furthermore, the full privatisation of the APIEs into SAGEPs has not resulted in any real control of the labour market by the employers. The withdrawal from the ownership and management of the pools by the port authorities has virtually transferred power to the trade unions. Moreover, in some SAGEPs powerful terminals dominate the others, which results in big employers striking bargains with unions to the detriment of the smaller ones, their competitors.

For all these reasons, the various modernisation and liberalisation measures contained in the 2010 Ports and Merchant Shipping Act have not resulted in any major change in the system. But generally speaking, most employers do not seem to suffer too much from current restrictions on employment and restrictive working practices, because maritime traffic to and from Spanish ports is a captive market, transshipment is of relatively limited importance and intra-port competition is weak. Moreover, port employers shrink away from the threat of collective actions which would disrupt their operations. The unions for their part resist the employment of workers outside the pool, because the latter is their main power base. Allegedly, this situation results in poor overall efficiency of the Spanish port system, which lags behind in the adoption of new technologies as well.

We should add that several container terminal operators vigorously denied that Spanish ports do not compete with ports in other countries. While some ports such as Barcelona, Bilbao and Valencia indeed handle considerable volumes of import and export traffic, many ports including, again, Barcelona and Valencia, but also Algeciras, Las Palmas and Málaga deal with transshipment cargo in direct competition with foreign ports. As a result, the port labour system is a major competitive factor.

1788. As a result of the rotation system, port workers (except the *fijos*) are assigned to different port employers. However, they cannot be transferred temporarily to another port (with one exception, namely Gijón and Aviles, which are very close and used to be managed by the same port authority).

1789. According to one trade union there are no sub-standard or otherwise unacceptable labour conditions in Spanish ports. This union does however confirm the ban on self-handling.

1790. In an interview, a representative of trade union Coordinadora explained that the legal requirement to employ 25 per cent of port workers on the basis of a permanent employment contract is not realistic for companies who do not have ships every day. He confirmed that in Barcelona, no *fijos* but only *rojillos* are employed, who are then counted as permanent workers in order to meet the legal minimum, while, to mention another example, the percentage of *fijos*

in Bilbao dropped from 60 to only 20 over the past eight years or so. Our interviewee also said that there is no reason why SAGEPs should allow only one temporary work agency per port and confirmed that container terminals at Barcelona are considerably more productive than those in Valencia.

1791. Replying to the questionnaire, trade union CC.OO confirmed that the present legal definition of port labour is inadequate and has caused too many conflicts and strikes.

1792. Puertos del Estado, ANESCO and CC.OO concur that health and safety rules are properly enforced, but TCM-UGT disagrees. As we have mentioned above²³⁸⁷, several terminal operators complain that workers refuse to comply with safety and/or security standards.

1793. To our knowledge, the National Regulations on the Handling of Dangerous Goods in Ports have not yet been adapted to the latest version of the relevant IMO Recommendations on which they are based.

1794. For completeness' sake, we should recall that back in 2003, the European Committee of Social Rights, informed by ILO of certain shortcomings in the regulations on port handling facilities, asked what measures the Spanish Government intended to take in this connection. It also asked whether workers called upon to handle dangerous or unhealthy substances were sufficiently well informed of the risks involved. Pending receipt of this information, the Committee nevertheless concluded that Spain complied with Article 3 of the European Social Charter on the right to safe and healthy working conditions²³⁸⁸. We are unaware of any further developments in this respect.

9.20.7. Appraisals and outlook

1795. First of all, it should be observed that over the past decades, the Spanish port labour regime underwent several reforms.

Saundry and Turnbull commented as follows on the 1986 reform:

²³⁸⁷ See *supra*, paras 1781-1872.

²³⁸⁸ See <http://hudoc.esc.coe.int/esc1doc/escsec/doc/200305/c-10-2-en/c-10-2-en-50.doc>.

Given the economics and logistics of port transport and the history of industrial relations on the Spanish waterfront, it would be surprising if the system of labour regulation were without its critics or indeed without inherent tensions. Employers would like to employ more permanent workers; the Coordinadora vehemently defends the principle of rotation. Employers would like to introduce greater temporal flexibility; the dockers want to protect overtime earnings and 'job-and-finish'. Employers would like to reallocate workers to different grades within any given shift; the unions argue that this will deny other pool workers the opportunity to work (e.g. if crane drivers are allocated to forklift trucks midway through a shift, rather than qualified forklift drivers being hired from the pool at the start of the shift). As the manager of a general stevedoring firm in Bilbao remarked somewhat wryly, 'In principle there is complete flexibility, as long as you're prepared to pay for it' (interview notes). In some respects, therefore, employers are 'resigned' to the port labour system – the manager of Bilbao's main container terminal suggested that to abolish the Estiba 'would be a declaration of war' (interview notes), a sentiment confirmed by one of the port's union officials, who proclaimed that 'We would die to defend the Estiba' (interview notes). But there was also widespread and very positive support for a system of labour regulation that provided highly skilled and productive workers on an 'as-and-when' basis²³⁸⁹.

Other commentators noted that reforms of the Spanish port labour regime have resulted in a substantial reduction of the workforce and in a modest deregulation of working practices²³⁹⁰.

1796. The inventory of present-day policy and legal issues provided above suggest that, even if today some individual terminal operators do not seem to encounter major problems, none of the consecutive reforms has eased the broad dissatisfaction with the Spanish port labour regime.

1797. Replying to our questionnaire, Puertos del Estado described the relationship between employers and unions as satisfactory and also informed us that, at this stage, it is not considering a denunciation of ILO Conventions No. 137 and No. 152.

1798. A neutral expert described the current system as unsatisfactory and as a serious competitive handicap. First of all, it is not conducive to competition between stevedoring companies, because the latter jointly manage the labour factor, which represents around 60 per cent of total costs. As the organisational model is determined at port level, there is little room

²³⁸⁹ Saundry, R. and Turnbull, P., "Contractual (In)Security, Labour Regulation and Competitive Performance in the Port Transport Industry: A Contextualized Comparison of Britain and Spain", *British Journal of Industrial Relations* 1999, Vol. 37:2, (271), 283.

²³⁹⁰ See Díaz, J.J., Martínez, E. and Jara, S., "Parametric estimation of efficiency in cargo handling in Spanish ports", September 2007, <http://www.cnc-logistica.org/congreso-cnc/documentos/118.pdf>.

for differentiated offers for the same service. Furthermore, the current arrangements are largely obsolete because they do not take into account the increasing regularity of ship traffic. As a result, trade today has to adapt to the labour regime whereas in a normal situation it should be the other way round. Our expert also notes a lack of legal certainty resulting from the excessive ambiguity of applicable rules, with labour disputes often being solved before the public administration.

In an interview, the expert doubted the present-day justification of the entire Spanish port labour regime, because today cargo handling in ports shows no special features which distinguish it from any other sector of the economy. The technological equipment of ports – such as gantry cranes – is used in other workplaces as well. Instability of demand is not a particularity of the port sector either: sectors such as car manufacturing and tourism have to cope with peaks and troughs as well. In order to underpin the view that the port sector has no characteristics that warrant the continuation of an exceptional labour regime, a thorough comparison of labour demand fluctuations in ports and other branches of the economy was suggested. Whatever the case, our interviewee asserted that, probably, some 95 per cent of Spanish port workers could be employed permanently.

1799. On the other hand, ANESCO asserts that the relationship between port employers and port workers and their respective organisations is satisfactory. ANESCO is "not dissatisfied" with the current port labour regime, because it has evolved in the course of the years and adapted itself to the European model. Some individual terminals however complained that ANESCO does not have a sufficiently strong impact on negotiations at national level.

1800. Several terminal operators complain that the current port labour regime does not make the Spanish ports competitive and that it does not offer sufficient legal certainty, because there is too much room for interpretation. Furthermore, the relationship between port employers and port workers and their respective organisations is considered unsatisfactory. In this regard, mention is made of a 'cold war situation' and, as we have mentioned, the unions are allegedly not respecting existing agreements. The terminal operators and port users in general are frustrated with the monopoly and abuses of the port workers. Terminals see no room to hire motivated and responsible port workers, while bad workers earn approximately 85,000 EUR annually. One terminal operator furthermore argues that the port labour regime is inflexible and not adapted to the needs of the modern container and ro-ro market. Short sea traffic is impossible to develop due to the high labour costs. Also, port workers are undisciplined, show no respect and continue to belong to the same families (nepotism). The police and the port authorities should take more action to enforce safety, discipline and ISPS rules.

1801. Trade union TCM-UGT is 70 per cent satisfied with the port labour system and describes the relationship between port employers and port workers and their respective organisations as good. The system impacts positively on the competitiveness of Spanish ports because workers are professional and, as the income varies substantially with their activity, also productive.

1802. For the trade union FSC-CC.OO, the current Spanish port labour regime is unsatisfactory and offers insufficient legal certainty, but these issues have no anticompetitive effect. The relationship with employers can be termed satisfactory because there is a permanent dialogue and it has been possible so far to avoid major strikes.

1803. One responding ship owner considers the current port labour system unsatisfactory because it is a monopoly. The company did not identify this as a major competitive handicap however.

1804. Puertos del Estado refers to Hamburg and Rotterdam as best models and believes that EU action is necessary to create a common legal framework guaranteeing equal competitive conditions. The peculiarities of port labour arrangements should be removed and port labour should follow the same rules as any other economic sector.

1805. According to ANESCO, legal and policy issues in the field of port labour should be solved through the conclusion of national and local agreements. It is not sure whether EU action is desirable or not.

1806. Opinions on the need for EU action differ among responding and interviewed terminal operators, with a clear majority insisting on the urgent need to intervene however. One company warned that the unions are "intimidating" Spanish politicians but insists that the port labour system must be "privatised" so as to enable employers to hire their own workers, like in all other industries. It also explained that the difference with the – equally restrictive – Belgian Port Labour Act is that in Belgium, the unions cooperate with the employers because otherwise Antwerp would lose traffic to Rotterdam; in Spain, the unions boycott all initiatives, using safety as an excuse. Still the same terminal stressed that the EU must act, otherwise it would be another proof of its incapacity to act, as shown with the two previous liberalisation initiatives.

1807. Trade union TCM-UGT perceives the Spanish and Belgian port labour regimes as best practices. It notes that there is fierce competition in EU ports, which are also more competitive than ports in America, India and Japan. It would be interesting to investigate and compare the costs of cargo handling and productivity rates. The result would probably confirm that European ports perform better.

1808. In the same vein, the trade union FSC-CC.OO does not see any need or scope for EU action and is of the opinion that any EU intervention would be counterproductive. It did not mention any specific national model either.

1809. One terminal operator does not see major issues where action at EU level would be necessary. However, another terminal operator fears that without an initiative at EU-level, the national Government will not take any measures to address the current problems at all. It also noted that there is no budgetary incentive for the national Government to change the current port labour regime, as the system's financial burden is in essence carried by private companies.

1810. Another terminal operator confirms that the reform of port labour will never be a priority for the national Government and that no real change can be expected unless it is imposed by the European Commission.

According to our interviewees, priorities should include:

- the abolition of the monopolistic market structure which makes collective bargaining an illusion;
- the effective implementation of the minimum of 25 per cent (or more) of fixed workers, with rotation becoming the exception and pools only serving to respond to peak demand;
- the possibility of employing permanent staff for sophisticated and dangerous jobs, or an EU-wide ban on temporary work for such jobs;
- the possibility of relying on private employment agencies;
- the introduction of independent training.

1811. On 27 September 2012, the European Commission sent a reasoned opinion to Spain. The press release²³⁹¹ reads as follows:

The Commission has sent today a reasoned opinion to Spain for obliging cargo-handling companies in several Spanish ports to financially participate in the capital of private companies managing the provision of dockers and not to allow them to resort to the market to employ their staff, unless the workforce proposed by this private company is not suitable or not sufficient. Cargo-handling providers from other Member States wishing to establish themselves in Spain might be discouraged from doing so because of the barrier this provision raises on the market for cargo-handling services. This is the second stage in the infringement procedure. If Spain fails to react satisfactorily, the Commission may refer the matter to the EU Court of Justice.

The EU rules

Treaty rules on freedom of establishment fully apply to the activities carried out by the entities in charge of recruiting port workers, so called "pools". The European Union requires the elimination of restrictions on freedom of establishment. In particular, the Treaty precludes any national measure which, even though not discriminatory on grounds of nationality, is liable to hinder or render less attractive the exercise of the freedom of establishment that is guaranteed by the Treaty. Therefore, while "pools", often provide sound training to workers and are an efficient tool for employers, they should not be used to prevent suitably qualified individuals or undertakings from providing cargo-handling services, or to impose on employers the workforce they don't need.

The reason for lodging a formal complaint

Spanish Royal Legislative Decree 2/2011 of 5 September 2011 foresees that private companies recruiting and putting the dockers at the disposal of cargo-handlers, SAGEP (Sociedad Anónima de Gestión de Estibadores Portuarios), should be set up in "ports of general interest". These ports comprise, among others, the port of Barcelona, Algeciras, Valencia and Bilbao. The same law obliges all companies wishing to provide cargo-handling services to join and financially participate in the capital of a SAGEP. Cargo-handling companies can be exempted from this obligation only in very limited cases and if they provide services exclusively for themselves. Furthermore, regardless of whether the cargo-handling company is a member of SAGEP or not, it has to rely on workers recruited and put at its disposal by SAGEP. Only if the dockers proposed by SAGEP are not sufficient or not suitable, the cargo-handling companies may recruit workers from the market, but only for one working shift.

According to the assessment made by the Commission, there are other instruments, such as policies and strategies aiming at ensuring training for dockers and improving

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IP/12/1022,
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/1022&format=HTML&aged=0&language=EN&guiLanguage=en>.

their competencies, to attain the claimed objective of protection of dock workers which are not in contradiction to the freedom of establishment and that are therefore more proportionate to that objective. Likewise, policies oriented towards the mobility of workers between ports in the same country or across the border, as well as flexible working arrangements, may have positive impact on dock labour.

The practical effect of a restriction on the freedom of establishment

Under the Spanish law the cargo-handling companies wishing to establish themselves in a Spanish port of general interest are obliged to gather sufficient financial resources to participate in a SAGEP and to hire SAGEP workers under conditions which they do not control. This causes a forced alteration of the companies' existing employment structures and recruitment policies. Such changes may entail serious disruption within companies and have significant financial consequences. Cargo-handling companies may consequently be discouraged from establishing themselves in Spanish ports of general interest.

9.20.8. Developments between January 2013 and September 2014

1811A. We received comments on the first version of this study by both Puertos del Estado and ANESCO. While we have integrated the former into the paragraphs above, we prefer to quote those provided by the employers' association in full below, as they concern more fundamental issues:

As to the “compulsory participation of operators in Pool Company” (mentioned in the Study): Our Law on Ports, in its art. 143, states that in certain cases such as operators with self-handling licence, they are not required to participate in the pool company (terminals dedicated to private use).

As to “exclusive rights of pool workers”: These are not exclusive, they are priority rights. Companies can go to free market when there are no workers in the pool because either the workers lists have run out or that pool has no worker with the training required to handle certain type of machinery.

Our last CBA had in part an anti-competitive effect. CBA is compulsory for the parties, and what has been annulled is the obligation for not-stevedoring companies to work with port personnel, i.e. not-stevedoring companies are not obliged to work with port workers.

As to the obligation to employ 25% permanent workers, it is not true that this is not observed; our Law on Ports, art. 150.6., establishes the possibility of fulfilling said

obligation by means of pool workers (RLE workers) assigned to operators for a longer time than one shift, and this without suspending their special labour relationship with the pool.

As to “closed shops”: In the companies, all workers are not members of the same trade union. There are three main trade unions: Coordinadora, UGT y CCOO. Besides this, in Galicia and Basque Country, they have ELA and LAB. And in other ports, there also exist smaller trade unions.

As to “disputes over scope of exclusive right of port workers”: Our Law gives preference to port workers following ILO Convention 137.

As to “restrictions on self-handling”: Our Law on Ports, in art. 133, establishes the possibility of self-handling in different cases: terminals dedicated to private use, shipping lines for on board services and in case of SSS and Motorways of the Sea services carried out with ro-ro, ro-pax, con-ro and ferries, ...

As to “exclusive right of 1 temporary work agency per port”: In Spanish ports, several temporary work agencies operate indistinctly – Adecco, Randstad and Tempo, among others.

As to “restrictive working practices”: Local Agreements in each port fix the working conditions, which are signed by employers and workers. At national level, a Frame Agreement fix the general lines.

As to “weak employer’s authority”: Employers fulfil what is stated by law, and no way they can ‘cross the line’ as, in that case, competition authorities would intervene.

National qualification system: In Spain this matter is ruled by the Ministerial Order 2.297/2012 that states the professional qualifications required to provide the port service of cargo-handling.

As to “exclusive right of Pool Companies to provide training”: Training is provided by the Pool, but private companies can also provide it once the workers have been employed by them as RLC workers (permanent workers).

As to “lack of health and safety statistics”: Each Pool has statistics on this matter.

As to “lack of safety discipline”: We are subject to Law on Labour Risks Prevention 31/1995.

1811B. On 20 June 2013 the Commission referred Spain to Court of Justice over rules for the recruitment of port workers. The press release read as follows:

The European Commission has today decided to refer Spain to the EU Court of Justice over its rules on hiring port labour in several Spanish ports. Currently, cargo-handling companies in these ports are not allowed to resort to the market to employ their staff. On the contrary, the rules in place oblige cargo-handling companies to participate financially in the capital of private companies, which in turn provide them with the required workforce. It is only when the workforce proposed by these private companies is not suitable or not sufficient that cargo-handling companies may freely hire staff from the market. The Commission considers that cargo-handling providers from other Member States wishing to establish themselves in Spanish ports may be discouraged from doing so because of these restrictive labour practices.

Treaty rules on freedom of establishment fully apply to port activities. In particular, the Treaty precludes any national measure which, even though not discriminatory on grounds of nationality, hinders or renders less attractive the exercise of the freedom of establishment.

Spanish law provides that private companies called SAGEPs (Sociedad Anónima de Gestión de Estibadores Portuarios) should be set up in ports of general interest. SAGEPs are in charge of recruiting dockers and putting them at the disposal of cargo-handlers. These rules are applicable to the largest Spanish ports, including the ports of Barcelona, Algeciras, Valencia and Bilbao. The same law obliges all companies wishing to provide cargo-handling services to join and financially participate in the capital of a SAGEP. Cargo-handling companies can be exempted from this obligation only in very marginal cases. Moreover, the cargo-handling company has to rely on workers recruited and put at its disposal by the SAGEP. Only if the dockers proposed by the SAGEP are not sufficient or not suitable, may the cargo-handling companies freely recruit workers from the market, but even then only for one working shift. This causes a forced alteration of the companies' existing employment structures, recruitment policies and ultimately business strategies. Such changes may entail serious disruption within companies and have significant financial consequences. Cargo-handling companies may consequently be discouraged from establishing themselves in Spanish ports of general interest²³⁹².

At the time of writing the case was still pending²³⁹³.

²³⁹² IP/13/559, http://europa.eu/rapid/press-release_IP-13-559_en.htm?locale=en.

²³⁹³ The case is registered at the Court under no. C-576/13.

9.20.9. Synopsis

1812.		
SYNOPSIS OF PORT LABOUR IN SPAIN²³⁹⁴		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 46 ports of general interest • Landlord model • 422m tonnes • 2nd in the EU for containers • 10th in the world for containers • 159 employers • Appr. 6,500 port workers • Trade union density: 100% 	<ul style="list-style-type: none"> • <i>Lex specialis</i> (Ports and Merchant Shipping Act) • Party to ILO C137 • National and local CBAs • Reforms between 1986 and 2010 • All port operators must be licensed • All cargo handlers must participate in Pool Company • 3 categories of workers: <ul style="list-style-type: none"> (1) permanent workers employed by individual operator (2) pool workers employed by Pool Company (3) other workers only in the case of shortage of pool workers • Pool workers are assigned to operators based on rotation • Authorisation system for self-handling • Criminal sanctions 	<ul style="list-style-type: none"> • Compulsory participation of operators in Pool Company (EU infringement procedure) • Exclusive right of pool workers • Last national CBA partly annulled due to anti-competitive effect • Obligation to employ 25% permanent workers not observed • Closed shop and nepotism • Broad definition of port labour • Disputes over scope of exclusive right of port workers • Detailed classification of workers • Mandatory manning scales • Restrictions on self-handling • Exclusive right of 1 temporary work agency per port • Restrictive working practices • Weak employer's authority • Low acceptance among terminals • Reform no priority for Government
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • All training organised through Pool Companies 	<ul style="list-style-type: none"> • All workers must be qualified • National regulations on qualifications exist • Truck driver's licence needed • CBAs promote multi-skilling 	<ul style="list-style-type: none"> • National qualification system voluntary and not fully operational • Exclusive right of Pool Companies to train their workers • Trainers are privileged workers
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No specific national accident statistics available 	<ul style="list-style-type: none"> • Party to ILO C152 • Rules on dangerous goods • Technical rules for mobile cranes 	<ul style="list-style-type: none"> • Lack of statistics • Weak enforcement at places • Lack of safety discipline

²³⁹⁴ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.21. Sweden

9.21.1. Port system²³⁹⁵

1813. Sweden has the longest coastline of all the EU countries (more than 2,000 km) and the largest number of ports of all the Baltic Sea countries. Currently, some 50 public ports and 30 industrial ports are in operation. These include large universal, ferry and oil ports, and also small regional and local wharves. Almost all the foreign trade of the country passes through its ports.

In 2012, the gross weight of seaborne goods handled in Swedish ports was about 173 million tonnes. Gothenburg is by far Sweden largest international cargo port. As for container throughput, Swedish ports ranked 11th in the EU and 47th in the world in 2011²³⁹⁶.

1814. In Sweden three models of seaport governance co-exist. Most public seaports are owned by the municipality but managed by a (totally or partially) municipality-owned port company, which also provides cargo handling services under a service port model. In a minority of public ports, a landlord model is followed, under which the port authority is either part of the municipal administration or a (totally or partially) municipality-owned port company, while cargo handling services are provided by private companies, but there are only few such private port terminal operators. A third category of ports is formed by industrial ports, some of which also offer port services to third parties. Conversely, some public ports also handle industrial port traffic.

²³⁹⁵ For general information on Swedish ports, see <http://www.transportgruppen.se/templates/MultiMaster.aspx?id=31769>; Sveriges Hamnar, *Swedish Ports, A linchpin in Swedish industry*, <http://www.transportgruppen.se/c71d6c6f-3c7e-40fd-8728-55f429f952f4.fodoc>; Wihlborg, M. and ECOTEC, *Employment trends in all sectors related to the sea or using sea resources, Country Report – Sweden*, European Commission. DG Fisheries and Maritime Affairs, August 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/sweden_employment_trends_en.pdf, 7-9; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 133-142. For statistics, see <http://www.transportgruppen.se/templates/Page.aspx?id=53767> and http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

²³⁹⁶ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

9.21.2. Sources of law

1815. The construction and operation of ports is governed by the Environmental Code²³⁹⁷ which requires a permit to operate and the preparation of an environmental impact assessment.

A port can also be designated as a public port by Act (1983:293) on the Establishment, Enlargement and Closure of Public Waterways and Public Ports²³⁹⁸, which *inter alia* requires the preparation of an environmental impact assessment before new port facilities are opened or expanded.

The Public Order Act²³⁹⁹ authorizes the Government to issue regulations on public order and safety in ports and to direct municipal authorities to issue such regulations (§ 10).

Neither of these instruments touches upon port labour.

We are unaware whether the historically important 1908 Port Labour Ordinance²⁴⁰⁰ is still in force. Ports of Sweden doubts whether that can be the case.

1816. Port labour is governed by general labour law, which is not brought together into a comprehensive labour code however²⁴⁰¹.

Ports of Sweden drew attention to the particular importance to the port sector of the Employment (Co-Determination in the Workplace) Act²⁴⁰². Under this Act, workers are free to form and join unions without government intervention. Unions have strong collective bargaining rights and, if conflicts arise, they may litigate or resort to industrial action.

1817. Health and safety at work is governed by the Work Environment Act²⁴⁰³ and the Work Environment Ordinance²⁴⁰⁴.

The only piece of specific national legislation on port labour is the Provisions of the Swedish Work Environment Authority on Dock Work and the General Recommendations on the Implementation of the Provisions, which was adopted on 13 December 2001²⁴⁰⁵.

²³⁹⁷ Miljöbalk (1998:808).

²³⁹⁸ Lag (1983:293) om inrättande, utvidgning och avlysning av allmän farled och allmän hamn.

²³⁹⁹ Ordningslag (1993:1617).

²⁴⁰⁰ See *infra*, para 1823.

²⁴⁰¹ For an overview of these laws, with some English translations, see <http://www.sweden.gov.se/sb/d/3288/a/19565>.

²⁴⁰² Lag (1976:580) om medbestämmande i arbetslivet (Medbestämmandelagen, MBL).

²⁴⁰³ Arbetsmiljölagen (1977:1160).

²⁴⁰⁴ Arbetsmiljöförordningen (SFS 1977:1166).

Other relevant health and safety regulations of a more general nature include the Provisions on Use of Work Equipment²⁴⁰⁶; Use of Trucks²⁴⁰⁷; Use of Lifting Gear and Lifting Equipment²⁴⁰⁸; and Temporary Personnel Hoists using Cranes and Trucks²⁴⁰⁹.

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 2003²⁴¹⁰.

Finally, mention should be made of the Ship Safety Act²⁴¹¹.

1818. Sweden has ratified both ILO Conventions No. 137²⁴¹² and No. 152²⁴¹³. Previously, Sweden was bound by ILO Convention No. 32.

1819. The main source of port labour law is the national collective agreement called the Port and Stevedoring Agreement. We consulted the agreement for 2008-2011²⁴¹⁴, which has, to our knowledge, been renewed twice. It appears that the national agreement is not a publicly available document.

In quite some detail, the Port and Stevedoring Agreement regulates issues such as the employment of workers, working hours and shifts, wage scales, overtime, holidays, sick leave and sick pay, sanctions and bargaining procedures. The national agreement is binding upon some 56 individual employers who are all members of Ports of Sweden and who are mentioned by name in the agreement. It governs all work performed at these stevedoring companies, including, *inter alia*, the loading and unloading of ships, terminal work, tally work, opening and closing of containers, lashing operations and mooring of vessels (§ 1).

The national agreement is supplemented by numerous local, company-specific agreements²⁴¹⁵. There is also a separate national agreement on the Port and Stevedoring School.

²⁴⁰⁵ Arbetsmiljöverkets föreskrifter om hamnarbete samt allmänna råd om tillämpningen av föreskrifterna (AFS 2001:09).

²⁴⁰⁶ Användning av arbetsutrustning (AFS 2006:04).

²⁴⁰⁷ Användning av truckar (AFS 2006:5).

²⁴⁰⁸ Användning av lyftanordningar och lyftredskap (AFS 2006:6).

²⁴⁰⁹ Tillfälliga personlyft med kranar eller truckar (AFS 2006:7).

²⁴¹⁰ Lag (2003:367) om lastning och lossning av bulkfartyg; Förordning (2003:439) om lastning och lossning av bulkfartyg; Sjöfartsverkets föreskrifter om lastning och lossning av bulkfartyg.

²⁴¹¹ Fartygssäkerhetslagen (2003:364).

²⁴¹² Kungl. Maj:ts proposition angående vissa av internationella arbetsorganisationens allmänna konferens år 1973.

²⁴¹³ Regeringens proposition 1979/80:133 med anledning av beslut fattade av internationella arbetskonferensen år 1979 vid dess sextiofemte möte.

²⁴¹⁴ Hamn- och Stuveriavtalet mellan Sveriges Hamnar och Svenska Transportarbetareförbundet (Port and Stevedoring Agreement between Ports of Sweden and Swedish Transport Workers' Union), valid from 1 April 2008 through 30 June 2011. The agreement also has a 'Supplement'.

²⁴¹⁵ We consulted one example for the port of Oxelösund, signed on 5 November 2012. The agreement mainly regulates working time, sick pay and daily rest.

9.21.3. Labour market

- Historical background

1820. As in most countries, the port labour system cannot be understood without its historical context²⁴¹⁶.

1821. In the past, all public ports in Sweden were municipal property and governed by the municipal administration, while local stevedoring companies were private businesses owned by port users. A major player in the stevedoring sector was the Swedish Shipowners' Association (Sveriges Redareförening).

1822. At the end of the 19th century, unions fought for the right to negotiate collective agreements, the exclusive right for unionised port workers to work in the port and a fair system of job distribution among the dockers to make sure that everyone would get a fair share of the work and thus a fair wage. In 1900, a majority of the ports had rules of preference for union members, but later this situation was reversed²⁴¹⁷.

1823. In 1908, the famous Swedish Stevedoring Ordinance was adopted, the aim of which was to maintain only one stevedore in each port, who would operate on a neutral and non-profit basis. This stevedore would offer its services to all ships in port and ensure that ship owners could always rely on a sufficient complement of port workers, even in the light of the considerable seasonality of port traffic.

The Stevedoring Ordinance rested on an Agreement between the Swedish Employers' Association and the Swedish Shipowners' Association. Its main principles were:

²⁴¹⁶ Our overview is largely based on data in the Swedish chapter in the excellent study by Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 120-160, especially 133 *et seq.*

²⁴¹⁷ See Hamark, J. and Thörnqvist, C., "Docks and Defeat – The 1909 General Strike in Sweden and the Shipping Ports Problem", www.gu.se, 8-9; see also the speech by Bjorn Borg of the Swedish Dockworkers Union at the Liverpool 2nd Anniversary Rally, 27 September 1997, <http://www.labournet.net/docks2/9709/BORG.HTM>.

- in every port, a stevedoring company must be established, the shares whereof must be offered to all port customers;
- in order to ensure neutrality towards all port users, no shareholder is allowed to hold a majority of shares;
- the stevedoring companies must operate in the general interest and not seek profits; the articles of association must regulate the payment of a limited dividend;
- members of the Swedish Shipowners' Association undertake to rely exclusively on the stevedoring company. However, services shall be provided in a non-discriminatory way to foreign ships and other port customers²⁴¹⁸.

1824. In the 1960s, when considerable investments were necessary in order to keep up with technological developments, many stevedoring companies were taken over by the municipalities²⁴¹⁹. In the 1980s, port authority and stevedoring functions were merged into integrated autonomous port companies established under private law.

1825. Today, the bulk of cargo is handled in integrated ports. In most cases, the move towards a service port system strengthened the competitive position of the port, because operations were better coordinated and became more flexible. In the next phase, the private sector (shipping lines and/or stevedoring companies) acquired shares in a number of port companies. In most cases, the municipality still controls around 50 per cent of the shares. In the largest non-integrated ports, municipalities still hold (mostly minority) shares in the stevedoring company. Practically, the Stevedoring Monopoly (*stuverimonopol*) has remained in force to this day.

- Regulatory set-up

1826. Employers of port workers do not need a specific licence and neither are they obliged by law to join an employers' association or any other organisation.

However, in most Swedish ports only one company offers stevedoring services. This arrangement is referred to as the Stevedoring Monopoly. It is not based on any legislative or regulatory provision, but only on the Port and Stevedoring Agreement, a collective agreement

²⁴¹⁸ Our account of the Stevedoring Ordinance is based on Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 151-152.

²⁴¹⁹ The transfer of all port operations to the municipalities was also advocated by the Communist Party (see, for example, Tell, K., "Hamnarbetarna i kamp (1954)", <http://www.marxistarkiv.se/sverige/skp-v/hamnarbetarna54.pdf>).

between the employers' organisation Ports of Sweden and the employees' organisation Swedish Transport Workers Union, and on tradition²⁴²⁰. The unique stevedoring company is responsible for all handling of goods in the port, from arrival by land transport until the goods are stowed on board and *vice versa*. As we have mentioned²⁴²¹, the Port and Stevedoring Agreement covers all workers employed by the stevedoring companies which are listed in the agreement which applies to all work performed at these companies. As a result, the Stevedoring Monopoly has a particularly broad scope. We should immediately add, however, that in an increasing number of ports, the Stevedoring Monopoly is being replaced by a more varied and competitive model, and that industry representatives deny that the Monopoly still exists²⁴²².

1827. Port workers in Sweden are employed by terminal operators or other companies. In one case, port workers are employed by a shipping line (Stena in Gothenburg). There is no pool system in Sweden. Neither is there a legal obligation on port workers to be registered, although the Port and Stevedoring School maintains a register of certificates issued to trainees. The latter is, however, not register within the meaning of ILO Convention No. 137. Temporary workers are not recruited in hiring halls.

1828. The Port and Stevedoring Agreement mentions three categories of port workers: permanent employees (*tillsvidareanställda*), temporary employees (*visstidsanställda*) and probationers (*provanställda*) (§ 3(1)). The temporary employees are used to temporarily replace permanent employees. The probationers are employed for a probationary period of six months (§ 3(2)).

In addition, the Agreement also mentions the possibility of agreement on the employment of short-term casual workers (*behovsanställda*) in the event of extra demand. The proportion of working hours performed by the latter category of workers must not exceed 20 per cent of the total hours worked per calendar year. Where an employer decides to hire additional permanent workers, he must give priority to these casual workers (§ 3(4)). The system of casual employment is used frequently.

Practically speaking, most Swedish cargo handlers employ permanent workers as well as temporary and casual workers. On average, port authorities and private terminals hire approximately 20 per cent of their workforce on a daily basis. The casual workers do not form an official pool however. Every employer has its own list of available casual workers, most of

²⁴²⁰ Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 153. Back in 1953, Halvar Sundberg accepted that municipalities could establish a stevedoring company but denied them the right to create a Stevedoring Monopoly (Sundberg, H.G.F., "Den kommunala kompetensen efter 1948 års kommunalreform", *Statsvetenskaplig Tidskrift* 1953, (334), 348).

²⁴²¹ See *supra*, para 1819.

²⁴²² See *infra*, para 1861.

which also have other jobs such as taxi or bus driver. The casual workers also enjoy certain unemployment benefits the organisation of which is said to be rather complicated. These benefits are paid by the Unemployment Benefit Fund (Ersättning från a-kassan) to their members.

1829. In their replies to the questionnaire, Ports of Sweden, the Swedish Transport Workers Union and the Swedish Dockworkers Union mentioned few specific conditions to become a port worker. Apparently, a minimum age of 18 applies. The supposed existence of a requirement to spend 3,200 hours of on-the-job training as a probationer and to attend induction training at the Port and Stevedoring School was denied by Ports of Sweden. Apparently, no specific training requirements apply.

1830. The Port and Stevedoring Agreement confirms the right of the employer to manage and distribute the work, to freely hire and dismiss workers and to deploy them, whether they are organised or not (§ 2 (2)).

Workers are under a duty to accurately and diligently carry out their tasks and to be sober and well-behaved; they may not leave the workplace without permission and must operate equipment carefully (§2 (3)).

They may be moved to another task in the course of their work. Manning levels must correspond with the actual needs and are determined by the employer (§ 5).

Workers must be deployed in a rational way, taking into account training levels and safety requirements (§ 2 of the Annex to the Agreement).

1831. Under the Port and Stevedoring Agreement (§ 2(4), port workers may be obliged to work at other ports. There is also no prohibition on transfers of workers between employers. Such exchanges only take place in very rare cases, however, and specific collective arrangements may apply to this matter.

1832. The Port and Stevedoring Agreement contains an elaborate scheme called 'Dock Side 4 Ett' which is aimed at personal development through education and learning at work and which comprises a differentiated pay system based on job classification (Annex 2 to the Agreement).

1833. The Port and Stevedoring Agreement contains provisions on disciplinary sanctions (warning and suspension) and on the termination of employment contracts (§ 11). If the demand for labour drops, the employer may lay off workers (§ 14). According to Ports of Sweden, the latter never happens.

1834. The Port and Stevedoring Agreement regulates the settlement of disputes (§ 16).

1835. Practically, enforcement of labour laws is ensured by the public prosecutor, the port authority, the terminal operator and the trade unions.

- Facts and figures

1836. In 2012, some 57 port companies had joined forces in Ports of Sweden (Sveriges Hamnar), an industry and employers' organisation (56 in 2014). Almost all Sweden's port companies are members. As an industry organisation, Ports of Sweden also represented and assisted around 15 port administrations in 2012 (10 in 2014), but these cannot become full members.

1837. In 2012, Ports of Sweden informed us that their members currently employ approximately 3,000 port workers (2,900 in 2014). According to the Swedish Dockworkers Union, Swedish ports employed some 2,500 permanently employed port workers and 1,500 temporarily employed casual port workers, while the Swedish Transport Workers Union mentioned a total of 3,450 unionised members. Other interviewees accepted these estimates as reasonable and mentioned a figure of no more than 3,700 blue collar workers.

1838. Almost all port workers in Sweden are reported to be members of a trade union (approximately 100 per cent according to Ports of Sweden, approximately 90 per cent for the Swedish Dockworkers Union; in 2014, however, the latter figure no longer seemed to be valid). There are two national unions: the Swedish Transport Workers Union (Svenska Transportarbetareförbundet) and the IDC-affiliated Swedish Dockworkers Union (Svenska Hamnarbetareförbundet), a splinter union founded in 1972.

The former union informed us in 2012 that it has approximately 1,900 members, while its counterpart has 1,550 members. As a result, the Swedish Transport Workers Union would represent 55 per cent of all port workers in Sweden. The Swedish Dockworkers Union reported having 1,430 members and claims that each union represents approximately one half of the workers.

9.21.4. Qualifications and training

1839. Today, there are no legal requirements regarding skills and competences of port workers in Sweden.

Until the late 1990s larger port operators and stevedoring companies organised training of port workers locally, either internally or externally. In 1997, discussions over a centralised training programme materialised in an agreement between the then Port and Stevedoring Association of Sweden (now 'Ports of Sweden'), the Swedish Transport Workers Union and the Vocational Training and Working Environment Council (Transport Trades) (TYA). The latter organisation is a joint body of private enterprises, governmental bodies and the Transportworkers Union. Pursuant to the agreement, a centralised training facility was created which is financed by a levy on the port workers' salaries (currently, this levy is 0.2 per cent). Preference is given to new employees. Today, this Port and Stevedoring School (Hamn & Stuveri Skolan) offers training for, among others, port workers, port crane operators, cargo securing workers and signalmen. The management board of this school is composed of three representatives from the employers and three representatives from the trade union side. The courses offered by the school are often company-based. Trainees receive a certificate²⁴²³.

In Gothenburg, terminal operator APMT is said to employ 4 port workers as trainers.

1840. Information according to which port workers only acquire professional qualifications after 3,200 hours (2 years) in the industry, provided they have also undertaken the approved induction training, was disputed by Ports of Sweden²⁴²⁴. Other informants mentioned that

²⁴²³ On the Port and Stevedoring School, see www.hamnaskolan.com and <http://www.tya.se/tya-skolan/hem>. On port training in Sweden, see also Sandström, S., "New form of professional training for port and terminal labour", in Vainio, J. (Ed.), *Port training innovation*, Turku / Åbo, University of Åbo / University of Turku, 2000, 33-39; Sveriges Hamnar, *Swedish Ports, A linchpin in Swedish industry*, <http://www.transportgruppen.se/c71d6c6f-3c7e-40fd-8728-55f429f952f4.fodoc>; Turnbull, P., *Training and Qualification Systems in the EU Port Sector: Setting the State of Play and Delineating an ETF Vision*, July 2009, <http://www.itfglobal.org/files/extranet/-75/17739/Final%20report%20EN.pdf>, *passim*, especially 18 *et seq.* In Malmö, cooperation with Copenhagen was envisaged back in 2001 (see *supra*, para 686).

²⁴²⁴ See already *supra*, para 1829.

students at the age of 15-16 who want to become port workers can choose a Vehicle Engineering Programme, specialising in transport.

1841. According to the responses to our questionnaire, the following types of formal training exist in Sweden:

- continued or advanced training after a regular educational programme;
- induction courses for new entrants;
- courses for the established port worker;
- training in safety and first aid;
- specialist courses for certain categories of port workers such as crane, ro-ro truck, forklift and container equipment operators, lashing and securing workers, tallymen, signalmen and reefer technicians;
- retraining of injured and redundant port workers.

9.21.5. Health and safety

- *Regulatory set-up*

1842. Health and safety at work is governed by the Work Environment Act. The purpose of this Act is to prevent ill-health and accidents at work and generally to achieve a good working environment (Section 1). The Act does not contain any port-specific provisions.

1843. Health and safety in ports is governed by the Provisions of the Swedish Work Environment Authority on Dock Work of 2001.

Directions on Dock Work had previously been issued by the National Board of Occupational and Safety Health, under powers conferred by the Workers' Protection Act. Provisions and General Recommendations on Dock Work were subsequently issued pursuant to the Work Environment Act. The current Provisions are a revision of the previous Directions and Provisions. Parts of the Directions and Provisions which were repealed are now covered by the Provisions of the National Board of Occupational Safety and Health on Use of Work Equipment. Unlike their predecessors, the new Provisions do not deal with chemical and biological hazards. These are now addressed, for example, in the Provisions of the National Board of Occupational safety and Health on Chemical Hazards in the Working Environment, Work in Confined Spaces and Work Involving Infection Risks.

The Work Environment Act applies to the loading and unloading of ships, *i.e.* to dock work. On the other hand it does not apply to ship work other than work on warships (Chap. 1, Section 4). The safety of work on board a vessel is regulated in the Ship Safety Act.

1844. The current Provisions²⁴²⁵ apply to:

- *loading, unloading, mooring, casting off and bunkering of ships,*
- *cargo handling or other terminal work directly connected with the foregoing, and*
- *handling of ships' stores and equipment.*

These Provisions apply solely within dock areas, shipping lanes or the equivalent (Sec. 1).

In connection with work on board ship, an on-shore employer shall co-operate with a representative of the ship in order to achieve co-ordination of the work of shipboard and on-shore employees (Sec. 2). Prior to work on board ship, the party conducting dock work shall transmit written instructions to the ship's representative. The instructions shall describe the rules of safety applying to the harbour visit (Sec. 3). Communication between representatives of a ship's crew and representatives of on-shore employees shall as far as possible be conducted in a common language (Sec. 4). Before work begins, both regular and outsourced workers shall have received the instructions which are necessary in order for the work to be done safely (Sec. 5).

The full division of chapters of the instrument is as follows:

Scope

General

Requirements on the workplace

Organisation

Technical devices

Conduct of work

General

Deposition of goods etc. on a quayside, dockside and suchlike

Hatches etc.

Work with vehicles, railway trucks etc.

Stowing, stacking, section loading, handling of containers and bulk, oil and chemical cargoes etc.

Work involving more than one team in the same hatch opening or cargo hold

Handling of load carriers

Personal protective equipment etc.

First-aid material, ambulance transport, life-saving equipment etc.

Provisions applying to harbour owners

Entry into force

²⁴²⁵ The English translation was provided by the Work Environment Authority.

1845. The Provisions are supplemented by General Recommendations of the Work Environment Authority on the implementation of the Provisions on Dock Work issued by the Work Environment Authority. The General Recommendations are not mandatory. Instead they serve to elucidate the meaning of the Provisions (e.g. by explaining suitable ways of meeting the requirements, instancing practical solutions and procedures) and also to provide recommendations, background information and references.

1846. The above instruments (e.g., the Guidance on Section 11) expressly refer to the provisions on Safety and Health in Dock Work issued by the ILO in 1977²⁴²⁶.

1847. Practically speaking, health and safety rules may be enforced by or at the initiative of the public prosecutor, the police, the Work Environment Authority, the port authority, the harbour master, the terminal operator and the trade unions.

- Facts and figures

1848. Statistics on the number of occupational accidents in Swedish ports are maintained by the Swedish Work Environment Authority.

Based on the Swedish NACE code 52441 for 'Hamngodshantering' (cargo handling in ports), figures for the last five years are as follows:

Table 109. Number of accidents and diseases in cargo handling (NACE code 52441) in Swedish ports, 2007-2011 (source: Swedish Work Environment Authority)

	2007	2008	2009	2010	2011	Total
Accidents ²⁴²⁷	78	55	62	68	73	336
Diseases ²⁴²⁸	17	8	7	9	4	45
Total	95	63	69	77	77	381

²⁴²⁶ On the latter instrument, see *supra*, para 96.

²⁴²⁷ Reported accidents with at least one day absence.

²⁴²⁸ Reported diseases with or without absence.

Over the same lustrum, accidents and diseases were distributed as follows by gender and age groups:

Table 110. Number of accidents and diseases in cargo handling (NACE code 52441) in Swedish ports 2007-2011, by gender and age groups (source: Swedish Work Environment Authority)

Age Group	Female	Male	Total
18-24	7	19	26
25-34	2	40	42
35-44	5	69	74
45-54	8	105	113
55-59	2	61	63
60-64	2	58	60
65-	0	3	3
Total	26	355	381

Between 2007 and 2011, no fatal accidents occurred in Swedish ports²⁴²⁹.

9.21.6. Policy and legal issues

- The Stevedoring Monopoly and registration of port workers

1849. Replying to the questionnaire, the Swedish Dockworkers Union mentioned that there is "maybe a factual obligation" on port employers to join Swedish Ports, but not a legal one. Swedish Ports and the Swedish Transport Workers Union mentioned no such factual obligation.

Swedish Ports further stated that there is no competition between port employers in Swedish ports. The Swedish Dockworkers Unions confirmed that competition only takes places in very few ports and mentioned Stockholm. The Swedish Transport Workers Unions asserted that Swedish terminals do compete.

²⁴²⁹ For official statistics on fatal occupational accidents in Sweden, see <http://www.av.se/statistik/faktarapporter/dodsolyckor.aspx>.

1850. Although in the course of our research not a single respondent or interviewee made any specific mention of it, it appears that the Stevedoring Monopoly is today by far the most pressing issue in the regulation of port labour in Sweden.

As the below account of policy and legal positions on the Stevedoring Monopoly reveals, this fundamental principle underlying the Swedish port regime has been highly controversial for at least two decades. Moreover, issues arose over the way in which Sweden is implementing ILO Convention No. 137.

1851. First of all, numerous proposals for the abolition of the Stevedoring Monopoly were put before the Swedish Parliament. The proponents argued that the Stevedoring Monopoly hampers technological development, leads to expensive stevedoring operations and irrational and obsolete management practices and discourages working in ports and environmentally friendly maritime shipping, that no one can understand why ports cannot be deregulated when post and telecom are, and that Sweden should denounce ILO Convention No. 137 and support the proposal for an EU Port Services Directive. Time and again, the Labour Committee of the Parliament referred to a decision by the Swedish ILO Committee from 1996 stating that the Stevedoring Monopoly finds no basis in ILO Convention No. 137. Be that as it may, all proposals to repeal the Stevedoring Monopoly through a legislative intervention have fallen on deaf ears²⁴³⁰. Competent Ministers confirmed that, as the Stevedoring Monopoly is not based on any specific legal provision but on collective agreements, the legislator is unable to intervene, and suggested that complainants have recourse to the Competition Authority, even if the latter cannot test collective bargaining agreements against competition law²⁴³¹.

²⁴³⁰ See, for example, *Parliamentary documents*, Arbetsmarknadsutskottet 1997/98:AU6, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Vissa-arbetsrattsliga-fragor_GL01AU6/; Arbetsmarknadsutskottets betänkande 1998/99:AU8, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Vissa-arbetsrattsliga-fragor_GM01AU8/, 23-24; Transportpolitik för en hållbar utveckling, Trafikutskottet betänkande 1997/98:TU10, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Transportpolitik-for-en-hallbar-utveckling_GL01TU10/; Arbetsmarknadsutskottets betänkande 1999/2000:AU5, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Lonebildning-och-arbetsratt_GN01AU5/, 65-66; Arbetsmarknadsutskottets betänkande 2000/01:AU7, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Arbetsratt-och-lonebildning_GO01AU7/, 35-37; Arbetsmarknadsutskottets betänkande 2001/02:AU6, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Arbetsratt_GP01AU6/, 95-96; Motion med anledning av skr. 2003/04:60 Berättelse om verksamheten i Europeiska unionen under 2003, http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Motioner/med-anledning-av-skr-200304_GR02U19/?text=true.

²⁴³¹ See *Parliamentary documents*, Protokoll 1993/94:38, 7 December 1993, http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Protokoll/Riksdagens-snabbprotokoll-1993_GH0938/; Riksdagens snabbprotokoll 1993/94:57, 9 February 1994, http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Protokoll/Riksdagens-snabbprotokoll-1993_GH0957/; Riksdagens snabbprotokoll 1993/94:73, 22 March 1994, <http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Protokoll/GH0973/>; Riksdagens snabbprotokoll 1998/99:34, 11 December 1998, http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Protokoll/Riksdagens-snabbprotokoll-1998_GM0934/; Riksdagens snabbprotokoll 1998/99:74, 24 March 1999, <http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Protokoll/GM0974/>; EU-namndens stenografiska uppteckningar, 22 March 2002, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/EU-namndens-stenografiska-uppteckningar/Fredagen-den-22-mars-2002_GPOA25/.

1852. The Swedish port labour system repeatedly attracted the attention of the ILO Committee of Experts on the Application of Conventions and Recommendations, *in casu* ILO Convention No. 137.

In 1993, the Committee noted:

Article 3, paragraph 2, of the Convention. The Committee notes, in particular, the Government's statement to the effect that dock workers employed on an indefinite-term basis who are registered by the stevedoring companies concerned have priority for all work provided by these companies, and that registered fixed-term dock workers also have priority for employment and are obliged to keep themselves available. The Committee also notes from the Government's report that the Swedish Dock Workers' Union made observations concerning the application of this Article, which, according to the Union, is sometimes flouted. The Union states that in such cases the work is done by other categories than registered dock workers. The Committee therefore would be grateful if the Government would refer to these observations in its next report, making such comments as it considers appropriate. Please also supply information on practical application of the Convention, including for instance extracts from reports, particulars of the numbers of dock workers on the registers and of variations in their numbers during the period covered by the report, as requested by point V of the report form²⁴³².

The Committee's report of 1997 mentions the following:

2. The Committee notes the information contained in the Government's report on the discussions held within the ILO Committee set up under Convention No. 144 on the possibility of denouncing the Convention, following a request from the Swedish Employers' Confederation (SAF). The SAF asserts that there is a monopoly of stevedoring activities in Swedish ports resulting, among other things, from the ratification of the Convention. It alleges that the monopoly situation hinders the development of new cargo-handling methods and impairs competitive capacity in the sector. Furthermore, it alleges that the Government does not give effect to the provisions of Article 3 of the Convention which requires that registers of dockworkers be established and maintained in accordance with the Article. The Swedish Trade Union Confederation, for its part, contends that provisions of the Convention do not create or maintain a stevedoring monopoly in ports. At the end of the discussions, the ILO Committee decided that the Convention did not imply introduction or maintenance of a monopoly. It decided that the Convention did not impede the establishment of more than one stevedore contractor in every port. Nor did it prevent an enterprise with another principle activity from carrying on connected activities in the ports. The ILO Committee

²⁴³² Direct Request (CEACR) - adopted 1993, published 80th ILC session (1993), http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO::P13100_COMMENT_ID:2115602.

resolved not to recommend that Sweden avail itself of the opportunity for repudiation of the Convention.

3. In its communication addressed to the ILO in November 1997, the Swedish Trade Union Confederation states that the Convention is one of the pillars of stevedoring activities in Swedish ports which are renowned for their efficiency. To try and alter such a positive situation would, in the Confederation's view, be a mistake in political and industrial terms.

4. The Committee appreciates the information supplied in the Government's report on the discussions that took place. Noting that the Government supplies no express comments on the observations of the Swedish Dockworkers' Union referred to in its previous direct request, the Committee asks the Government to make such comments as it considers appropriate on the observations made by the Swedish Trade Union Confederation. Furthermore, noting that government and employers' representatives of the ILO Committee consider that the keeping of registers of dockworkers by the unions or the stevedoring companies cannot be regarded as giving effect to Article 3 of the Convention, the Committee recalls that the purpose of maintaining registers, as required by both this Article and Recommendation No. 145, is the regularization and stabilization of the employment and income of dockworkers, regardless of the authority or authorities responsible for maintaining them, since this is determined by national law or practice. Therefore, the Committee asks the Government to provide information on the effect given to Article 3 of the Convention and Recommendation No. 145 above-mentioned and to supply, as requested in point V of the report form, information on the practical application of the Convention, including for instance extracts of reports, particulars of the numbers of dockworkers on the registers and of variations in such numbers during the period covered by the report²⁴³³.

The 2004 report mentions:

The Committee notes the Government's report received in December 2002, which contains indications on the provisions adopted in order to improve the safety of work in ports. It asks the Government to provide information on the effect given to Article 3 of the Convention (establishment and maintenance of registers for all occupational categories of dockworkers) and to supply, as requested in Part V of the report form, information on the practical application of the Convention, including, for instance, extracts of reports, particulars of the numbers of dockworkers on the registers and of variations in such numbers during the period covered by the report²⁴³⁴.

²⁴³³ Direct Request (CEACR) - adopted 1997, published 86th ILC session (1998), http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2161844.

²⁴³⁴ Direct Request (CEACR) - adopted 2004, published 93rd ILC session (2005), http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2242060.

In its 2002 survey of the implementation of Convention No. 137, the ILO mentioned Sweden among the countries where the task of registering port workers falls to employers²⁴³⁵.

1853. In a decision of 1999, the Swedish Competition Authority could find no objection to the Stevedoring Monopoly.

However, several concerned parties had expressed their discontent with the Stevedoring Monopoly before the Authority. The Stevedoring Association, for one, argued that the list of stevedoring companies in the preamble to the relevant collective agreement on port labour makes it difficult for new stevedoring companies to establish themselves in a port where another stevedore is already operating. The Association denied that its members had reached an agreement to maintain the monopoly and rejected the prevailing order. It considered the current scheme a pure trade union monopoly maintained by the Transport Workers Union and added that the Association also opposed the ban on self-handling by the ship operators.

In the same vein, the Shipowners' Association explained that the Stevedoring Monopoly is a result of the refusal by the Transport Workers' Union to conclude collective agreements with more than one stevedoring company per port and insisted that it is a barrier to free competition.

The Federation of Swedish Industries, too, considered the Stevedoring Monopoly the result of an anti-competitive agreement prohibited by the Swedish Competition Act, with the Transport Workers' Union acting as an undertaking. The current monopoly situation had serious adverse effects because existing technologies and rational handling methods were not fully utilised. For example, the union imposed the use of the stevedoring company to load and unload self-unloading ships (*självlossare*). Also in other circumstances, there were instances when the port user had to pay the stevedoring company even if its personnel did not perform any work; in other words, payment was due for services that are unnecessary. Further, loading and unloading operations were governed by the stevedoring company's working hours, which meant that no operations could take place when the stevedores had a break or their working was over, regardless of whether stevedoring personnel were needed or not. Further examples of the cost-increasing effects concerned the stuffing and stripping of containers outside the port area and the mandatory intervention of stevedores to load ro-ro loads of forest products arriving at ports in trucks driven by staff of the exporter. The Federation concluded that handling and transport costs for shipping companies and shippers could be cut if they were allowed to stuff and strip containers within the port area or if other stevedoring companies were allowed to establish themselves in ports.

On the other hand, the Transport Workers Union argued before the Competition Authority that the Stevedoring Monopoly was fully justified as a measure to combat sub-standard working

²⁴³⁵ International Labour Conference (90th Session 2002), *General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, <http://www.ilo.org/public/english/standards/reIm/ilc/ilc90/pdf/rep-iii-1b.pdf>, 54, para 123.

conditions. It resulted from a refusal by the union to conclude collective agreements with companies unwilling to invest in better equipment or to hire older workers. The trade unions did not require that stevedoring companies join the Stevedores' Association or any other employers' association and explained that it had signed tie-in agreements with several third companies engaged in stevedoring or related activities. It was not aware of any agreement between the stevedoring companies to keep new companies out of the market. In sum, the trade union's policy was to conclude collective agreements with reputable companies that show a willingness to carry out investments ensuring safe and sound operations.

The trade union National Swedish Union (Landsorganisationen i Sverige, LO) declined to support the Stevedoring Monopoly.

The Competition Authority did not find sufficient proof that the stevedoring companies had entered into agreements or other concerted practices to restrict competition in the market for port services. However, the list of individual companies in the preamble of the relevant collective agreement resulted from a decision taken by the Stevedoring Association as an association of undertaking, within the meaning of the Swedish Competition Act.

Further, the Competition Authority found that no new stevedoring companies had established themselves in ports where a service provider was already active and that opportunities for the shipping companies or other undertakings than the established stevedoring company to load or unload ships or carry out any other port work activity were extremely limited. As a result, the existing stevedoring companies enjoyed a factual exclusive right.

However, the Competition Authority also noted that the list of signatory companies in the preamble to the collective agreement on port labour did not rule out that other companies might also be covered. Further, the agreement contained no other terms which reflected an exclusive right for existing companies to perform stevedoring services. Restricting competition would not be a natural or obvious consequence of the mere insertion into the agreement of a list of the companies to which it applies. The fact that no newcomers had tried to obtain access to the cargo handling market could just as well find an explanation in excess capacity. The absence of cases where a new entrant had actually been denied access indicated that the exclusive right of the stevedoring companies depends on factors other than a decision by the Stevedoring Association. For these reasons, the Competition Authority saw no grounds to conclude that the decision by the Association was intended to prevent, restrict or distort competition in the relevant market²⁴³⁶.

In a comment, Malmberg rejects the suggestion to the effect that the immunity of collective agreements from the prohibition on cartels would not apply to a decision by an employers'

²⁴³⁶ Swedish Competition Authority, 28 June 1999, No. 161/1999, Sveriges Hamn- och Stuveriförbund; see also OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>, (191), 192-193; X., "Competition concerns in ports and port services – Sweden –", [http://www.konkurrensverket.se/upload/Filer/Om_Konkurrensverket/Internationell%20roll/oecd/DAF-COMP-WP2-WD\(2011\)31_Competition_concerns_in_ports_and_port_services.pdf](http://www.konkurrensverket.se/upload/Filer/Om_Konkurrensverket/Internationell%20roll/oecd/DAF-COMP-WP2-WD(2011)31_Competition_concerns_in_ports_and_port_services.pdf).

association, or an agreement or concerted practice among its members, which precedes the conclusion of the agreement, because *all* collective agreements must inevitably be based on such a preliminary decision, agreement or practice. At least insofar as the agreement relates to wages and other conditions of employment, the exception for collective agreements must equally cover decisions by the social partners on each side, as well as the cooperation arrangements between the members of the organisations²⁴³⁷.

1854. The 2001 proposal for a Port Services Directive was immediately seen as a threat to the Swedish Stevedoring Monopoly. The trade unions were deeply concerned that deregulation would lead to wage dumping. Since firms would be able to select their employees without restriction, it was possible that current agreements with the employers' organisation Ports of Sweden would not be respected and that employees would be recruited who accepted lower wages than the present dockworkers. Critics observed that there was in fact fierce competition in the industry already, but it was between ports. The deregulation proposal was based on the assumption that stevedoring is inefficient, but many in the industry believed that to be wrong. The port of Gothenburg, for instance, competed with Hamburg and other major ports. However, that level of competition would be constrained if 10 to 15 firms were to share stevedoring between them, which would be the case in a port the size of Gothenburg if deregulation became a reality²⁴³⁸.

In 2002, the Swedish Government decided not to support the proposal for an EU Port Services Directive, because it would erode the Stevedoring Monopoly.

The unions voiced concern that low-paid Asian sailors would take jobs from Swedish port workers²⁴³⁹, while the Confederation of Swedish Enterprise (Svenskt Näringsliv) stressed that Sweden was the only Member State not to support the Directive and that the Stevedoring Monopoly resulted in inefficiency and lower growth. The monopolies in European ports dated back to the times of the guild system, and the Swedish system obliged exporters bringing goods to port to use dockers to take over the truck for the last 100 meters or so, which is inefficient and contrary to rational management. These nostalgic rules were unsustainable for the Swedish industry. The principles of competition and transparency should give the industry the opportunity to unload a ship with its own competent and authorised personnel, utilising its own resources²⁴⁴⁰.

²⁴³⁷ Malmberg, J., "Collective Agreements and Competition Law in Sweden – a report to the COLCOM project", in Bruun, N. and Hellsten, J., *Collective Agreements on the Competitive Common Market. A Study of Competition Rules and Their Impact on Collective Labour Agreements*, COLCOM Report, June 2000, (160), 168).

²⁴³⁸ See European Parliament, Written Question E-3295/01 by Jonas Sjöstedt (GUE/NGL) to the Commission of 28 November 2001 and the Answer by Commissioner de Palacio of 22 January 2002, OJ 18 July 2002, 172E, 33.

²⁴³⁹ Wallberg, P., "EU luckrar upp svenskt stuverimonopol", SvD Näringsliv 18 June 2002, http://www.svd.se/naringsliv/eu-luckrar-upp-svenskt-stuverimonopol_1039979.svd.

²⁴⁴⁰ Hallsten, L., "Avskaffa stuverimonopolet", *Transport iDag* 2003, No. 6, http://www.svensktnaringsliv.se/material/debattartikel/avskaffa-stuverimonopolet_3462.html; see also Svenskt Näringsliv, *A Swedish Business Agenda for Europe*, 2002, http://www.svensktnaringsliv.se/migration_catalog/a-swedish-business-agenda-for-europe-eu-

1855. In his masterly study on the ownership and organisational structure of Baltic ports of 2004, Kimmo Naski wrote that the Stevedoring Ordinance and, later, ILO Convention No. 137, created stable and rational relationships in the ports. Today, many ports still have only one stevedoring company which operates port facilities on a commercial basis and also provides stevedoring services. Majority shareholdership is no rarity, and in most cases it is in the hands of the municipality. But also where the municipality rents the infrastructure out to a port company, the provision of services at these integrated ports is characterised by a monopolistic market structure. In unintegrated ports, where a mix of landlord and tool port models applies, stevedoring services continue to be ensured by a single stevedoring company as well. Under the present circumstances, the Stevedoring Monopoly is only upheld by the trade unions, while, still according to Naski, the employers' associations deny that port operations are based upon any monopoly. The fact that, today, two trade unions exist, has not weakened the Stevedoring Monopoly either. Both unions continue to refer to the Stevedoring Ordinance of 1908 and ILO Convention No. 137, which precludes port operations performed by the ship's crew and which reserves all port work for registered port workers. The unions refuse to conclude agreements with more than one stevedoring company per port. They assert that this is the best means to ensure efficient stevedoring operations and optimum employment conditions. However, Kimmo Naski also reports that, currently, the Stevedoring Monopoly cannot be based on any Swedish legislative instrument, and that a number of ship owners and industrial companies voice severe criticism about it. At the time of writing, all their hopes centred on the proposal for a EU Port Services Directive – even if in 1999 the Swedish Competition Authority saw no objections against the Stevedoring Monopoly²⁴⁴¹. Kimmo Naski concludes that the hard stance taken by the unions prevents competition within ports and threatens efficiency and cost levels, but also raises the question whether market access for third operators would be in the interest of the integrated port companies²⁴⁴².

1856. An EC-supported 2006 report on the maritime sector in the Baltic region confirmed that the Stevedoring Monopoly continued to be "strictly adhered to in many Swedish ports"²⁴⁴³.

1857. In recent years, experts and stakeholders continued to mention the Stevedoring Monopoly among the critical issues in Swedish ports policy²⁴⁴⁴.

policy_532832.html/binary/A%20Swedish%20Business%20Agenda%20for%20Europe%20-%20EU%20Policy, 15.

²⁴⁴¹ Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 152-153.

²⁴⁴² Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 159-160.

²⁴⁴³ Institute of Shipping Analysis, BMT Transport Solutions and Centre for Maritime Studies, *Baltic Maritime Outlook 2006*, Gothenburg, Hamburg and Turku, March 2006, http://tentea.ec.europa.eu/download/MoS/2006_baltic_maritime_outlook.pdf, 79.

1858. Recently, the Swedish Competition Authority focused on municipal ports broadening their market scope. Municipal ports now offer services traditionally provided by the private sector. Municipal ports allegedly take advantage of their respective market powers and the Stevedoring Monopoly in, for example, the markets for forwarding and shipping agents and shipbrokers²⁴⁴⁵.

1859. The Swedish Stevedoring Monopoly is a perfect example of how exclusive rights for port workers can be inextricably intertwined with exclusive rights of port service providers. Despite the fact that the latter type of restriction is beyond the scope of our study²⁴⁴⁶, we would like to draw particular attention to the following issues.

First of all, we should recall that, from a historical perspective, the exclusive right of port workers is part and parcel of a broader set-up which reserved all stevedoring operations for a single port service provider who acted as an employer of pool workers, whose exclusive right was officially backed by municipal port authorities.

Secondly, several commentators observed that ILO Convention No. 137 does not require the granting of an exclusive right to a single cargo handling provider per port. The opposite arguments put forward by the trade unions rest on an extremely liberal, and indeed indefensible interpretation of the Convention²⁴⁴⁷.

Thirdly, the absence of any legislative confirmation of the Stevedoring Monopoly and of any penal sanctions on infringements does not prevent the unions from strictly enforcing this rule. Companies who attempted to break the Monopoly would face immediate industrial action²⁴⁴⁸.

Fourthly, it would appear that the Stevedoring Monopoly may distort competition in that some shipping lines own and operate their own stevedoring company while, due to the Monopoly, other companies are dependent on an external service provider²⁴⁴⁹.

²⁴⁴⁴ See, for example, Vierth, I., *Samhällsekonomiskt underlag för hamnpolitiken*, <http://www.vti.se/sv/publikationer/pdf/samhallsekonomiskt-underlag-for-hamnpolitiken.pdf>, Linköping, 2010, 21-22, 31 and 33.

²⁴⁴⁵ OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>, (191), 193.

²⁴⁴⁶ See *supra*, para 25.

²⁴⁴⁷ Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 153, footnote 421.

²⁴⁴⁸ See already Bergman, L. *et al.*, "Vägen till välstånd", *Konjunkturrådets rapport* 1999, 60.

²⁴⁴⁹ Such a situation is mentioned in Garberg, B., *Value-adding services in ro-ro-shipping. Present demand and future possibilities*, master thesis Logistics and Transport Management, No. 2001:23, Graduate Business School, Gothenburg University, https://gupea.ub.gu.se/bitstream/2077/2444/1/Garberg_2001_23_inlaga.pdf, 42.

1860. Ports of Sweden, the Swedish Transport Workers Union and the Swedish Dockworkers Union all confirmed that Swedish port workers do not have to be registered.

In an interview, IDC stated that in Sweden, ILO Convention No. 137 is not complied with. According to IDC, any port worker who is employed by a *bona fide* cargo handling company is *de facto* regarded as a registered worker. IDC considers this a particularly lax and unacceptable interpretation of the Convention.

Otherwise, Ports of Sweden, the Swedish Transport Workers Union and the Swedish Dockworkers Union concurred that labour arrangements in Swedish ports are properly enforced.

1861. Replying to a request for information on their current position, Ports of Sweden and the Confederation of Swedish Enterprise (Svenskt Näringsliv) said that there is today no longer any Stevedoring Monopoly in the ports, as there are many examples of ports where more than one company is operating, such as Gothenburg and Gävle, while no one would reasonably expect competition to take place in small ports where only 3 dockers are used. As a result, the Stevedoring Monopoly is no longer considered a political issue.

- Other restrictions on employment and restrictive working practices

1862. It would appear that, factually, port labour in Sweden is organised as a closed shop. In a 2012 interview, a Swedish ITF inspector said:

*In Sweden every docker is a member of a union, 100% is a member. It's very very important*²⁴⁵⁰.

Ports of Sweden added that in Sweden many port workers are still members of the same family.

Depending on the source, trade union density in Sweden as a whole is estimated at over 70 or 80 per cent²⁴⁵¹.

²⁴⁵⁰ X., "Inspectors speak", GNT Bulletin, February 2012, http://www.itfglobal.org/files/extranet/-1/33687/SJ_GNT%20DRAFT%20FEB%202012%20_Layout%201.pdf. Compare, for a view of the Swedish Dockworkers' Union, Rothelius, L., "Enigt och starkt fack i Helsingborgs hamn", 5 April 2012, <http://www.proletaren.se/inrikes/enigt-och-starkt-fack-i-helsingborgs-hamn>.

²⁴⁵¹ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

1863. Despite these facts, national collective agreements are only concluded with one of the two unions, namely the Swedish Transport Workers Union. The Swedish Dockworkers Union is not a party to the National Collective Agreement²⁴⁵². While its members enjoy all the benefits of the agreement, they are not under an obligation to guarantee social peace. Ports of Sweden explained to us that this results in a high strike propensity among the members of this union. Quite remarkably, in its turn, the Swedish Dockworkers Union complains that it is denied a seat at the negotiating table²⁴⁵³. In the past, the non-recognition of the union attracted the attention of the European Committee of Social Rights²⁴⁵⁴, but it appears that no further steps were undertaken to alter the situation.

1864. The Swedish Transport Workers Union responded that self-handling is prohibited in Swedish ports but did not identify this as a negative competitive factor²⁴⁵⁵. In an interview, Ports of Sweden said that, whilst self-handling is allowed by port authorities, it does not occur very often in practice because the labour unions impose compliance with the National Port and Stevedoring Agreement²⁴⁵⁶.

1865. The port workers' unions concur that in Swedish ports, a ban on the use of temporary agency workers applies. We are unaware of the legal basis of this prohibition²⁴⁵⁷. In an interview, Ports of Sweden and Ports of Stockholm denied the existence of such a ban but admitted that temporary agency work is not relied on frequently. In another interview, a representative of the Swedish Dockworkers Union mentioned that in small industrial ports in the North of Sweden, a number of grey companies hire just anyone and that, in Stockholm, Lithuanians unload timber. In Gothenburg, which is run by big terminal operators, such

²⁴⁵² See, earlier, Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 155.

²⁴⁵³ See, for example, Nylander, J., "Swedish port workers goes on strike" [sic], *The Swedish Wire* 14 August 2009, <http://www.swedishwire.com/nordic/736-swedish-port-workers-goes-on-strike>; X., "Öppet brev till Sveriges hamnarbetare inför avtalsrörelsen", 11 June 2011, <http://www.hamn.nu/avtal/264-oeppet-brev-till-sveriges-hamnarbetare-infoer-avtalsroerelsen.html>.

²⁴⁵⁴ See http://hudoc.esc.coe.int/esc1doc/escsec/doc/201005/6_conclusions_vi_eng/00000151.doc; <http://hudoc.esc.coe.int/esc1doc/escsec/doc/200825/c06EN/00000177.doc>; http://hudoc.esc.coe.int/esc1doc/escsec/doc/200839/07_conclusions_vii_en/00000184.doc.

²⁴⁵⁵ A ban on self-handling in Swedish ports is also mentioned in Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 152. U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) *All longshore activities.*

²⁴⁵⁶ In essence, this seems to corroborate the information in European Sea Ports Organisation, *Factual Report on the European Port Sector*, Brussels, 2004-2005, 166.

²⁴⁵⁷ An expert on the implementation of the Temporary Agency Work Directive writes that in Sweden, no restrictions of any kind have been laid down by law or collective agreement on the use of temporary agency workers (Eklund, R., "Who Is Afraid of the Temporary Agency Work Directive?", in Eklund, R., Hager, R., Kleineman, J. and Wängberg, H.-Å. (Eds.), *Skrifter till Anders Victorins minne*, Uppsala, Iustus, 2009, (139), 158).

practices do not occur. The union said that it has been demanding a national certification and training system for almost twenty years.

1866. Interviewees from Ports of Sweden and Ports of Stockholm pointed to the obsolescence and the complexity of the Port and Stevedoring Agreement which essentially dates from 1972. The agreement does not meet the needs of cargo handling companies today. First and foremost, it states that normal working hours last from 7h00 to 16h30 (§ 4(A)(1)), which is totally inadequate in a 24/7 port economy. Before and after normal working hours, port labour can only be performed on the basis of a specific collective agreement. As a result, the trade unions have a very strong bargaining position. For example, while there are no mandatory manning scales during normal working hours, the unions are said to be able to impose any conditions whenever the employer wishes to continue operations after 16h30²⁴⁵⁸. However, the Port and Stevedoring Agreement also regulates alternative working time systems (scheduled work and shift work) (§ 4(B) and (C)) and the performance of overtime (§ 5). According to Ports of Sweden, these arrangements offer no realistic solution as they are subject to negotiations and costs are exorbitant.

In its response to our questionnaire, the Swedish Transport Workers Union confirmed the restrictive working practices of limited working days and hours and late starts and early knocking off. It said that these practices have no major competitive impact. In an interview, Ports of Sweden and Ports of Stockholm commented that the limitation on working hours is indeed an issue, while the non-respect of working times should not be considered a widespread problem. The Port and Stevedoring Agreement expressly obliges workers to comply with the agreed hours (§ 2(3)).

- *Qualification and training issues*

1867. In 2006, ECOTEC assessed the training system as follows:

The skills demands on people working in cargo handling are comparatively low, however, they vary widely between seaport companies depending on what kind of cargo handling they are involved in. It should be noted though that demands for specialised skills are continuously increasing and more and more companies are demanding that their employees have a three-year higher secondary education, driver's license (sic) and appropriate language skills.

²⁴⁵⁸ Compare, on the earlier introduction of a three shift-system in Gothenburg, which increased productivity by 20 to 25 per cent, Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 152, footnote 421.

The education and experience of workers in seaports is highly transferable to other sectors. Most of the workers have a licence to operate a number of machines and forklift trucks, which are also used in other industries. There are relatively good development opportunities for workers in seaports due to the introduction of the Seaport and Stevedoring School (see the main report). Moreover, there are opportunities to become a supervisor, production manager and operational manager. Notably, most employees do not leave the occupation until they retire and thus it can be quite difficult for young people to get a job in the sector²⁴⁵⁹.

Ports of Sweden confirmed that this description remains accurate.

1868. In its reply to the questionnaire, the Swedish Transport Workers Union mentions that there still is a need to improve continued training of port workers. Other stakeholders raised no specific training-related issues.

- Health and safety issues

1869. In 2009, ILO's Committee of Experts on the Application of Conventions and Recommendations noted, with reference to observations submitted by the Swedish Transport Workers Union in 2002, that the Swedish Government had not yet commented on the concerns expressed by the union regarding increasing work-related stress in the ports due to increased efforts to improve the productivity and efficiency of dock work. In the union's view all dock work on and around ro-ro vessels has become more hazardous as the requirement of swift handling makes it impossible for work to be done according to the regulations. In view of the potential dangers that the required speed in handling could cause, the Committee requested the Government to comment on the union's observations as well as to provide a general appreciation of the manner in which ILO Convention No. 152 is applied in the country, and to attach extracts from the reports of the inspection services, information on the number of workers covered by the legislation, the number and nature of contraventions reported and the resulting action taken, as well as the number of occupational accidents and diseases reported²⁴⁶⁰. Ports of Sweden has no indications that this request was acted upon.

²⁴⁵⁹ Wihlborg, M. and ECOTEC, *Employment trends in all sectors related to the sea or using sea resources, Country Report – Sweden*, European Commission. DG Fisheries and Maritime Affairs, August 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/sweden_employment_trends_en.pdf, 9.

²⁴⁶⁰ International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), 98th Session, 2009, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_10_3484.pdf, 670-671.

1870. Yet in their response to the questionnaire, Ports of Sweden and the Swedish Transport Workers Union state that rules on health and safety in port work are adequate and properly enforced. However, the latter also responded that unsafe working conditions arise as a result of poor education and induction on safety matters. In addition, the Swedish Dockworkers Union denied that the health and safety level is satisfactory. It explained that the regulations are insufficiently detailed and that the factual situation differs from port to port, depending on how seriously the local employer takes these issues and on the strength of the local trade union. In an interview, a union representative said that, in Sweden, the employer bears the full responsibility to prevent work-related injuries and illnesses. Following a work related accident, the employer's representatives, often the CO or top management, are not infrequently prosecuted *e.g.*, for failing to make sure that the working environment is safe, that safety regulations are enforced, because the necessary impact assessments have not been made *etc.* In such cases resulting in severe or fatal accidents, prison sentences (usually suspended) are often imposed. This does, however, also mean that employees must follow safety rules and regulations that have been decided in the safety committees and that failure to do so can result in dismissal.

9.21.7. Appraisals and outlook

1871. Even if stakeholders did not identify it as a separate issue, the Stevedoring Monopoly continues to be a fundamental and quite controversial component of work organisation at Swedish ports.

1872. Ports of Sweden considers the current port labour regime unsatisfactory but terms the current relationship between port employers and port workers and their respective organisations satisfactory. The port labour system is not seen as a major competitive factor.

1873. The Swedish Transport Workers Union considers the current port labour regime unsatisfactory.

1874. The Swedish Dockworkers Union, too, considers current arrangements unsatisfactory. It states that casual port workers have "a very unsafe form of employment". Moreover, there is insufficient legal certainty, as there is no registration or authorisation of port workers. The

current relationship between employers and unions is said to be satisfactory, but the union regrets that it is denied a role in the collective bargaining process at national level.

1875. More in particular, the port workers' unions complain about substandard employment conditions in Swedish ports. Unacceptable labour conditions include temporary unemployment, an unhealthy and unsafe working environment, lack of training and, as regards the Swedish Dockworkers Union, insufficient involvement in collective bargaining. Interviewees from Ports of Sweden and Ports of Stockholm categorically denied these allegations and insisted that statistics demonstrate that port labour in Sweden is neither unsafe nor unhealthy and that moreover the unions are highly involved in the regulation of these matters. A 2006 report for the European Commission mentions that, compared to other countries, salaries for workers in Swedish ports are significantly higher. For the workers, this is an advantage; however, from a competitive perspective it may be seen as a weakness²⁴⁶¹. In an interview, Ports of Sweden confirmed that wages in the sector are very high, which is indicative of an attractive working environment in ports.

1876. Ports of Sweden, the Swedish Transport Workers Union and the Swedish Dockworkers Union do not see any need or scope for EU action in the field of port labour.

9.21.8. Developments between January 2013 and September 2014

1876A. We are not aware of any major developments in port labour in Sweden.

²⁴⁶¹ Wihlborg, M. and ECOTEC, *Employment trends in all sectors related to the sea or using sea resources, Country Report – Sweden*, European Commission. DG Fisheries and Maritime Affairs, August 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/sweden_employment_trends_en.pdf, 8.

9.21.9. Synopsis

1877.		
SYNOPSIS OF PORT LABOUR IN SWEDEN²⁴⁶²		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 80 ports, 50 public and 30 industrial • Mix of management models • 173m tonnes • 11th in the EU for containers • 47th in the world for containers • Appr. 71 employers (?) • 2,900-3,900 port workers • Trade union density: 90-100% 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • Party to ILO C137 • National CBA and company CBAs • 'Stevedoring Monopoly' based on national CBA • 4 categories of workers: <ul style="list-style-type: none"> (1) permanent workers employed by individual company (2) temporary (replacement) workers (3) probationers (4) casual workers • No pool system • No hiring halls 	<ul style="list-style-type: none"> • 'Stevedoring Monopoly' (?) • Vain attempts at abolishing the Monopoly through legislation and competition procedures • Industry denies continuing existence of Monopoly • Union concerns over non-compliance with ILO C137 as workers are not registered • Closed shop • One union does not participate in collective bargaining • Factual ban on self-handling • Ban on temporary agency work • Limited working times
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • National Port and Stevedoring School 	<ul style="list-style-type: none"> • No national requirements on skills and competences • CBA on jointly managed Ports and Stevedoring School 	<ul style="list-style-type: none"> • Training can still be improved
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Detailed national statistics available 	<ul style="list-style-type: none"> • Specific national Provisions on Dock Work • Specific national Recommendation on Dock Work • Party to ILO C152 	<ul style="list-style-type: none"> • Diverging opinions on safety level

²⁴⁶² Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

9.22. United Kingdom

9.22.1. Port system²⁴⁶³

1878. There are more than 650 ports in the UK which have been granted statutory harbour authority powers. Of these, 120 are commercially active. The UK's geography, together with cost and environmental advantages of maritime transport over other modes of transport, has resulted in its ports industry being the largest in Europe in terms of freight tonnage.

More than 50 ports handle at least 1 million tonnes of cargo. The Port of Grimsby and Immingham is the UK's largest port by tonnage, with 57.2 million tonnes of goods handled in 2011. The second port of the UK is the Port of London, which handled 43.7 million tonnes in 2012²⁴⁶⁴. Felixstowe and Southampton are the UK's largest container ports, and Dover is a major ro-ro and passenger port. UK container ports ranked 6th in the EU and 17th in the world in 2011²⁴⁶⁵.

In 2012, the gross weight of seaborne goods handled in UK ports was 500.9 million tonnes²⁴⁶⁶.

1879. The ports industry in the UK comprises a mixture of private²⁴⁶⁷, trust²⁴⁶⁸ and municipal²⁴⁶⁹ ports which operate as self financing commercial entities, in competition with one another. The trust and municipal ports operate on a stand alone basis, but most of the private ports belong to groups, such as Associated British Ports which operates 21 ports.

A number of ports offer a fully integrated service, whereby the port provides the cargo handling and other services which the shipowner requires. Other ports operate on the landlord model

²⁴⁶³ For general information on UK ports, see www.ukmajorports.org.uk; www.britishports.org.uk; see also ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 153-192; OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>, 207-230; for statistics, see http://www.dft.gov.uk/statistics?post_type=release&series=ports-parent-series&topic=ports and http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

²⁴⁶⁴ Port of London Authority, *Annual Report & Accounts 2012*, London, 2013, http://www.pla.co.uk/assets/POLA_Report_2012.pdf, 1.

²⁴⁶⁵ Container ranking based on UNCTAD, *Review of Maritime Transport 2013*, New York and Geneva, UNCTAD / UN, 2013, http://unctad.org/en/Docs/rmt2013_en.pdf, 179-180.

²⁴⁶⁶ See [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_\(inward_and_outward\)_in_main_ports\(1\)_in_2012_by_type_of_cargo\(2\)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Gross_weight_of_seaborne_goods_handled_(inward_and_outward)_in_main_ports(1)_in_2012_by_type_of_cargo(2)_in_%25_of_total_cargo_handled.png&filetimestamp=20140228161723).

²⁴⁶⁷ For example, Associated British Ports, Forth Ports and Hutchison Ports.

²⁴⁶⁸ For example, Port of Dover and Milford Haven.

²⁴⁶⁹ For example, Portsmouth and Sullom Voe.

whereby the port authority provides the infrastructure but cargo handling and other services are provided by independent companies. Some ports operate a mixture of the two systems.

9.22.2. Sources of law

1880. Broadly, port labour is not segregated from general UK employment law or singled out for specific arrangements. Port workers enjoy the same employment rights and responsibilities as the rest of the UK workforce.

1881. The National Dock Labour Scheme was abolished by the Dock Work Act 1989²⁴⁷⁰.

1882. Health and safety in port work is regulated in general laws and regulations on occupational health and safety, the Docks Regulations 1988 and further sector-specific regulations and guidance instruments issued by the Government and the industry²⁴⁷¹.

Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers was transposed by the UK in 2003²⁴⁷².

1883. The UK has ratified neither ILO Convention No. 137, nor ILO Convention No. 152²⁴⁷³. However, it is still bound by ILO Convention No. 32²⁴⁷⁴.

1884. Collective labour agreements are typically arranged between the union concerned and the individual employing organisation. These arrangements are therefore generally confidential between the parties; as a result, we were unable to analyse the content of collective agreements on port labour in the UK. Reportedly, collective agreements will cover, as a

²⁴⁷⁰ An Act to abolish the Dock Workers Employment Scheme 1967 and repeal the Dock Workers (Regulation of Employment) Act 1946, to make provision for the dissolution of the National Dock Labour Board and for connected purposes; see more *infra*, para 1900.

²⁴⁷¹ See *infra*, para 1920 *et seq.*

²⁴⁷² Merchant Shipping (Safe Loading and Unloading of Bulk Carriers) Regulations 2003.

²⁴⁷³ See more *infra*, paras 1939 and 1958.

²⁴⁷⁴ The Convention was adopted on 27 April 1932 (Cmd 4115).

minimum, pay, hours of work and holidays. There are no collective labour agreements on port labour at national level.

9.22.3. Labour market

- Historical background²⁴⁷⁵

1885. Far more interesting than the UK experience with old-style corporations – in London, for example, portage brotherhoods had been in operation since the middle ages²⁴⁷⁶ – are developments in 19th-century English ports, which paved the way for international dock labour trade unionism, the first attempts at decasualisation of modern port labour and the joint management of port labour relations across Europe. What is more, the UK was also one of the first EU countries to radically reform its port labour regime, a move which culminated in the outright abolition of the specific regulation for the control of port labour – known as the National Dock Labour Scheme – in 1989. Throughout its long history, the UK port labour regime

²⁴⁷⁵ An abundance of studies deals with the history of port labour in the UK. See, for example, Adams, G., *Organisation of the British Port Transport Industry*, London, National Ports Council, 1973, 116 *et seq.*; Brown, B.M., "The effects upon the workforce of technological change of the U.K. waterfront", *Australian Transport Research Forum Papers* 1986, 355-381; Carter, C., Clegg, S., Hogan, J. and Kornberger, M., "The polyphonic spree: the case of the Liverpool Dockers", *Industrial Relations Journal* Vol. 34 (4), 2003, 290-304, <http://onlinelibrary.wiley.com/doi/10.1111/1468-2338.00276/abstract>; Davies, S., "The history of Hull dockers, c. 1870-1960", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, 180-212; Davis, C.J., "New York city and London, 1945-1960", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, 213-230; Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 222 p.; Gillès de Pélichy, Ch., *Le régime du travail dans les principaux ports de mer de l'Europe*, Louvain / Brussels / Paris, Polleunis & Ceuterick / Louis Lagaert / Guillaumin & Cie, 1899, Partie spéciale, 3-123; Lord Howie, "Dock labour history", in Nicholson, G. et al., *Dockland. An illustrated historical survey of life and work in east London*, London, North East London Polytechnic, 1986, 71-80; Jackson, M., *Labour relations on the docks*, Farnborough, Saxon House, 1973, 146 p.; Jensen, V.H., *Hiring of Dock Workers and Employment Practices in the Ports of New York, Liverpool, London, Rotterdam, and Marseilles*, Cambridge (Mass.), Harvard University Press, 1964, 121-214; Kenefick, W., "A struggle for recognition and independence: the growth and development of dock unionism at the port of Glasgow, c. 1853-1932", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, 319-339; Lovell, J., *Stevedores & Dockers. A Study of Trade Unionism in the Port of London 1870-1914*, London, Mamillan, 1969, 270 p.; Mankelov, R., "The port of London, 1790-1970", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, 365-385; McCarthy, T., *The Great Dock Strike 1889*, London, Weidenfeld and Nicholson, 1988, 254 p.; McKelvey, J.T., *Dock labour disputes in Great Britain*, Ithaca, New York, New York State School of Industrial and Labor Relations, Cornell University, 1953, 59 p.; Taplin, E., "The history of dock labour: Liverpool, c. 1850-1914", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, II, Aldershot, Ashgate, 2000, 442-470; X., "International Dockers' Struggles in the Eighties: Workers of the World, Tonight!", http://www.reocities.com/cordobakaf/blob_docks.html.

²⁴⁷⁶ See briefly Davis, C.J., "Formation and reproduction of dockers as an occupational group", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (542), 544.

has thus served as an international benchmark and a major source of inspiration to other EU Member States. More in particular, several pressing policy and legal issues that arise today in other Member States appear to have been at the heart of discussions on earlier British reform initiatives. For these reasons, a retrospective of the UK port labour pool regime and a discussion of the motives behind its abolition is a particularly fruitful exercise. Of course, we will pay attention to current port labour arrangements in UK ports as well.

1886. In England, too, port labour at the end of the 19th century was characterised by casual employment. A select number of English dockworkers who possessed various degrees of expertise, such as stevedores or lightermen²⁴⁷⁷, were employed on a permanent basis and were considered the labour aristocrats of the port. The vast majority of dockworkers, however, were casual labourers who never knew whether they would be hired on a given day, and who unloaded whatever cargo a ship brought in. These men looked for work outside the dock gates every morning, often bribed foremen for a day's work with a fraction of their scanty earnings and, then, were forced to run while unloading ships, and to labour for twenty-four hours or more at a stretch²⁴⁷⁸. Those who did find work often faced severe danger.

Recently, Dempster summarised the situation as follows:

The fact that dock work was largely unskilled, coupled with the casual system of employment, meant that dock work was among the most poorly paid and least attractive ways of earning a living. Some dockworkers worked regularly in the docks but other men who were otherwise unemployed would go to the docks as a last resort looking for work. Frequently there were more men looking for work than there was work available and bribery and abuse were rife. The foremen who hired the dockworkers were in a position of great power, which they used every opportunity to exploit. The daily "call" led to degrading scenes where men struggled to catch the foreman's eye in the hope of securing just half a day's work²⁴⁷⁹.

The Great Dock Strike of 1889 was one of the labour movement's most famous victories. In an unprecedented display of solidarity for a group of casual workers thought to be unorganisable, the dockers of London's East End walked out en masse and paralysed the docks. The strike was led by, among others, the legendary Ben Tillett, who later became one of the first Labour MPs. The settlement reached helped many other workers and sowed the seeds of the modern trade union movement²⁴⁸⁰.

²⁴⁷⁷ Lightermen transferred cargo from boats moored in the river to dock quay or wharf via small barges called "lighters". They had to know the principles of navigation, and the peculiarities of the river, its tides, shoreline, undercurrents, bridges, obstacles and so on. See Schneer, J., "London's Docks in 1900: Nexus of Empire", *Labour History Review* 1994, (20), 21.

²⁴⁷⁸ Schneer, J., "London's Docks in 1900: Nexus of Empire", *Labour History Review* 1994, (20), 21.

²⁴⁷⁹ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 7.

²⁴⁸⁰ See especially McCarthy, T., *The Great Dock Strike 1889*, London, George Weidenfeld & Nicholson, 1988, 254 p.

Nevertheless, nearly every week during the year 1900 a London dockworker was crushed by a heavy cargo, or broke his neck falling into a ship's hold or from a winch or crane he had climbed to repair. A report commissioned by the Home Secretary and published in October 1900, listed 115 deaths in British docks during the previous year and 4,591 non-fatal accidents²⁴⁸¹.

1887. The movement for the reform of the casual system of employment on the docks first turned its attention to schemes of registration. Only men who were registered would be offered employment on the docks, so that men would not hang around the docks when there was obviously no work for them, and that the docks would cease to be the last resort for the unemployed labourer when trade was slack in other industries.

The first registration and decasualisation scheme in the UK was instituted in the port of Liverpool in 1912. It introduced registration and gave registered dockers a preference for employment; clearing houses were set up; and centralised weekly payment of wages was introduced. The register was periodically reviewed by a joint committee. There were weaknesses in the system, however: (1) not all employers came into the scheme; (2) too many men were given registration; (3) registered workers were not obliged to present themselves for work, so that there was a constant shortage of workers in the port, obliging employers to employ non-registered men; and (4) nothing was done to reduce the number of call-stands. Despite these problems, registration schemes spread across the country. During World War I, similar schemes were set up in other UK ports and during the interwar years these were further adjusted. By the early 1920s, registration systems applied in most British ports²⁴⁸².

1888. Following the Dock Workers (Regulation of Employment) Act 1946, the National Dock Labour Scheme (NDLS) was introduced by the Labour Government in 1947²⁴⁸³. The NDLS was, at that time, a modern instrument designed to reform the system of casual employment.

The Scheme was a radical change for port workers. Their registration aimed at providing a stable supply of experienced labour for employers and regular employment for dockworkers, in addition to medical welfare services and training through a financial levy on port employers²⁴⁸⁴.

The key features of the NDLS were:

²⁴⁸¹ Schneer, J., "London's Docks in 1900: Nexus of Empire", *Labour History Review* 1994, (20), 21.

²⁴⁸² See Jackson, M., *Labour relations on the docks*, Farnborough, Saxon House, 1973, 8 *et seq.*; see also Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 5 *et seq.*

²⁴⁸³ Statutory registration, accompanied by guaranteed fall-back pay, was first introduced in WWII, to ensure an adequate supply of labour in the ports during the war. The 1947 Scheme put the wartime arrangements on a permanent footing.

²⁴⁸⁴ House of Commons Transport Committee, *Ports. Ninth Report of Session 2002-03*, I, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmtran/783/78302.htm>, 14, para 43-44.

- a statutory definition of dock work²⁴⁸⁵ and a designation of ports where the scheme applies;
- the establishment of a National Dock Labour Board (NDLB) supplemented by a further 20 local Boards across the country consisting of 50 per cent union and 50 per cent employer representatives which in practice gave the unions veto over dismissal and control over recruitment and discipline;
- the compulsory registration of employers and workers who thereupon are deemed to have accepted the obligations of the scheme;
- a prohibition on registered workers from engaging for work with a registered employer except as weekly workers or being selected by a registered employer or allocated to him in accordance with the Scheme;
- a corresponding obligation on the employers to accept the daily workers so allocated and on the workers to accept the employment; in other words a statutory monopoly of dock work, with the employment of non-registered dockworkers constituting a criminal offence;
- the control of wages paid by the employers and entitlement of workers in the reserve pool to payment from the National Board (remuneration due from employers in respect of daily workers being paid to the National Board);
- disciplinary powers (including provisions for disentitlement of workers to payment for non-compliance with certain provisions of the scheme) and provisions for the termination of employment of daily workers, for appeals by persons aggrieved to appeal tribunals, and for the cost of the operation of the scheme;
- involvement of the NDLB in functions such as training, welfare and administration of severance schemes, financed by a levy on employers²⁴⁸⁶.

As a result, the NDLB administered the register as the holding employer or labour pool in each port, to which the dockers would be returned when the job was finished. Only registered labourers were permitted to work in the docks. Registered dockers received a guaranteed wage, supplemented by payments for work actually done.

In 1949, the labour force totalled 74,850 registered dockworkers. Membership of the union was a condition of dock employment²⁴⁸⁷. The employers were said to pay the highest wages known in any UK industry. In 1950, a working party concluded *inter alia* that the workpeople, fearing the introduction of machinery because of possible unemployment, clung to practices prejudicial to the use and extension of mechanical equipment; the working party recommended that all concerned should aim at "complete flexibility of labour as between ship and shore, and also between gang and gang"²⁴⁸⁸.

²⁴⁸⁵ Under the Dock Workers (Regulation of Employment) Act 1946 a dock worker was defined as "a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading, movement or storage of cargo or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or for leaving port" (see also Adams, G., *Organisation of the British Port Transport Industry*, London, National Ports Council, 1973, 76).

²⁴⁸⁶ Comp. Jackson, M., *Labour relations on the docks*, Farnborough, Saxon House, 1973, 36.

²⁴⁸⁷ McKelvey, J.T., *Dock labour disputes in Great Britain*, Ithaca, New York, New York State School of Industrial and Labor Relations, Cornell University, 1953, 56.

²⁴⁸⁸ Bown, A.H.J., *Port economics*, London, The Dock and Harbour Authority, 1953, 82, 87-88 and 90.

1889. From early on there was a certain degree of discontentment with the NDLS and in the mid 1960s the scheme was the subject of a review. In 1964 the Devlin Committee was set up as a means of resolving an immediate pay dispute in the docks²⁴⁸⁹. The Committee's first report, published in November 1964, was devoted to the pay dispute, but the Committee members promised to look more deeply into the causes of the chronic problems which beset the industry. The results of this work were contained in a second report, published in July 1965. The Committee noted that the 1947 scheme had been only partially successful in eliminating casual employment in the docks and listed the following issues²⁴⁹⁰:

- lack of income security for registered dockworkers;
- preferential treatment for 'blue-eyed boys', that is men who were the favourites of employers and could be sure on most occasions that they would obtain work (the other categories were the 'perms', *i.e.* regular or 'weekly' workers, and the 'floaters' or 'drifters' who were only given work after the needs of the other two categories had been satisfied; a half or more of all dockworkers fell under the third category)²⁴⁹¹;
- lack of responsibility on the part of the dockworkers, especially with regard to strike action;
- deficiencies in management (from 1947 all dock employers had to be registered, but the only qualification for registration was the wish to employ dock labour);
- time wasting practices, such as the use of the continuity rule (by which a dockworker is entitled to complete any job that he has begun), bad time-keeping, and excessive manning; all these practices were protective devices, designed to ensure the maximum amount of employment for the maximum number of dockers;
- the use of piecework rates;
- overtime issues;
- poor welfare, amenities and working conditions;
- trade union organisational difficulties.

To further illustrate the situation, Jensen reported in 1964 on the following characteristic practice in the port of London:

Whether gangs are hired as such, the men who work on the ships and at ship side are formed into gangs in accordance with the terms of the industrial agreements and practices at the place of work. In times of short labour supply an anomalous situation may occur. An employer is not allowed, or will not be permitted to work short-handed. He may not get a full complement of men for a gang at the free call. There may not be enough at the control for him to get the needed men by allocation. Furthermore, he is not allowed to merge gangs when he has several that are not up to full strength. He

²⁴⁸⁹ See *inter alia* Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 20 *et seq.*

²⁴⁹⁰ See also Jackson, M., *Labour relations on the docks, o.c.*, 79 *et seq.*; comp. McKelvey, J.T., *Dock labour disputes in Great Britain*, Ithaca, New York, New York State School of Industrial and Labor Relations, Cornell University, 1953, 52 *et seq.*

²⁴⁹¹ See also Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 17-18.

must pay the men even though they are not actually doing work – that is, the men have been hired and are on continuity and must be paid. (On one day at the Royal docks in the summer of 1960, the employers were short some four hundred men, whereas, at the same time, there were eight hundred who could not work because the employers could not fill out the gangs.) Obviously this can go on for several shifts if the labor market is tight. Nor is the situation an unmixed blessing. The men are paid only daily wages, which may be only half, or even less than half, the amount they might be earning under piece rates. They would rather be working. It is said that the contracting stevedores do not care. They pass the cost on to the steamship companies and shippers²⁴⁹².

In addition, the strike record in the docks was the worst of any industry²⁴⁹³.

The Devlin Committee identified decasualisation as a prerequisite for change. It proposed that all registered dockworkers be brought into weekly, *i.e.* permanent, employment and that the number of employers be reduced by means of licensing. Moreover, the Committee recommended that all dockworkers be employed by one employer, which would result in a very limited (almost non-existent) reserve pool²⁴⁹⁴.

The Devlin proposals were enacted in statutory form in the Docks and Harbours Act 1966 and the Dock Workers (Regulation of Employment) (Amendment) Order 1967. Under the new regime, every registered dockworker was to be allocated to permanent employment ('jobs for life'²⁴⁹⁵), including sick pay and a pension scheme, with a licensed and registered employer. Most features of the NDLS, such as the provisions on discipline and the size of the dockworkers' register, remained unaltered however. The 1966 Act designated 43 port authorities as licensing authorities for port employers, and laid down the criteria to be used in awarding licences. These criteria were designed to restrict licences to employers who were sufficiently large to be able to offer weekly employment to a significant number of workers and to ensure that the casual employers (for example, employers with no proper company structure or permanent presence in the port, who would hire some workers when they had a job and then disappear when they did not) would be eliminated. A condition of licences was that the employers in a port should be prepared, in total, to take on sufficient workers to eliminate any surplus, thereby achieving the goal of bringing all dockworkers into permanent (*i.e.* weekly) employment.

Yet, the 1967 Scheme still established three different categories of workers. The majority became permanent workers employed by a single registered employer. A second group were registered with an employer for a limited period only, usually for the completion of a particular task such as the loading and unloading of seasonal cargoes. The final group were members of

²⁴⁹² Jensen, V.H., Jensen, V.H., *Hiring of Dock Workers and Employment Practices in the Ports of New York, Liverpool, London, Rotterdam, and Marseilles*, Cambridge (Mass.), Harvard University Press, 1964, 205-206.

²⁴⁹³ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 18 and 28.

²⁴⁹⁴ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 23-24.

²⁴⁹⁵ Hanson, C., "Time to End the National Dock Labour Scheme", *Economic Affairs* June/July 1988, (34), 34.

the 'Temporarily Unattached Register' (*i.e.* men who would be paid by the Dock Labour Board), but it was envisaged that this register would be used only on a genuinely temporary basis, pending reallocation to another employer²⁴⁹⁶.

1890. The aspiration of the 1967 Scheme was that decasualisation would resolve the labour problems in docks. However, the introduction of modern cargo handling methods, such as unitisation and containerisation, meant that the industry experienced a prolonged decline in employment. The rapidity of these changes created an increasing number of workers who were termed 'surplus to requirements'. This became a particular problem for the industry as the number of registered dockworkers could only be adjusted under a voluntary severance agreement²⁴⁹⁷. Under the Aldington Jones Agreements of 1974, if a cargo handling company ceased operations, its labour force had to be re-assigned to other employers in the port. As a consequence, stevedoring companies were failing one after another like dominoes, and under the 'employer of last resort', the port authorities were forced to employ men for whom they had no work²⁴⁹⁸. Private stevedoring companies virtually disappeared²⁴⁹⁹.

1891. When the Scheme was established in 1947 it covered 83 ports which comprised all the ports in the country where casual labour was used. However, as time passed new ports began to flourish, such as Portsmouth and Felixstowe, which were outside the Scheme and which began to attract traffic from the Scheme ports. On account of the port of Felixstowe's freedom to adopt efficient working practices, coupled with energetic and far-sighted management, the port became the largest UK container port²⁵⁰⁰. The unions proposed that non-scheme ports should be required to pay the Dock Labour Board levy. They furthermore complained about the safety and other standards at small wharves and argued that such wharves should be forbidden to handle international traffic²⁵⁰¹.

²⁴⁹⁶ See Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 26-28; see also Sapsford, D. and Turnbull, P., "Dockers, Devlin and industrial disputes", *Industrial Relations Journal* 1990, (26), 28.

²⁴⁹⁷ See House of Commons Transport Committee, *Ports. Ninth Report of Session 2002-03*, I, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmtran/783/78302.htm>, 15, para 45.

²⁴⁹⁸ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, ix-x.

²⁴⁹⁹ Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 6.

²⁵⁰⁰ Harding, S., *Restrictive Labor Practices in Seaports*, Washington, World Bank, October 1990, http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/1990/10/01/000009265_3960929231915/Rendered/PDF/multi_page.pdf, 12, para 28.

²⁵⁰¹ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 39; see also Hanson, C., "Time to End the National Dock Labour Scheme", *Economic Affairs* 1988, (34), 34. Turnbull and Wass however argue that working practices and levels of labour productivity at scheme and non-scheme ports were remarkably similar (see Turnbull, P., and Wass, V., "The great dock and dole swindle: Accounting for the costs and benefits of port transport deregulation and the dock labour compensation scheme", *Public Administration* 1995, (513), 521).

1892. The rapid development of containerisation moreover led to continuous disputes about whether the stuffing and stripping of containers constituted dock work. A number of employers set up clearance and groupage depots outside port areas (e.g. at Glasgow, Leeds, Manchester, Birmingham, Liverpool and London) where containers were packed and unpacked by non-dockworkers for much lower pay. The unions however argued that these inland activities constituted dock work and should therefore be reserved to registered dockworkers²⁵⁰². Under the 1947 Scheme, several cold storage operators had claimed for exemption from the obligation to employ registered dockworkers as well, but, in most cases, to no avail²⁵⁰³.

1893. In response to a Government consultation paper, dock work, port reorganisation and an extension of the Dock Labour Scheme were debated in the House Commons on 14 April 1975²⁵⁰⁴. The report indicates that the above measures had certainly not soothed discontent.

James Prior MP, the opposition spokesman on employment matters, said that there is "a great deal wrong with the efficiency of our docks. In London a 12-man gang moves 50 tons per shift. The equivalent gang in Antwerp moves 350 tons per shift". He went on to say that merchants avoid storing goods in premises staffed by dock labourers at the scheme ports. They do so because of the fear of strikes, higher costs, lower productivity and general inefficiency. Turning to the subject of the non-scheme ports, where there has been great development in recent years, he said that one reason for this was the bad labour at the dock labour scheme ports. He was assured that the dockers of Felixstowe or Shoreham did not wish to join the dock labour scheme, because they do not wish to have anything to do with it at all²⁵⁰⁵. Alexander Fletcher MP added that if warehousing and container companies preferred to operate outside the dock areas, they and their employees must have good reasons for doing so. These companies enjoy good industrial relations with their employees, many of whom are former dockworkers who have moved voluntarily, without compulsion on either side, into this new employment. The MP said that the Government should be aware of their responsibilities towards companies engaged in warehousing, cold storage and container work, many of which play an important part in the preparation and distribution of food supplies at competitive prices to consumers. In relation to

²⁵⁰² See especially Jackson, M., *Labour relations on the docks*, Farnborough, Saxon House, 1973, 112 *et seq.* and 128 *et seq.*; see also Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 29; Sapsford, D. and Turnbull, P., "Dockers, Devlin and industrial disputes", *Industrial Relations Journal* 1990, (26), 28.

²⁵⁰³ See Jackson, M., *Labour relations on the docks*, Farnborough, Saxon House, 1973, 60-61. For example, the United Cold Storage Company Limited based its case on three separate arguments: firstly, the Company argued that their labour requirement should not be met from the Scheme, as specialised labour was needed; secondly, it said that when casual labour was allocated to the company by the Dock Labour Board, it often arrived late and was unenthusiastic about the work; thirdly, it argued that it could offer all its employees permanent work. Its conditions of employment were therefore better than those guaranteed by the Scheme and as a result the Scheme was inappropriate. In a 1959 Report of Inquiry, each of these arguments was dismissed. Importantly, permanent employment and the NDLS were not considered incompatible. The arguments of one other company in a similar situation were accepted, because their operations were not primarily concerned with international trade and they were based a good distance from the docks area.

²⁵⁰⁴ <http://hansard.millbanksystems.com/commons/1975/apr/14/dock-work-and-port-reorganisation>.

²⁵⁰⁵ The dockers of Felixstowe indeed voted against joining the Scheme (see Baird, A., "Analysis of private seaport development: the port of Felixstowe", *Transport Policy* 1999, Vol. 6, (109), 114).

"groupage" work, which dockworkers claim to be their work – in other words, work involving the stuffing and stripping of containers which do not go from manufacturer to the docks but are loaded at places outside the dock industry, in conditions which are by no means comparable with those obtaining in the docks and at quite different wages, Eddie Loyden MP commented as follows:

The situation reached such a point that at one time we were stuffing and stripping containers with prisoners. Is it any wonder that dock workers became concerned about developments? Against that background dock workers began to seek some form of legislation to protect existing jobs and, if necessary, to bring back work to the industry which had been taken away. The best way to deal with this is by extending the scheme. This does not mean that the dockers are saying that non-registered workers who are doing the job now should become unemployed, except in those circumstances where the employer has established a "cowboy" outfit in order to undermine the position of dock workers and their employment. One reason why they are asking for an extension of registration is so that the conditions that prevail in their industry can be guaranteed outside dockland.

While the latter speaker insisted that "sanity" had to be brought "into what has virtually become a jungle", Ian Lloyd MP could not understand why the guarantee given to the dockworkers should be so much greater and more specific than that given to employees in the aerospace industry, and be enshrined in legislation. Keith Stainton MP stressed that the port of Felixstowe was doing extremely well, precisely because it had been free from all those inhibitions that so constrained and constricted the activities of Liverpool, London and Hull over recent years. Peter Rees proposed that one "should look with extreme distaste and suspicion on any monopoly, particularly on any extension of an existing monopoly", and suggested that the redefinition of the scope of the Dock Labour Scheme be referred to the Monopolies Commission to apply the test of "the national interest" – not just the interest of the Transport and General Workers' Union – to the proposals. The same speaker said that if the Dock Labour Scheme were extended to Dover the costs of handling freight would increase by at least 50 per cent, that the real reason for the extension was "in deference to the susceptibilities of registered dock workers", and that it seems "that the docks are to be run by and for registered dock workers". Marcus Fox MP added that "every time the London docks are brought to a standstill the dockers in Rotterdam must be drinking champagne" He described the situation at non-scheme ports in the following terms:

In the non-scheme ports the men will work week-ends. They will work to suit the shipping and the tides. There are no restrictive practices. The men allow interchangeability between jobs if necessary. They allow interchangeability during all hours between ships. The men will discharge one hold and load another simultaneously. The ships are not undermanned. Under the conditions in the scheme, however, ports would require extra men not fully employed. We all know that in London, Hull and Liverpool there is rigidity of hours of work especially at weekends. There is adherence to historic and outworn practices, and rotation of labour across the broad spectrum of activity dilutes efficiency.

1894. Port labour in the scheme ports indeed continued to be subject to numerous restrictive rules and practices²⁵⁰⁶, including:

- the exclusive right of registered employers to engage workers on dock work;
- the exclusive right of registered dockworkers to be engaged for dock work²⁵⁰⁷;
- disputes over the exact definition of dock work²⁵⁰⁸;
- job demarcation between various categories of dockworkers, resulting in an obligation to assign workers to particular tasks;
- rigidity of manning scales, resulting in over-manning, *i.e.* providing an employer with more personnel than necessary;

²⁵⁰⁶ See also Hanson, C., "Time to End the National Dock Labour Scheme", *Economic Affairs* June/July 1988, (34), 35 and the triumphant 1990 speech by the former director of Britain's National Association of Port Employers, Nicholas Finney OBE, published online on <http://www.labournet.net/docks2/9706/NDLS.HTM>:

Restrictive practices, all thoroughly familiar to you, developed a folk lore of their own. Ghosting was popular; allocating and paying dockers to do a job which couldn't be done by dockers and ensuring they never appeared to do the job. The trouble is they had real pay packets and the shippers, importers and exporters had to pay. Other practices such as welting and bobbing were endemic. I also heard the mention of 'spelling'. All these practices involved establishing an inflated gang size and letting half of them "bob off" home for the day. Disappointment money, embarrassment money; all sorts of money for fictional hardships. Above all morale was always poor because everybody knew management could not manage in this straightjacket. There was a terrible sense of demoralisation and morbid unreality about everything. It reminded me in a strange way of a little text found on a gravestone deep in the heart of the English countryside.

*Here lies all that remains of Charlotte
born a virgin, died a harlot
for sixteen years she kept her virginity
a marvellous thing for this vicinity.*

It was the depth of plundering by the docker; the abuse of monopoly power which eventually sowed the seeds of their own destruction.

²⁵⁰⁷ Clause 10(1) of The Dock Workers Employment Scheme 1967 provided, under the heading of 'Restriction on employment':

No person other than a registered employer and the National Board shall engage for employment or employ any worker on dock work nor save as hereafter in the Scheme provided shall a registered employer engage for employment or employ a worker on dock work unless that worker is a registered dock worker.

A contravention of the preceding provision was a criminal offence (see Clause 10(2)).

²⁵⁰⁸ See again Jackson, M., *Labour relations on the docks*, Farnborough, Saxon House, 1973, 112 *et seq.*, especially commenting at 113 on the legal definition of dock work as it was laid down in 1947:

This definition of 'dock worker' (and thus the definition of 'dock work') is, in parts, a little vague. There is, for example, a degree of uncertainty about exactly what is meant by 'in the vicinity' of a port. How far away from the port can the work be in order for it still to be covered by this phrase – 1 mile, 2 miles or 3 miles? Again, the Act states that the storage of cargo is 'dock work'; cargo is defined as 'anything carried in a ship or other vessel'. Does that mean, then, that storing anything that has at any time been carried on board a ship is dock work? Or is there a time limit involved? Does it mean that only storing goods that have recently been carried on board a ship is dock work? Clearly the 1947 Act does not provide an unequivocal answer to these questions.

In his speech from 1990, Finney commented as follows:

In the sixty UK ports governed by a national dock labour scheme it was a criminal offence to employ anyone other than a registered dock worker on work which was legally defined as dock work. The obscurity of the dock work definition gave the legal profession a wonderful living for over forty years. In fact, it was nothing short of a national tragedy to the legal profession to learn the historic announcement by the UK government on the 6th April 1989 – it's all over.

- 'bobbing': establishing an inflated gang size (actually twice as many as are needed) and letting half of them 'bob off' home for the day)²⁵⁰⁹;
- 'ghosting': allocating and paying dockworkers to do a job which they could and did not perform;
- 'welting' or 'spelling': taking turns to give members of a gang a break, whereby only half of a gang worked at any one time, which had the effect of increasing the requirement for overtime²⁵¹⁰;
- 'ca'canny' or going slow;
- 'disappointment money': demanding a compensation for bonuses lost from the employer when a ship failed to dock or a cargo was cancelled;
- kin-based recruitment or nepotism: familial connections being the chief determinant in obtaining a job on the docks and in gang composition²⁵¹¹;
- 'moonlighting': registered dockworkers, who were guaranteed fallback pay when there was no work for them to do, earned extra by, say, driving a minicab or running a market stall.

A *cause célèbre*, which was highlighted by the Government in its 1989 White Paper supporting the abolition of the Dock Labour Scheme, concerned the construction and transportation of the Thames Barrier Gates:

The gates for the Thames Barrier were built by a company on Teeside [sic]. To get these large structures to London to be in place by autumn 1982 they had to be loaded on barges and towed down to the Thames. Weather conditions restricted the times of year when this could be done and special floating cranes had to be hired from Holland to lift the gates from the barges onto the barrier. Loading the gates at the Cleveland Bridge works on Teeside [sic] was a highly skilled job which only specialist staff could

²⁵⁰⁹ In his speech, Finney also elaborates on how the employers used press and media in their attempt to have the NDLS abolished:

We constantly searched out and supplied the media with anti-docker stories, headlines such as "welcome return even if the man's a thief" or "ghosts who keep vanishing"; "twenty things you never knew about fiddling dockers", "they can't be fired". These headlines were all designed to make it easier for the dockers to be isolated. By the time government acted every national newspaper at one time or another had published an editorial calling for the government to end the dock labour scheme.

We had a Times columnist write headlines like "dock ages on the docks", "queer seaside customs", "legalised extortion racket", "time to end it", "block those dock rip offs". We also encouraged radio and television to do documentary programmes on the docks scandal.

On this public relations campaign see also Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 65 *et seq.*

²⁵¹⁰ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 22. See also Davies, S., "The history of Hull dockers, c. 1870-1960", in Davies, S. et. al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (180), 188; Jackson, M., *Labour relations on the docks*, o.c., 123-124 and Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 18.

²⁵¹¹ See also *Report of the Committee of Inquiry into the Major Ports of Great Britain*, London, HMSO, 1962, 145, para 407; see also Davis, C.J., "New York city and London, 1945-1960", in Davies, S. et. al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (213), 224; Mankelov, R., "The port of London, 1790-1970", in Davies, S. et. al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (365), 384; Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 19.

carry out. This was accepted by all concerned. However, under the definitions of dock work on the Tees this work appeared to be dock work. As had become customary the company requiring the work to be done had to pay for a number of registered dock workers, though they were not needed for the job.

In November 1981 however the dockers employed by the port authority went on strike over a pay claim. That meant there were no dockers available to be paid to watch the specialist employees load the barge. Had the specialists gone ahead their employer would have been liable to a criminal prosecution brought by the NDLB and the unions might well have called a national strike because of this breach of the Scheme.

Meanwhile the gates were strike bound, the weather window was closing, and the crane hire period running out. London was threatened with a further winter without adequate flood protection because no dockers were available to be paid for work which others were doing. The installation of the gates had to be rescheduled at great cost. On March 1st the strike was settled and loading began the day after, several months late²⁵¹².

In short, there developed a labour allocation system of extreme inflexibility, which made it impossible to switch dockers to different tasks in order match labour supply with labour demand²⁵¹³.

In normal circumstances market forces and competition would have eliminated these absurd practices – also dubbed 'Spanish customs' – but the existence of the National Dock Labour Scheme prevented this outcome²⁵¹⁴.

According to Hanson, the five main elements of the NDLS – joint control and management, a guaranteed minimum weekly wage, the determination of the size of the register by the NDLB, the reservation of dock work for registered workers and, from 1967, the allocation of all registered workers as permanent workers to registered employers – created in all scheme ports "a totally rigid employment arrangement which becomes more anachronistic with every passing year". In particular the principle of joint control prevented the employers from managing their businesses in an effective way. It was also impossible for employers to exercise discipline over their workforce; from 1981, every single registered dockworker who was summarily dismissed by his employer in the port of Liverpool had been re-employed following NDLB appeal decisions²⁵¹⁵. The NDLB's responsibility for discipline resulted in conflicts of interest for the trade unions, whose dual role caused profound frictions with the dockworkers²⁵¹⁶.

²⁵¹² Quoted in Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 75-76.

²⁵¹³ See Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 18.

²⁵¹⁴ Hanson, C., "Time to End the National Dock Labour Scheme", *Economic Affairs* June/July 1988, (34), 35.

²⁵¹⁵ Hanson, C., "Time to End the National Dock Labour Scheme", *Economic Affairs* June/July 1988, (34), 34-35. Comp. the 1990 speech by Nicholas Finney OBE, <http://www.labournet.net/docks2/9706/NDLS.HTM>:

The National Dock Labour Board consisting of 50% union and 50% employer reps, was supplemented by a further twenty boards across the country. This system gave the unions an absolute veto over dismissal and total control over recruitment and discipline. In 1982 (I just quote this as an example) a Southampton dockworker was dismissed for a serious criminal offence involving theft over quite a long period of time. He served the prison

One MP who advocated the abolition of the Scheme concluded that it stood in the way both of an effective utilisation of resources and of the adoption of labour-saving investment strategies, especially as it constituted a legislative framework for the maintenance of restrictive employment practices without parallel elsewhere in the industry:

[T]he Scheme encourages practices of unimaginable wastefulness; undermines effective management; destroys discipline; stultifies technological development and by a combination of high costs and low reliability, drives away business²⁵¹⁷.

1895. The return of the Labour Government in 1974 led to the introduction of the 1976 Dock Work Regulation Bill. The Bill provided for the Minister to make an order which would:

- extend the NDLS to non-scheme ports;
- define port operations within a corridor of half a mile of harbour land (originally proposed as 5 miles but reduced in Parliament);
- categorise dock work, thus ending disputes about filling and emptying of containers;
- abolish the Temporarily Unattached Register by removing the power of local boards to employ dock labour.

The Bill passed, but the Order to bring it into force was defeated in the House of Commons and the Government did not attempt to reintroduce it²⁵¹⁸.

1896. By the end of the 1970s important parts of the port industry faced financial problems²⁵¹⁹. Nevertheless, the general view within Government was that any attempt to abolish or reform the NDLS would automatically lead to a national port strike. Therefore, and notwithstanding a strong campaign organised by port employers, it was decided that the first priority was to tackle reform of industrial relations more generally. It was furthermore argued that the cost of repeal – there were ‘only’ 9,200 registered dockworkers in 1981 – was out of all proportion to the benefits²⁵²⁰.

sentence, was returned to the labour pool and within six months on full back pay, was put back to employment in the same area from which he had come.

²⁵¹⁶ Stoney, P., “The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool”, *Economic Affairs* 1999, Vol. 19, No. 2, (18), 18.

²⁵¹⁷ Conservative MP David Davis, as quoted in Coffey, D., “Old-time militancy and the economic realities: towards a reassessment of the dockers’ experience”, *Industrial Relations Journal* 2009, (292), 294.

²⁵¹⁸ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 40.

²⁵¹⁹ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 52-53.

²⁵²⁰ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 53.

1897. During the 1980s legislation on industrial relations in the UK was progressively reformed, notably with the Employment Acts of 1980, 1982, 1984 and 1988, which outlawed secondary picketing (*i.e.* picketing locations that are not directly connected to the issue of protest), introduced a requirement for ballots before strike action, and exposed union funds to the risk of sequestration if they failed to comply with the law. These changes were to prove most important when the Government eventually decided to tackle the NDLS²⁵²¹. A proposal by the employers in 1982/83 to redesign the Scheme so that it became operable in the modern day context had not been successful, because the trade unions could not agree to replace the legislation with a voluntary national agreement²⁵²².

1898. Interestingly, in 1988 the British MEP Andrew Pearce submitted the following written question to the European Commission:

Does the Commission believe that the United Kingdom National Dock Labour Scheme, which obliges certain British ports to pay the cost of compensating redundant dockers for life, is a breach of the EEC's competition rules? Would the Commission agree that if the British Government was determined to maintain this outdated scheme which disfavours some British ports with regard to their competitors, that it should meet these costs centrally?

In its answer, the Commission first of all noted:

Conditions of employment vary considerably between the ports of the Community and within Member States. In all the maritime Member States except Denmark and the Federal Republic of Germany²⁵²³ dockworkers have in some measure a special status and different schemes have been devised seeking to provide a stable workforce for port employers and job security for port employees.

The Commission went on to explain that it had considered the NDLS when a procedure was instituted in 1986 under the Treaty's state aid rules. The aid at issue included assistance from the UK Government to meeting the cost of severance of registered dockworkers. The Commission took the view in these cases that the aids which had as their object a restructuring of the industry were not incompatible with the common market as they did not tend adversely to affect trading conditions to an extent contrary to the common interest. The Commission

²⁵²¹ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 53; comp. McNamara, T.M.J and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 15.

²⁵²² McNamara, T.M.J and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 14.

²⁵²³ See, however, our findings *supra*, para 293 *et seq.*

concluded that any similar future aid proposed by the UK Government would need to be examined²⁵²⁴.

1899. On 6 April 1989, a statement was made by Norman Fowler, the then Secretary of State for Employment, announcing that the NDLS would be abolished and that a Bill would be published the following day, accompanied by a White Paper. The Government's strategy was to take the unions by surprise, and preparations were made in total secrecy²⁵²⁵.

The White Paper began by emphasising the importance of seaports for the UK's trade, and pointed out that ports would be facing both increased opportunities and increased threats as a result of the Single European Market. It went on to describe the many restrictions inherent in the NDLS and the history of chronic surpluses. Moreover, the paper included five case studies illustrating the nonsensical problems and costs to which the NDLS gave rise.

The White Paper concluded that the Government had decided that problems could only be solved by bringing all port employers and all dockworkers into exactly the same position as other employers and workers under employment law. The only way this could be achieved was by a complete repeal of all legislation connected with the NDLS. Finally, the White Paper announced compensation arrangements²⁵²⁶.

1900. The Dock Work Bill made its way through Parliament and eventually received Royal Assent on 3 July 1989.

Article 1 of the Dock Work Act 1989 stipulates:

Abolition of Dock Labour Scheme

(1) The Dock Workers Employment Scheme 1967 made under the Dock Workers (Regulation of Employment) Act 1946 shall, together with that Act, cease to have effect on the date of the passing of this Act.

(2) Any local dock labour board or other body constituted in accordance with the 1967 Scheme shall accordingly cease to exist on that date.

(3) Notwithstanding that Clause 3(1)(g) of the 1967 Scheme (functions of the National Dock Labour Board as to training and welfare) is, by virtue of subsection (1), no longer to apply to the Board, the Board shall continue during the transitional period to have

²⁵²⁴ European Parliament, Written question no. 2914/87 by Mr Andrew Pearce to the Commission, OJ 28 November 1988, C 303/56.

²⁵²⁵ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 2 and 69.

²⁵²⁶ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 74-76. The compensation arrangements proved to be a cause of some embarrassment. The cost of the abolition to the Government was initially estimated at 25 million GBP. In the event the total cost was 131 million GBP (Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 97).

power to make provision for the training and welfare of dock workers (within the meaning of the Scheme), including provision for port medical services.

(4) In this Act "the transitional period" means the period beginning with the date of the passing of this Act and ending on the date on which the Board is dissolved in accordance with section 2.

The Dock Work Act 1989 furthermore contains provisions on the dissolution of the National Dock Labour Board (Section 2), the appointment by the Secretary of State of the person to act in place of the members of the Board (Section 3), the financial provisions relating to the winding up of Board's affairs (Section 4), the compensation for former registered dockworkers who become redundant (Section 5) and employment protection for registered dockworkers (Section 6).

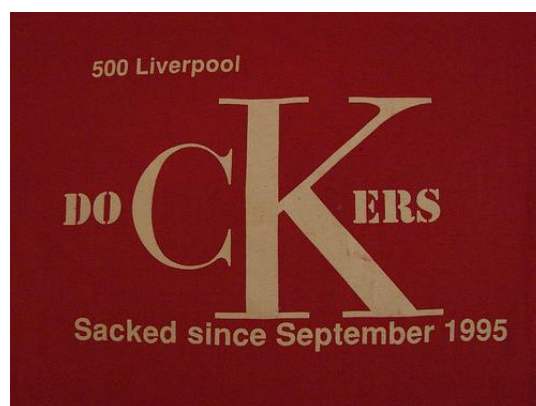
1901. The abolition of the NDLS meant that there was no longer any legal definition of 'dock work', nor any restriction on the employment of workers to perform such work²⁵²⁷.

1902. In the port of Liverpool, the dockworkers had been employed by the Mersey Dock & Harbour Company (MDHC). Following the abolition of the NDLS, concessions were made not to introduce casual labour. In 1995, a small stevedoring company called Torside went into liquidation, making around 80 dockworkers redundant. The local trade-union's view was that, as in pre-abolition days, MDHC had to take on the role of employer of last resort and re-employ the redundant workers. MDHC refused to do so and when workers went on sympathy strike without having an official ballot it sacked its entire workforce. Dock gates were picketed for the following 15 months. The dispute was settled finally in January 1998. A limited number of dockworkers received a redundancy package while most of them came away with nothing. From 1999 onwards the port was able to run its business along normal commercial lines without having to bear the cost of other operating companies' failures²⁵²⁸.

²⁵²⁷ See Turnbull, P., and Wass, V., "The great dock and dole swindle: Accounting for the costs and benefits of port transport deregulation and the dock labour compensation scheme", *Public Administration* 1995, (513), 526.

²⁵²⁸ Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 21. See also Carter, C., Clegg, S., Hogan, J. and Kornberger, M., "The polyphonic spree: the case of the Liverpool Dockers", *Industrial Relations Journal* Vol. 34 (4), 2003, 290-304, <http://onlinelibrary.wiley.com/doi/10.1111/1468-2338.00276/abstract>; Castree, N., "Geographic Scale and Grass-Roots Internationalism: The Liverpool Dock Dispute, 1995-1998", *Economic Geography* 2000, 272-292; "The Liverpool dockers dispute, a summing up", <http://www.sinistra.net/lib/upf/comlef/cotu/cotugdicee.html>. On Britain's restrictive laws on trade union action, see Hendy, J., "The Liverpool Dockers and International Law", 29 January 1998, <http://www.labournet.net/docks2/9801/hendy.htm>.

Figure 115. The Liverpool footballer Robbie Fowler supported the famous strike by the Liverpool Dockers, an industrial dispute which lasted from 1995 to 1998. Fowler was fined 2,000 Swiss francs by UEFA, when, after scoring the winning goal in a televised European Cup Winners Cup quarter-final match, he removed his Liverpool shirt to reveal a t-shirt bearing the message '500 Liverpool Dockers sacked since 1995' (source: various websites²⁵²⁹).



1903. The ending of the NDLS gave the port authorities the opportunity, if they so chose, to get out of cargo handling by leaving the work to independent companies²⁵³⁰. Some shipping lines who had previously been forced to use stevedoring companies as contractors to load and unload their vessels were now able to use their own employees and chose to do so²⁵³¹.

- Regulatory set-up

1904. Today, port employers do not need to be licensed anymore and there is no obligation on port employers to join an employers' association or a similar professional organisation.

1905. Port workers are employed under normal labour law conditions. There are no specific laws and regulations on the employment of port workers, nor is there an official pool system.

²⁵²⁹ See Carter, C., Clegg, S., Hogan, J. and Kornberger, M., "The polyphonic spree: the case of the Liverpool Dockers", *Industrial Relations Journal* Vol. 34 (4), 2003, (290), 292.

²⁵³⁰ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 83-84. On the powers of harbour authorities to carry out cargo handling, see Douglas, R., Lane, P. and Peto, M., *Douglas & Geen on the Law of Harbours, Coasts and Pilotage*, London, LLP, 1997, 159.

²⁵³¹ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 99.

Port workers do not have to be registered. There are no specific conditions regarding access to the profession. If a port worker is temporarily unemployed, he receives regular unemployment benefit.

1906. There is no ban on permanent employment of port workers, and employers are allowed to employ temporary port workers via job recruitment or employment agencies. The Recruitment and Employment Confederation confirmed to us that, generally, restrictions on temporary agency work in the UK are minimal. Indeed, agency work is more prevalent in the UK than in most other European countries²⁵³². In 2009, the Department for Business Enterprise and Regulatory Reform could not even identify any restriction or prohibition which would require review under the EU Temporary Agency Work Directive²⁵³³.

In a considerable number of UK ports, work is outsourced to companies supplying, training and managing stevedoring workforce on a 24/7 basis. Some of these labour supply companies were set up by experienced port people, in some cases by ex-registered dockworkers. In Southampton, for example, temporary agency workers are used for car lashing and container work. In Tilbury, most workers are hired from an informal pool of workers. In smaller ports, temporary agency workers are mainly used to fill peaks or to handle seasonal traffic such as fruit and vegetables. Other ports relying on temporary agency workers include Birkenhead, Chatham, Liverpool, Thamesport²⁵³⁴. In most container terminals, the container crane and straddle carrier operators belong to the permanent workforce of the company.

²⁵³² For a discussion of current UK law, see Davies, A., "The implementation of the Directive on temporary agency work in the UK: a missed opportunity", *European Labour Law Journal* 2010, Vol. 1, No. 3, 307-331.

²⁵³³ Department for Business Enterprise & Regulatory Reform, *Implementation of the agency workers directive : A consultation paper*, May 2009, <http://www.bis.gov.uk/files/file51197.pdf>, 45.

²⁵³⁴ One such provider is Drake International (and its subsidiary Drake Port Distribution Services (DPDS)): see <http://www.drakeintl.co.uk>. An article on www.portstrategy.com explains their position in the labour market:

In the UK, the new Agency Workers Regulations, based on the Directive, come into force this October. "These regulations will give agency workers the entitlement to the same basic employment and working conditions as if they had been recruited directly by the port, if and when they complete a qualifying period of 12 weeks in the same job," says Ian Roots, managing director of Drake International, the parent group of Drake Ports Distribution Services.

"Imagine the scenario where a port employs 20 casual workers, probably not on comparable conditions to those in full-time employment; perhaps they are paying £30,000 to their permanent workers, but the casual workers don't get that. The legislation is moving towards giving agency workers parity in more areas."

However, Mr Roots emphasises, it is important to make the distinction between 'agency' and 'outsourced'. DPDS is outside of these regulations because it employs the workers it provides on formal contracts.

"DPDS was set up in the UK in the early 90s to address the needs of some of our customers within the ports industry who wanted a viable alternative to directly employed, heavily unionised labour," he says.

DPDS does not operate as an 'agency' which would use traditional temporary staff or 'casuals', as they are better known in the ports industry, but employs all of its staff on contracts of employment with guaranteed weekly pay, holiday pay, sick pay, pensions, etc. We offer full employment contracts with associated benefits, plus we are responsible for their training, management, direction, control and supervision. We have a loyal, productive, well-trained and cost-effective workforce."

According to a study carried out in 2009/10, 7 of the 45 businesses supplying workers to UK ports were port labour suppliers; these businesses specialise in supplying labour to ports and are usually linked to a specific port where they have regular contracts. Of those that are general recruitment agencies (the remaining 38 businesses), the majority of workers they supply to the port are to perform jobs relating to the loading and/or unloading of general cargo for import/export; this includes stevedores for general dock work and warehouse workers, especially drivers (forklift, class 1, 2 etc.). Some workers are also recruited for construction projects on the port²⁵³⁵.

1907. Reportedly, exchanges of employees between employers may sometimes occur, which could conceivably involve temporary employer change under a formal agreement between the parties. However these are in the minority. Port workers may be supplied to another organisation to provide work, however this will be undertaken through some form of sub-contracting or service level agreement arrangement. The employee's status, named employer and terms will be specified in the contract arrangements.

Port workers can also be transferred temporarily to another port. Typically a permanent employee will remain employed by their employer organisation. If an employer owns more than one port, then employees do transfer between ports but retain the same employer. Contract non-permanent employees will typically be employed by the labour supply company rather than the port for which they are undertaking work²⁵³⁶.

DPDS provides workforces to major ports in the UK and also in Ireland and the Middle East, and has ambitions to expand in Europe: "Some European ports have the same issues relating to highly unionised workforces and often the management simply cannot run the port because of these issues," says Mr Roots.

The general principle of outsourcing is that it is ultimately more cost-effective, allowing ports to focus on their core activity, he says. "Ports' core activity isn't necessarily management of labour – and there is a huge amount of employment legislation, directives, etc., to consider. More and more ports are asking whether they really want to be involved in the intricacies of this, or do they really just want the labour. And outsourcing is much more flexible."

*DPDS has a fixed workforce, with employees guaranteed and paid for a 40-hour week but with flexibility built into their contracts. "So maybe they will work 30 hours in week one but we need them to do 50 in week two, within the constraints of health and safety and employment law (Landon, F., "Adding up the costs", *Port Strategy* 7 June 2011, <http://www.portstrategy.com/news101/administration/Personnel/adding-up-the-costs>).*

The port of Liverpool and Peel Ports use Stafforce (see <http://www.stafforce.co.uk/employers/recruitment/ports/>).

In 2009, the Port of Dover outsourced stevedoring work to licensed ferry operators and to 3rd party companies.

²⁵³⁵ Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 46.

²⁵³⁶ Davis asserts that, under the NDLS, mobility of workers between ports was common:

The dock workers were directed not just within the port, but also to other cities. It was quite common, for example, for London dockers to be directed to work in Liverpool or elsewhere to fill an emergency shortage.

(Davis, C.J., "New York city and London, 1945-1960", in Davies, S. et. al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (213), 222; see also Davies, S., "The history of Hull dockers, c. 1870-1960", in Davies, S. et. al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (180), 186). Other experts who were directly involved dispute this information.

1908. Breaches of general employment law can be pursued by the employee, supported to varying degrees by a trade union or similar organisation via either a civil court or employment tribunal.

- *Facts and figures*

1909. We were unable to collect reliable information on, or even an estimate of, the number of employers of port workers in the UK. A total number of 150 port operators engaged in cargo handling at ports would perhaps be a fair guess; supposing that it is methodologically correct to add some 45 temporary workforce providers, the overall total could be estimated at some 195²⁵³⁷.

1910. Accurate data on the number of registered dockworkers in the UK are only available for the period prior to the repeal of the National Dock Labour Scheme in 1989.

In the current absence of a definition of port labour for legal or merely statistical purposes and given the use of temporary and part-time labour in ports, it is not possible to provide precise updated nation-wide figures on the number of port workers.

One study mentions that in 2004, 27,300 people were employed in cargo handling and ports²⁵³⁸. A 2006 EU study reported that in 2005, 22,180 people were employed in cargo handling (including warehousing) in UK seaports²⁵³⁹.

A more recent survey on behalf of the Department of Transport²⁵⁴⁰ estimated the directly port-related employment in winter 2009/10 at 37,000 fte²⁵⁴¹. Directly port related employment totalled

²⁵³⁷ Our guess is based on data on the total number of port businesses and the percentage of businesses engaged in warehousing, storage and cargo handling given in Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 73-74.

²⁵³⁸ The Mackinnon Partnership, *The Maritime Sector Labour Market Assessment. A review of the fishing, ports and shipping industries for the Maritime Skills Alliance*, 2005, http://www.maritimeskills.org/docs/LMA_Final_Draft_v1.pdf, 18. This study also suggests that 9 per cent of this workforce is self-employed, and it refers to another report where the employment of stevedores was estimated at 9,000 (*ibid.*, 19).

²⁵³⁹ European Commission, *Employment trends in all sectors related to the sea or using sea resources, Country Report – United Kingdom*, European Commission DG Fisheries and Maritime Affairs, 2006, 13.

²⁵⁴⁰ Department for Transport, "Port Employment and Accident Rates Survey: 2009/10", *Statistical Release*, October 2010, see <http://www.dft.gov.uk/statistics/series/ports/>. The full report is available on <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>.

58,100 fte, 45 per cent of which (both on and off-port) involved cargo operations²⁵⁴², 11 per cent marine operations (vessel handling, mooring *etc.* by shore based staff), 4 per cent passenger operations²⁵⁴³ and 16 per cent management, administration and other specialist services (such as engineering & maintenance, Customs, security *etc.*). The remaining 24 per cent involved 'non-operational' activities such as forwarding agents, shipping agents, importers/exporters *etc.* The study highlights the fact that a significant number of those working in cargo operations work for organisations that are based outside the port estate; this was generally where freight forwarders based outside the port estate employed people to handle cargo on the port estate.

At the time of the survey (winter 2009/10), non-permanent employees accounted for about 7 per cent of all direct on-port employment by businesses. At the quietest time of year this proportion fell to about 4 per cent, while at the busiest time of year it was around 14 per cent. A proportion of these workers were recruited via employment agencies – at the time of the survey agency workers accounted for about 4 per cent of direct on-port employment, ranging between 3 per cent at the quietest time of year and 9 per cent at the busiest.

Overall the results of the survey suggest a decline in port related employment since a previous survey in 2004/5.

A further breakdown of the estimated direct port employment by function results in the following tables of port labour jobs directly related to cargo and passenger operations:

²⁵⁴¹ Full-time equivalent.

²⁵⁴² This comprises "activities involving the loading and unloading of cargo, and any associated administration. Cargo operations includes stevedores, forklift operators, cargo handlers and clerks".

²⁵⁴³ This comprises "activities involving the transport of passengers by sea. Job roles included are information officers, baggage handlers and security staff".

Table 111. Breakdown of 'on port' port labour employment in UK ports, 2009/10 (source: Databuild / Department of transport²⁵⁴⁴)

Function	Permanent employees	Non-permanent employees employed by an agency ²⁵⁴⁵	All other non-permanent employees	Total
Cargo Operations				
Stevedores/dockers	4,140	25	150	4,315
Forklift operators	1,685	10	30	1,725
Cargo Handlers (Other than forklift operators)	1,265	90	40	1,395
Warehouse workers	1,200	125	20	1,345
Clerks	2,675	0	40	2,715
Other cargo operations	2,795	490	190	3,475
Cargo operations - subtotal	13,760	740	470	14,970
Passenger Operations				
Information Officers	260	0	15	275
Traffic Marshals	115	0	0	115
Baggage handlers	100	25	0	125
Security staff	595	125	35	755
Other passenger operations	1,000	10	35	1,045
Passenger operations subtotal	2,070	160	85	2,315

²⁵⁴⁴ Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 68.

²⁵⁴⁵ Ports were asked to supply non-permanent agency and non-permanent non-agency employees separately in the electronic questionnaire; as it was not practical to collect the full breakdown in this table via the telephone for businesses, the number of non-permanent agency employees for business respondents is estimated.

Table 112. Breakdown of 'off port' port labour employment in UK ports, 2009/10 (source: Databuild / Department of transport²⁵⁴⁶)

Function	Permanent employees	Non-permanent employees employed by an agency ²⁵⁴⁷	All other non-permanent employees	Total
Cargo Operations				
Stevedores/dockers	665	0	5	670
Forklift operators	1,135	0	0	1,135
Cargo Handlers (Other than forklift operators)	700	0	65	765
Warehouse workers	710	0	0	710
Clerks	6,230	0	85	6,315
Other cargo operations	1,340	0	15	1,355
Cargo operations - subtotal	10,780	0	170	10,950
Passenger Operations				
Information Officers	20	0	0	20
Traffic Marshals	15	0	0	15
Baggage handlers	0	0	0	0
Security staff	15	0	0	15
Other passenger operations	140	0	50	190
Passenger operations subtotal	190	0	50	240

²⁵⁴⁶ Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 70.

²⁵⁴⁷ Ports were asked to supply non-permanent agency and non-permanent non-agency employees separately in the electronic questionnaire; as it was not practical to collect the full breakdown in this table via the telephone for businesses, the number of non-permanent agency employees for business respondents is estimated.

Table 113. Breakdown of all port labour employment on and off port in UK ports, 2009/10
(source: Databuild / Department of transport²⁵⁴⁸)

Function	Permanent employees	Non-permanent employees employed by an agency	All other non-permanent employees	Total
Marine Operations				
Dredging	215	0	0	215
Harbour masters/assistants	655	5	35	695
Pilots	695	20	20	735
VTS staff	355	0	0	355
Lock Operations	230	0	5	235
Surveying	305	0	10	315
Tug Operations	565	0	10	575
Vessel mooring	875	0	110	985
Other marine operations	2,365	10	140	2,515
Marine Operations – subtotal	6,260	35	330	6,625
Cargo Operations				
Stevedores/dockers	4,805	25	155	4,985
Forklift operators	2,820	10	30	2,860
Cargo Handlers (Other than forklift operators)	1,965	90	105	2,160
Warehouse workers	1,910	125	20	2,055
Clerks	8,905	0	125	9,030
Other cargo operations	4,135	490	205	4,830
Cargo operations - subtotal	24,540	740	640	25,920
Passenger Operations				
Information Officers	280	0	15	295
Traffic Marshals	130	0	0	130
Baggage handlers	100	25	0	125
Security staff	610	125	35	770
Other passenger operations	1,140	10	85	1,235
Passenger operations subtotal	2,260	160	135	2,555

These figures and interviews with stakeholders result in a rough estimate of the current number of UK port workers performing port labour within the meaning of the present study at 18,000. Several experts from the public and private sector considered this a fair guess, perhaps slightly on the low side.

On that basis, and taking into account a particularly wide error margin due to the lack of comparability of the source material, the historical evolution of port labour employment in the UK since World War II can be sketched as follows:

²⁵⁴⁸ Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 72.

Table 114. Number of registered dock workers and port workers in the UK, 1950-2012 (source: Dempster based on NDLB Annual Reports²⁵⁴⁹ and our estimate)

Registered dockworkers (scheme ports only)					Port workers (estimate, for all ports)
1950	1960	1970	1980	1988	2012
75,264	72,550	46,912	24,492	9,649	18,000

1911. No reliable data are available on trade union density. A representative of Unite the Union informed us that his union organises 90 per cent of all unionised dockers in the UK. Other important unions include the National Union of Rail, Maritime and Transport Workers (RMT), UNISON and GMB²⁵⁵⁰, which unites seafarers and car checkers in the port of Dover. In the container sector, between 90 and 95 per cent of all workers are members of a union. In ports operated by Associated British Ports and bulk ports, union density is around 50 or 60 per cent. These scattered data suggest that union density remains higher in ports than in the UK economy taken as a whole, where it reaches a percentage of between 20 and 29 per cent²⁵⁵¹.

9.22.4. Qualifications and training

1912. In 1999, Rayner wrote that there is a "mythology" in the docks industry that the National Dock Labour Scheme has been most missed because of the quality of its training, and that one of the fears of the employers was that standards of training would reduce post-repeal²⁵⁵². Rayner stated with great certainty that this fear has not been realised:

Customer demands for a quality service, including damage control and the increasing sophistication, specialisation and cost of cargo-handling plant and capital, have been

²⁵⁴⁹ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 212-213. Compare, however, the historical figures provided by the British Ports Federation as published in House of Commons, Transport Committee, *Ports*, Ninth Report of Session, 2002-2003, I, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmtran/783/783.pdf>, 12. For 1988, for example, the latter report mentions 17,425 "Dock Workers and other Cargo Handlers" and, in addition, 2,611 "Foremen/Supervisors". The difference can be explained partly by the fact that the latter figures also cover non-registered dock workers in non-scheme ports.

²⁵⁵⁰ GMB is derived from 'General, Municipal, Boilermakers and Allied Trade Union'.

²⁵⁵¹ See Carley, M. "Trade union membership 2003-2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

²⁵⁵² See, for example, the debate on the Dock Work Bill in the House of Lords on 3 July 1989 (especially the statement by Lord Rochester). It is worth mentioning that the Port of London Authority in 1970 established an Accident Prevention Centre at the Royal Albert Dock, where two full-time instructors were employed.

such that for the vast majority of the industry, training, now provided by various specialised agencies, has improved beyond all recognition. Some ports, notably Liverpool, which has an international reputation in this field, have expanded their operations into the provision of training for other ports. Dockers are increasingly certified for their skills. Those employed by Forth Ports Ltd for example now largely possess VNQs²⁵⁵³.

Other sources confirm that ten years after repeal of the NDLS, many ports nationwide were offering extensive training packages, which included the opportunity to study for National Vocational Qualifications (to NVQ level II and NVQ level III) and degrees; methods of staff training however varied among operators²⁵⁵⁴.

1913. Today, UK port employers must comply with general health and safety legislation which requires the provision of suitable and sufficient instruction, information and training for employees (Health and Safety at Work Act 1974). It is an employer's responsibility to carry out a risk assessment of the work and the work environment and to identify the information, instruction and training necessary to reduce the risk of harm so far as reasonably practicable. As the approach is risk and evidence based, there are no prescribed requirements. In general, the solutions are specific to the context and to the work²⁵⁵⁵. There are however some recent initiatives to develop standards for port training²⁵⁵⁶.

1914. In response to our questionnaire, the following types of formal training were confirmed to be available for port workers in the UK (but probably not in every individual port):

- continued or advanced training after regular educational programme;
- induction courses for new entrants (broadly compulsory);
- courses for the established port worker (employer's decision and responsibility);
- training in safety and first aid (compulsory);
- specialist courses for certain categories of port workers such as: crane drivers (employer's decision and responsibility); container equipment operators (employer's decision and responsibility); ro-ro truck drivers (employer's decision and responsibility); forklift operators (compulsory); lashing and securing personnel (employer's decision and responsibility); tallymen (employer's decision and responsibility); signalmen (employer's decision and responsibility); reefer technicians (employer's decision and responsibility);

²⁵⁵³ Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 8.

²⁵⁵⁴ See McNamara, T.M.J. and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 15-16, where further details are provided.

²⁵⁵⁵ See also McNamara, T.M.J. and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 16.

²⁵⁵⁶ See *infra*, para 1917.

- training aimed at the availability of multi-skilled or all-round port workers (employer's decision and responsibility);
- retraining of injured and redundant port workers (employer's discretion).

1915. Following the abolition of the National Dock Labour Scheme, company-based training is now the norm in the UK²⁵⁵⁷.

The port of Felixstowe, for example, has its own dedicated training centre with a team of forty trainers and simulators for both rubber-tired gantry cranes and quay cranes²⁵⁵⁸.

DP World Southampton has a dedicated training centre and classrooms, where candidates can practice and study skills such as forklift driving, manual handling and working at height.

Port Training Services (PTS)²⁵⁵⁹, an organisation set up by the Port of Blyth in 2008, organises training for the port, marine, warehousing, logistics and heavy industrial sectors. PTS reports that the increase of offshore wind turbines and relocation of organisations to the North East of England are set to increase demand for highly skilled and competent workers, further impacting on challenges presented by an aging workforce. It was recognised that outside trainers could not deliver training to meet future demand for skilled port workers, as they did not have the industry knowledge²⁵⁶⁰.

The Scottish Ports Division of Forth Ports, which comprises the ports of Grangemouth, Leith, Rosyth, Dundee, Methil and Burntisland, developed a Management / Supervisory Development Programme based on in-house and external training which consists of Induction, specific Management Development Programmes and external training where employees achieve nationally recognised qualifications such as Foundation Degree: Supply Chain (Logistics and Operations Management) and the Diploma in Port Management. Supervisors go through the Management/Supervisory Development Vocational Qualification (VQ) to Management Level 3/4. In-house programmes and specialist one off courses also supplement this programme and include Appointed Persons, Safe Cranes and Lift Supervisors training. All managers and supervisors are trained in the IOSH 4-5 day Managing Safely course. Port operators are trained to Stevedoring VQ Level 2 and to date Scottish Ports has trained over 300 employees. In addition, all employees are given a full safety induction on starting with the Company, where certification is checked and employees become familiarised with plant and equipment before being allowed to work in an operational environment. All employees who are certificated are subject to a Continuous Assessment programme where each employee is assessed annually for

²⁵⁵⁷ Further information on UK port training providers is available on http://www.portskillsandsafety.co.uk/skills/training_providers.

²⁵⁵⁸ See Turnbull, P., *Training and Qualification Systems in the EU Port Sector: Setting the State of Play and Delineating an ETF Vision*, July 2009, <http://www.itfglobal.org/files/extranet/-75/17739/Final%20report%20EN.pdf>, 19.

²⁵⁵⁹ See <http://www.porttrainingservices.co.uk/>.

²⁵⁶⁰ See <http://www.esf-works.com/projects/short-reviews/projects/401453> (link found broken upon updating).

competence in each particular category of plant. Safety training is also carried out on a regular basis for updates on new legislation and for refresher safety training as required. The company launched a Safety Partnership initiative with its employees and the trade unions to promote greater safety within the ports industry. This involved the participation of 360 employees, London Metropolitan University, Unite and the Company's Senior Management Team²⁵⁶¹.

Forth Ports also has a Training and Development Team at the port of Tilbury²⁵⁶².

1916. In 2002, the ports industry established Port Skills and Safety (PSS). This organisation has a wide remit to work with its members and other stakeholders, to encourage and promote high standards of health and safety and a highly skilled workforce. PSS is core funded through subscriptions, and is open to all port related organisations including harbour authorities, conservancies, port and terminal operators, stevedoring companies and labour supply companies²⁵⁶³.

In 2012, PSS represented 90 port-related organisations throughout the UK²⁵⁶⁴. It is estimated that this represents approximately 18,000 people or two thirds of employees at port operations where safety is a particular concern²⁵⁶⁵. PSS works in co-operation with the British Ports Association (BPA) and the United Kingdom Major Ports Group (UKMPG), who are the only shareholders. PSS has a Board of Management comprising senior representatives of the BPA and UKMPG as well as other employer interests²⁵⁶⁶.

PSS administers a series of standing work and advisory groups which includes the long-established Port Skills and Safety Group (PSSG; previously the Accident Prevention Officers' Group). The PSSG provides the industry with a forum for health and safety practitioners, and others with an interest in health and safety, to learn about and discuss current issues, and to share information and best practice.

Special work groups are established on an *ad hoc* basis to consider specific issues. Such issues can include the development of industry guidance, the interpretation of generic legislation, or the development of National Occupational Standards and national qualifications frameworks.

PSS also provides a full range of services to its members. These include:

²⁵⁶¹ See <http://www.forthports.co.uk/ports/ports/scotland/people/> (link found broken upon updating).

²⁵⁶² See http://www.forthports.co.uk/ports/ports/tilbury/working_tilbury/ (link found broken upon updating).

²⁵⁶³ See www.portskillsandsafety.co.uk.

²⁵⁶⁴ House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 12.

²⁵⁶⁵ House of Commons Transport Committee, *The Ports Industry in England and Wales*, o.c., Vol. 1, 3.

²⁵⁶⁶ House of Commons Transport Committee, *The Ports Industry in England and Wales*, o.c., Vol. 2, 12.

- the dissemination of information via regular postings on the PSS website. These postings provide important information on, for example, accidents and incidents, legal developments (including consultations), accident prevention, skills and standards issues, industry publications, and events and training;
- technical advice on any issues relating to health, safety, skills and standards in the ports industry;
- the production and publication of industry specific guidance material;
- the facilitation of national and in-house training events on ports specific issues.

With the consent of the HSE, members are able to appoint PSS as one of their 'competent persons', in accordance with the Management of Health and Safety at Work Regulations, reflecting the range of health and safety services and advice provided.

1917. PSS acts as the standards setting body for the ports sector and works with employers, and other key stakeholders, to develop National Occupational Standards and Qualifications frameworks that will meet the needs of employers and learners into the future.

Almost all sectors within industry have developed National Occupational Standards (NOS). NOS identify key job roles within a particular sector, break each role into its component activities and define the performance, behaviour and knowledge that an employee needs to undertake the activity. The ports sector currently has five completed sets of NOS. Two are concerned with port operations and three with harbour management. The NOS reflect best practice within industry and, as such, provide a useful benchmark against which individual employee performance can be measured. They can therefore be adapted for use as management tools covering a range of employer functions including recruitment, employee development and managing performance.

PSS is also developing a framework of qualifications that will recognise the professionalism and aid the development of those already working within the ports sector. The framework will also provide a career pathway and entry qualifications for those considering working in the ports sector. Within this framework are planned National and Scottish Vocational Qualifications (N/SVQs), Apprenticeships (Foundation Modern Apprenticeships (FMA) in Wales), Advanced Apprenticeships (Modern Apprenticeships in Wales and Scotland) and a Foundation Degree. National and Scottish Vocational Qualifications are qualifications designed to recognise the skills and knowledge of those already working within the ports sector, through assessment of work performance. Although they are not strictly development programmes, many assessment centres have the capability to help individuals plan and, possibly, meet, their development needs so that they can complete the qualification²⁵⁶⁷.

²⁵⁶⁷ For further background, see House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 14.

The need for a tailored vocational route led to a collaboration between PTS, the examination board EAL²⁵⁶⁸ and Port Skills and Safety aimed at developing level II and level III National Vocational Qualifications (NVQs) in port operations²⁵⁶⁹. Funded by Skills Funding Agency²⁵⁷⁰ and the European Social Fund (ESF), PTS delivers these NVQs to employees in the North East of England²⁵⁷¹, but the EAL qualifications are open to all regions and have been delivered around the UK. In June 2012, level II qualification has been revised and updated.

1918. In 2000, the ports industry (British Ports Association, the United Kingdom Major Ports Group and Port Skills and Safety) developed a Code of Practice on the engagement of non-permanent employees on cargo handling operations in the port industry²⁵⁷². The purpose of this voluntary Code is to set a minimum industry standard by which non-permanent employees are not put to work on cargo handling operations until the cargo handling company is satisfied that they have undergone appropriate safety induction training. The Code was revised in 2005.

1919. A study for 2009/10 pointed out that 13 of the 45 temporary work agencies active in UK ports that were interviewed (29 per cent) offer some form of training ranging from basic health and safety to a full port induction which is usually delivered in conjunction with either the port authority or the business they are supplying on the port.

28 out of the 45 agencies interviewed (62%) stated that they do not provide any training for the workers they supply to the ports; this is for a number of reasons:

- *Ports typically provided induction which would cover most or all of the elements of interest i.e. 'health and safety', 'skill-related training' and 'port-related training'.*
- *Agencies rarely carry out training themselves, though they could arrange training if requested by the client. Agencies tended to see themselves as merely a resource to find the staff with existing capabilities to be able to successfully and safely perform their job roles; they considered it to be the client's responsibility to provide any job/location specific training beyond that.*
- *There are generally little to no educational requirements to work on a port. All that workers typically require is relevant experience, which tended to be considered as over a year doing a job similar to the one they had applied for i.e. cargo handling, general labour etc. Checks are also carried out where*

²⁵⁶⁸ EAL is an employer-recognised awarding organisation for the engineering, manufacturing, building services and related sectors, see <http://www.eal.org.uk/>.

²⁵⁶⁹ See http://www.portskillsandsafety.co.uk/sites/default/files/documents/NVQ_Pathways.pdf.

²⁵⁷⁰ See <http://skillsfundingagency.bis.gov.uk/>

²⁵⁷¹ See <http://www.esf-works.com/projects/short-reviews/projects/401453> (document no longer available).

²⁵⁷² http://www.portskillsandsafety.co.uk/sites/default/files/documents/Inf0022006_-_PSSL_NPE_Booklet.pdf.

*necessary to ensure workers have up to date licenses [sic] for those using machinery, especially drivers*²⁵⁷³.

9.22.5. Health and safety

- Regulatory set-up

1920. Health and safety of UK port workers is covered by general health and safety legislation, in particular the Health and Safety at Work etc Act 1974.

The legislation applies to all dock operations, on shore and on board ship, when shore based workers are involved. It does not apply to dock operations carried out solely by the ship's crew under the direction of the master, which is covered by merchant shipping legislation enforced by the Maritime and Coastguard Agency (MCA)²⁵⁷⁴.

The Management of Health and Safety at Work Regulations 1999 set out a number of requirements for employers to ensure they are adequately managing health and safety. These include:

- a risk assessment of their activities. This should identify the measures they need to have in place to comply with their duties under health and safety law and reduce risks so far as is reasonably practicable;
- making sure there is effective planning, organisation, control, monitoring and review of the measures they put in place;
- appointing a competent person to provide health and safety assistance. A competent person is someone with the necessary skills, knowledge and experience to manage health and safety;
- providing employees with information they can understand – including people whose first language is not English; and
- co-operation and co-ordination with other employers sharing a workplace.

The Health and Safety Executive (HSE) is responsible for enforcing the Health and Safety at Work, etc Act 1974, and its supporting regulations, in ports in Great Britain.

By law, employers must consult with all their employees on health and safety matters.

²⁵⁷³ Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 46-47.

²⁵⁷⁴ House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 223.

1921. The main regulation, specific to ports, is the Docks Regulations 1988 which are based on ILO Convention No. 152. These Regulations impose health, safety and welfare requirements with respect to dock operations. The Regulations contain provisions on, *inter alia*, lighting, access, transport by water, rescue, life-saving and fire-fighting equipment, hatches, ramps and car-decks and drivers of vehicles and operators of lifting plant²⁵⁷⁵. It also sets out the general requirement that dock operations be planned and executed in such a manner as to ensure so far as is reasonably practicable that no person will be exposed to danger (Section 5).

Other relevant regulatory instruments include:

- the Dangerous Substances in Harbour Areas Regulations 1987;
- the Loading and Unloading of Fishing Vessels Regulations 1988.

HSE, the Maritime and Coastguard Agency and the Marine Investigation Accident Branch have signed a Memorandum of Understanding for health and safety enforcement activities *etc.* at the water margin and offshore.

1922. On its website, HSE offers a wealth of guidance instruments and other information on health and safety in ports, including which topics are the main causes of injury and ill health in ports, where to get useful guidance on how to manage these risks, the role of HSE in the port industry and how to manage health and safety in ports to ensure compliance with legal requirements²⁵⁷⁶.

A guidance instrument of major importance is the Approved Code of Practice *Safety in Docks*²⁵⁷⁷ which covers safety in dock operations and is aimed at those who have a duty to comply with provisions of the Docks Regulations 1988. This includes people who control dock premises, suppliers of plant and equipment, dock employers, managers, safety officers and safety representatives. The Code has been prepared in joint discussion between the Confederation of British Industry, the Trades Union Congress, other Government Departments and the Health and Safety Executive (HSE). The Code integrates Regulations (in particular The Docks Regulations 1988), Approved Code of Practice (ACOP) and Guidance. Although failure to observe any provision of the Code is not in itself an offence, that failure may be taken by a Court in criminal proceedings as proof that a person has contravened the Regulation or Section of the HSW Act to which the provision relates. In such a case, however, it will be open to that person to satisfy the Court that he has complied with the Regulation or Section of the Act in some other way.

In 2011, HSE published *A quick guide to health and safety in ports* which provides among other things an overview of the main legal requirements²⁵⁷⁸.

²⁵⁷⁵ See also Douglas, R., Lane, P. and Peto, M., *Douglas & Geen on the Law of Harbours, Coasts and Pilotage*, London, LLP, 1997, 161-162.

²⁵⁷⁶ See <http://www.hse.gov.uk/ports/index.htm>.

²⁵⁷⁷ <http://www.hse.gov.uk/pubns/priced/cop25.pdf>.

²⁵⁷⁸ <http://www.hse.gov.uk/pubns/indq446.pdf>.

1923. In 2000 the Port Marine Safety Code was introduced. This Code applies to all harbour authorities in the UK that have powers to direct shipping and to regulate navigation.

It applies the well-established principles of risk assessment and safety management systems to port marine operations. It does not contain any specific provisions on cargo handling however²⁵⁷⁹.

1924. Industry policy for health, safety and skills is driven through the partnership work of the Ports Industry National Committee for Health, Safety, Skills and Standards. The partner organisations represented on the Committee are:

- the training centre AMICUS;
- Department for Transport (Ports Division);
- Health and Safety Executive;
- Maritime and Coastguard Agency;
- the National Union of Marine, Aviation and Shipping Transport Officers (NUMAST);
- Port Skills and Safety;
- Transport and General Workers Union.

1925. Individual port companies have developed internal health and safety schemes. For example, the Corporate Health and Safety Policy Statement of Peel Ports Group²⁵⁸⁰ mentions the following Group Commitments:

Peel Ports will ensure that:

- *The Chief Executive Officer has specific responsibility for health and safety; he will delegate authority for the implementation of Group policies to his Managing Directors, Senior Managers, Health and Safety Managers and Supervisory Managers.*
- *Risk-assessed safe systems of work are in place for all potentially hazardous activities, and are properly supervised at all times.*
- *Competent people are appointed to assist in meeting relevant statutory duties including, where appropriate, specialists from outside the organisation.*

²⁵⁷⁹ The Code is primarily intended for the 'duty holder' – for most harbour authorities this means members of the harbour board, both individually and collectively – who is directly accountable for marine safety in harbour waters. The Code establishes the principle of a national standard for every aspect of port marine safety and aims to enhance safety for those who use or work in ports, their ships, passengers and the environment. The Code refers to some of the existing legal duties and powers that affect harbour authorities in relation to marine safety, but does not create any new legal duties for harbour authorities (Department for Transport, *Port Marine Safety Code*, London, Department for Transport, 2009).

²⁵⁸⁰ <http://www.merseydocks.co.uk/assets/pdf/healthandsafety.pdf> (link found broken upon updating).

- *Arrangements are in place to ensure that employee representatives are consulted and have the opportunity to raise concerns on matters relating to health, safety and welfare.*
- *Adequate facilities are maintained for employee health, safety and welfare.*
- *Each employee is given such information, instruction and training as is necessary to enable the safe performance of work activities.*
- *All employees are made aware of the arrangements for their health, safety and welfare.*
- *These arrangements are regularly monitored and reviewed to ensure that they are effective.*

The diagram below sets out the principal responsibilities for health and safety within Peel Ports.

Figure 116. Principal responsibilities for health and safety within Peel Ports (source: Corporate Health and Safety Policy Statement of Peel Ports Group²⁵⁸¹)



1926. Breaches of law relating to employee health and safety are prosecuted by the Health and Safety Executive, a UK government agency. The police may also be involved in the process.

²⁵⁸¹ <http://www.merseydocks.co.uk/assets/pdf/healthandsafety.pdf> (link found broken upon updating).

- Facts and figures

1927. Under its Safer Ports Initiative, which was launched in 2002, PSS claims that the industry succeeded in substantially reducing the incidence rate of reportable fatal, major and over-three-day industry accidents, whereby it achieved and even exceeded its initial targets²⁵⁸². Taking the last full year of available data (2011), the overall incidence rate shows a fall of 54 per cent when compared with 2000.

In 2008, the Health and Safety Executive (HSE) published *Accidents in the docks industry. An analysis of statistics from 2005/06 to 2007/2008*²⁵⁸³. In this report, HSE explains that the docks industry has always been considered one of the most dangerous in the UK, and statistics showing the number of fatalities go back to 1896 when there were 71 deaths. In the 1950s and 1960s the number of fatalities in the industry was consistently very high at between 40 and 60 every year when the industry was regulated by the old Factories Acts. The reporting of injuries changed substantially in 1985 following the implementation of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 1995. There have been some changes to RIDDOR and SIC codes since then which can make year on year comparisons difficult. In 1996/97 there were a total of 781 reported injuries (including 6 fatalities) assigned to ports. According to HSE, the numbers of reportable injuries in recent years were still showing at between 800 and 900 every year. The figures suggested that priority areas of attention for the industry should be ‘handling’ and ‘slips and trips’.

The trade union Unite the Union concluded from these statistics that the safety record of the industry had considerably worsened²⁵⁸⁴.

1928. In 2010, the Department for Transport published the following figures on port accidents:

Table 115. Accident rate estimates in UK ports, 2009/10 (source: Department of Transport, 2010²⁵⁸⁵)

	Estimated number of accidents ²⁵⁸⁶	Number of employees (fte)	Annual rate as a percentage	Annual rate per 100,000 employees

²⁵⁸² See House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 13.

²⁵⁸³ <http://www.hse.gov.uk/ports/accidents.pdf> (link found broken upon updating).

²⁵⁸⁴ See *infra*, paras 1943 and 1964.

²⁵⁸⁵ Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>.

²⁵⁸⁶ Defined as the number of injuries to persons reportable to the Health and Safety Executive under RIDDOR reporting rules. Collected through the survey and grossed up for non-response and so subject to sampling variation.

Directly port related, on port	421	37,000	1.1	1,100
Other on port	72	12,200	0.6	600
Employees of directly related businesses based off port, but spending time on port ²⁵⁸⁷	57	7,000	0.8	800

The survey suggested that among direct on port businesses, the accident rate among all employees who were not 100 per cent office based was around 50 per cent higher than the overall average. The work further suggested that the accident rate for direct on port employees while “not in the office” was around twice the overall average.

1929. Recently, HSE published statistical data on occupational accidents in the ports industry over a five-year period from 2006/07 to 2010/11p²⁵⁸⁸. The data represent accidents and dangerous occurrences reported to HSE under RIDDOR.

It would appear, however, that these data, which cover various types of water transport plus cargo handling regardless of transport mode (e.g. ports, airports, road haulage) are insufficiently accurate to support firm policy-oriented conclusions on the safety level in port labour²⁵⁸⁹. In addition, HSE mentions a number of general interpretational caveats²⁵⁹⁰. For these reasons, the data below should be used with caution:

²⁵⁸⁷ Accidents and employee ftes for this group both relate to that part of their time spent on port, to give a comparable estimate of their on-port accident rate.

²⁵⁸⁸ *Statistics report for the Port industry 2010/11p (provisional)*, <http://www.hse.gov.uk/ports/port-industry-statistics-report%202010-11.pdf>.

²⁵⁸⁹ The HSE explains its classification system as follows:

In 2009 HSE transferred to a new industrial classification system (SIC 2007 from SIC 2003). The following tables provide 2010/11p figures and a back series of data under SIC 2007. Please note that the back series (before 2010/11p) has been mapped back and the figures provided for 2005/06 – 2009/10 are considered to be an estimate.

Under SIC 2007 we only have 2 years employment data at 4 digit level, and therefore we are unable to provide 3 year average rates. The 4 digit rates will be available from next year.

The analysis is divided by Standard Industrial Classifications as defined in 2007 (SIC), and focuses on six main industry categories (to SIC 4 digit level) either independently or as combined totals.

- 5010 Sea and coastal passenger water transport
- 5020 Sea and coastal freight water transport
- 5030 Inland passenger water transport
- 5040 Inland freight water transport
- 5222 Service activities incidental to water transport
- 5224 cargo handling

For the purposes of this report, data provided for Water Transport will include SIC 2007 codes 5010, 5020, 5030, 5040 & 5222 as identified above.

Table 116. Number of reported major accidents in water transport in the UK, 2010-2011 (provisional) (source: Health and Safety Executive²⁵⁹¹)

Severity	2010/11p
Fatal - employee	0
Major - employee	69
Over-3-day - employee	225
Fatal to MOPs	1
Non-fatal to MOPs	12

Table 117. Number of reported major accidents in cargo handling in the UK, 2010-2011 (provisional) (source: Health and Safety Executive²⁵⁹²)

Severity	2010/11p
Fatal - employee	0
Major - employee	49
Over-3-day - employee	341

Cargo handling (SIC 5224) refers to all transport and is not therefore able to be incorporated into any particular transport type (e.g. ports, airports, road haulage). Therefore although we have referenced the RIDDOR data for SIC 5224 in relation to ports, it is not possible to confidently ascertain which type of transport is more significantly affected by this data than any others. It is important to bear this in mind when interpreting the figures.

²⁵⁹⁰ These caveats are:

RIDDOR

Starting in 2010/2011 HSE data will be collected and, later, published using SIC 2007 rather than SIC 1992 and SIC 2003. Earlier data collected using SIC 1992/2003 may be used in publications after recoding it into SIC 2007 to show trends. There may be errors introduced as a result of such recoding and we will clearly annotate any series which we believe to have been affected by a discontinuity

General caveats on RIDDOR data

RIDDOR data needs to be interpreted with care because it is known that non-fatal injuries are substantially under-reported. Currently, it is estimated that just over half of all such injuries to employees are actually reported, with the self-employed reporting a much smaller proportion. (Further information on the caveats that should be applied to analysis of RIDDOR data)

1. Counts of non-fatal injuries reported under RIDDOR will almost always underestimate by a considerable amount the total that would have been recorded if there had been 100% reporting.

2. Any comparisons between different subsets within RIDDOR data (e.g. comparisons between one industrial sector and another) need to take account of the possibility of there being markedly different reporting levels in the subsets being compared.

Small Numbers

This output includes counts that are relatively small numbers. (Further information that explains the need for caution when making comparisons that involve small numbers)

A further factor that needs consideration when numbers are small is that the coding of data is by its nature an error-prone process. Miscoding is more likely to occur as the coding becomes more detailed. Thus, for example, when the industrial sector (SIC) or nature of employment (SOC) is coded to a four digit level coding errors may have an important bearing.

(the underlinings in the original were omitted).

²⁵⁹¹ p means Provisional. MOPs means Members of the public.

²⁵⁹² p means Provisional. MOPs means Members of the public.

Fatal to MOPs	0
Non-fatal to MOPs	2

Figure 117. Accident trends 2006/07 to 2010/11p for water transport in the UK (not including cargo handling) (source: Health and Safety Executive²⁵⁹³)

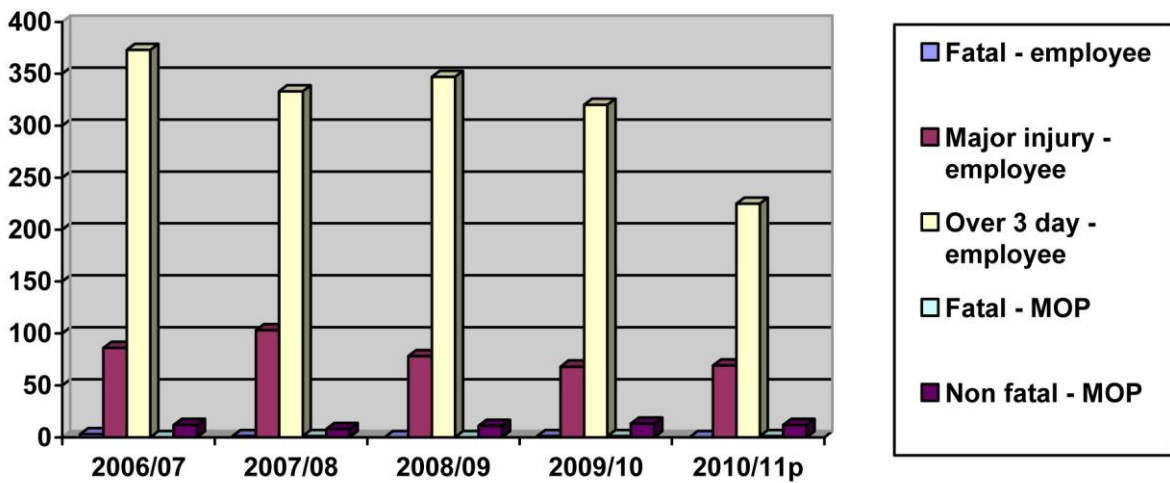
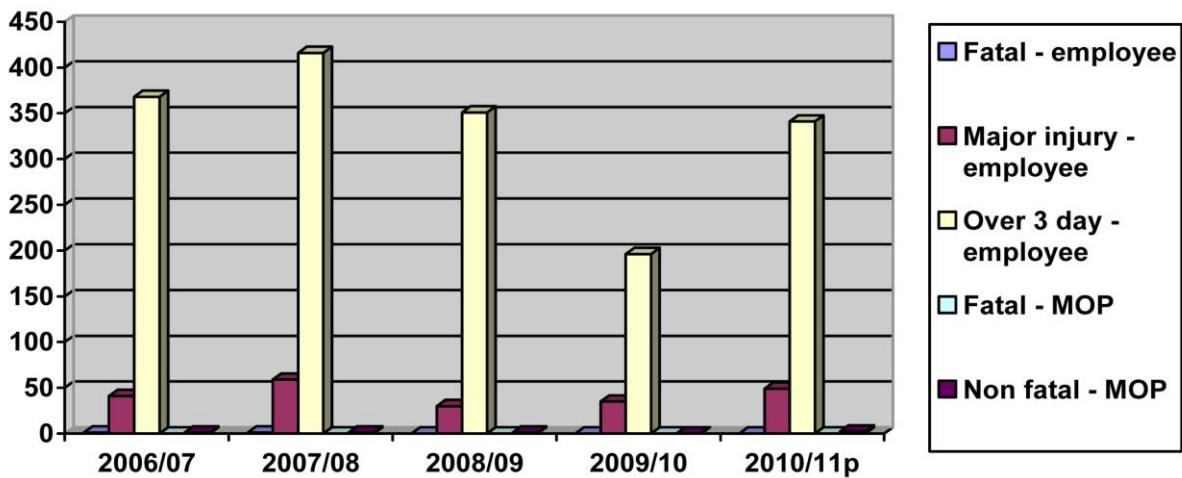


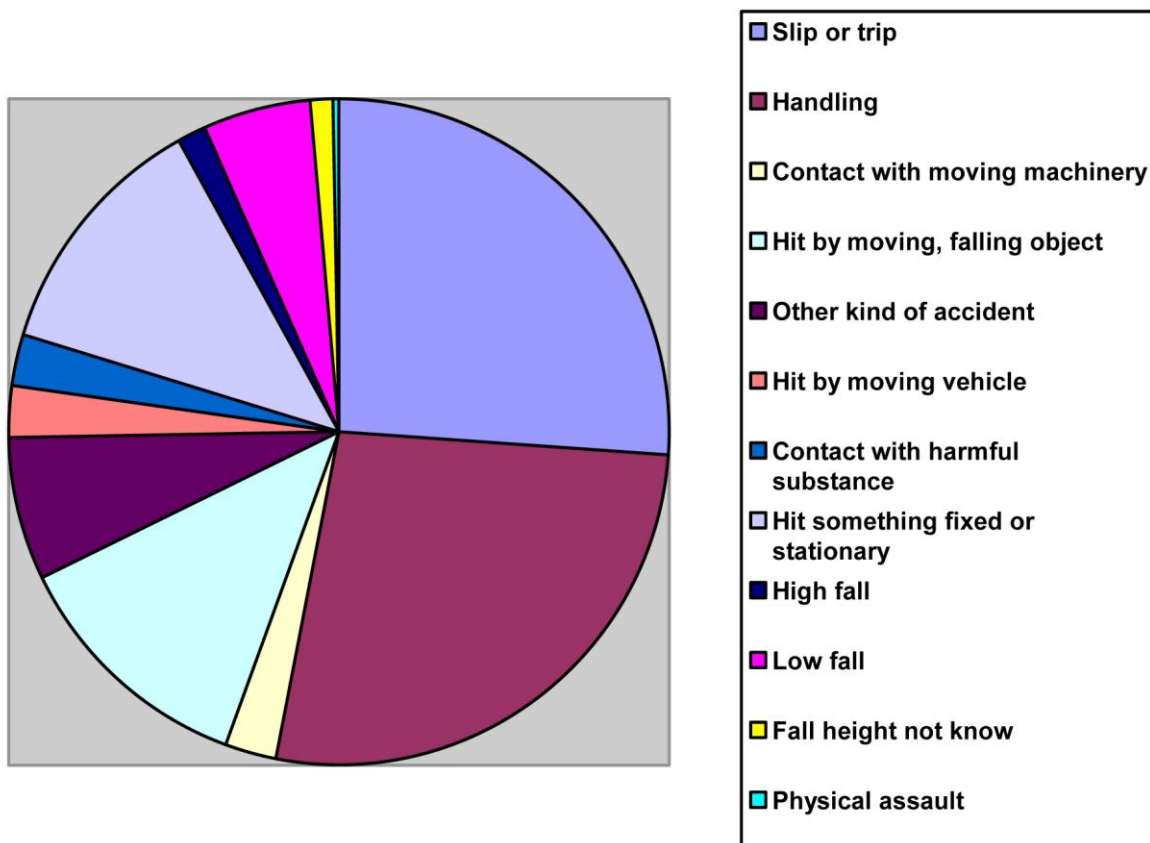
Figure 118. Accident trends 2006/07 to 2010/11p for cargo handling in the UK (source: Health and Safety Executive²⁵⁹⁴)



²⁵⁹³ p means Provisional. MOPs means Members of the public.

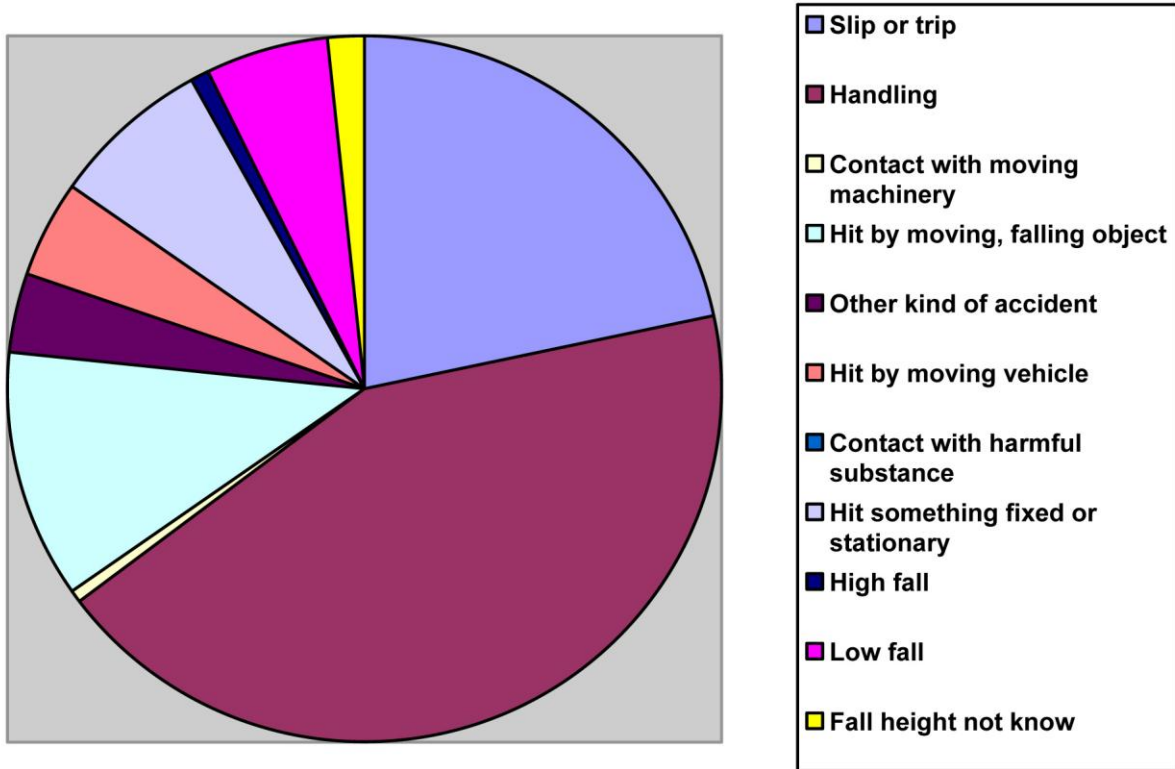
²⁵⁹⁴ p means Provisional. MOPs means Members of the public.

Figure 119. Details of all injuries (major & over 3 day) to employees in water transport in the UK for 2010/11p by accident kind code (source: Health and Safety Executive²⁵⁹⁵)



²⁵⁹⁵ p means Provisional.

Figure 120. Details of all injuries (major & over 3 day) to employees in cargo handling in the UK for 2010/11p by accident kind code (source: Health and Safety Executive²⁵⁹⁶)



²⁵⁹⁶ p means Provisional.

Table 118. Dangerous occurrences for water transport in the UK (not cargo handling) (source: Health and Safety Executive²⁵⁹⁷)

Dangerous occurrence by type	2008/09	2009/10	2010/11
Failure, collapse or overturning of lifting machinery etc.	22	22	13
Failure of any closed vessel including boiler	0	0	1
Failure of freight container in any of its load bearing parts	1	0	1
Plant or equipment comes into contact with overhead power lines	1	0	0
Electrical short circuit which results in stoppage of plant for over 24 hours	1	1	1
The malfunction of radiation generators	1	0	0
Failure of any lifting or life-support equipment during a diving operation	1	1	1
Complete or partial collapse of a scaffold over 5m	0	1	0
An explosion or fire occurring in plant or premises which results in stoppage of plant for more than 24 hours	0	3	0
Accidental release or escape of any substance sufficient to cause death or major injury or damage health	1	4	3
Any fire or explosion at an offshore installation	1	0	0
TOTAL	29	32	20

Table 119. Dangerous occurrences for water transport in the UK (not cargo handling) (source: Health and Safety Executive²⁵⁹⁸)

Dangerous occurrence by type	2008/09	2009/10	2010/11
Failure, collapse or overturning of lifting machinery etc.	9	3	7
Failure of freight container in any of its load bearing parts	1	0	0
Electrical short circuit which results in stoppage of plant for over 24 hours	1	1	0
Failure of any lifting or life-support equipment during a diving operation	0	1	0
The sudden, uncontrolled release of flammable substances	1	0	0
Accidental release or escape of any substance sufficient to cause death or major injury or damage health	0	1	1
TOTAL	12	6	8

²⁵⁹⁷ p means Provisional.

²⁵⁹⁸ p means Provisional.

Finally, HSE also maintains statistics on enforcement activity in the water transport and cargo handling sectors²⁵⁹⁹.

1930. On 31 July 2012, the Health and Safety Executive posted a media release on its website in which it informed the public that a berth operator at an Essex Port has been fined £20,000 for safety failings after an employee had both legs amputated after they were crushed by a cargo container²⁶⁰⁰.

9.22.6. Policy and legal issues

- Labour market issues

1931. Since the abolition of the National Dock Labour Scheme and the privatisation of a number of large ports in the UK in the 1980s and 1990s, the UK Government has continued support for a market-led approach to the industry with minimal interference from the centre.

Today, no one seems to advocate the reinstatement of the NDLS or any other form of re-regulation of the port labour market. In other words, (de)regulation of the market for port labour is hardly an issue in the UK. Recently, however, a trade union proposed the introduction of a new type of port passports²⁶⁰¹.

1932. Our questionnaire did not reveal any major problems resulting from restrictions on employment or restrictive working practices.

1933. Port Skills and Safety reported that UK employment law is properly enforced. While the organisation identified no restrictions on employment or restrictive working practices, it admitted that job insecurity and temporary unemployment exist in the UK as in all EU countries and beyond. Whilst distressing, these two issues can arguably not be considered sub-standard or otherwise unacceptable labour conditions, as the UK has robust systems and legislation

²⁵⁹⁹ See, once again, the *Statistics report for the Port industry 2010/11p (provisional)*, <http://www.hse.gov.uk/ports/port-industry-statistics-report%202010-11.pdf> (link found broken upon updating).

²⁶⁰⁰ Health and Safety Authority, "Port berth operator fined after worker's legs amputated", Release No. HSE-E-93, 31 July 2012, <http://www.hse.gov.uk/press/2012/rnn-e-93.htm>.

²⁶⁰¹ On the latter, see *infra*, para 1943.

addressing the remaining items (from social security to lack of training) though there is clearly a need to continuously seek to improve skills and safety.

1934. In an interview, an experienced shipping company manager at Liverpool confirmed that all manning scales were abolished and that the employer can freely choose his men. Most UK ports operate on a 24/7 basis, except the smaller ones. In container terminals, usually a three-shift system is applied. Self-handling is not an issue²⁶⁰². In most UK ports, lashing is performed by the ship's crew, but there are exceptions²⁶⁰³.

1935. Yet, employers are still trying to increase flexibility, for example through the introduction of 'follow-the-ship contracts' which stipulate that dockers work when ships are ready to be unloaded, rather than to a set shift pattern. This innovation, which would reduce overtime, gave rise to an industrial conflict in the port of Tilbury in 2012, which was reported to be the first dockworker strike in the London-area since 1989²⁶⁰⁴, and a similar scheme was proposed at Teesport. Some workers complain about flexibility affecting family life; some signals even suggest the local survival of closed shop and nepotism situations²⁶⁰⁵.

²⁶⁰² U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) mentions no restrictions on longshore work by crewmembers aboard U.S. vessels in UK ports.

²⁶⁰³ An ESPO report for 2004-2005 mentions:

"Self handling" is largely confined to the ro-ro sector, but it can include the lashing of vehicles, although the practice varies from port to port.

Some ports do not permit "self-handling" of cargo, on the grounds that this would amount to "cherry picking" and would not be in the overall interest of the port. The need for expensive equipment and high investment generally militates against "self handling" of cargo, especially for containers. The situation is different for ferry services where "self handling" tends to predominate.

(European Sea Ports Organisation, *Factual Report on the European Port Sector*, Brussels, 2004-2005, 168-169).

²⁶⁰⁴ See, for example, <http://www.itfglobal.org/news-online/index.cfm/newsdetail/7426>; http://www.idcdockworkers.org/index.php?option=com_content&task=view&id=186&Itemid=9&lang=english (link found broken upon updating) and <http://felixstowedocker.blogspot.be/>. In 2006, a manager from Maersk complained about shifts systems in UK ports before the Transport Committee of the House of Commons:

If I may offer one specific example, it is that in most Continental ports there are four six-hour shifts during the day, whereas in the UK typically it is worked as two 12-hour shifts. That lowers the flexibility for the shipping lines to arrive. I am talking mainly of container shipping lines here. That is one example of where port industry could make a change to the way things are done today and, we believe, achieve high productivity.

[...]

It makes a difference in that, traditionally, or in practice, you will get better productivity if you arrive your vessel at the same time as there is a change of shift, which provides the UK with only two possible arrival slots during the 24-hour period, whereas you will have four on the Continent. Traditionally, for a number of reasons, you will lose a bit of time around the end of those shifts, a number of hours where perhaps it is not felt beneficial to start a vessel which arrives at five o'clock, before the shift starts at seven o'clock.

(House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 31).

²⁶⁰⁵ See Hetherington, G., "Dock workers consider strike action over contract changes", *The Northern Echo* 16 June 2012, http://www.thenorthernecho.co.uk/news/9765687.Dock_workers_consider_strike_action_over_contract_changes

1936. Responding to the questionnaire, ship owner DFDS mentioned job insecurity and temporary unemployment of workers in the port of Dover as an unfortunate result of the fierce competition which exists in the Channel and the very high fuel prices which forced several operators to close business. As regards Immingham, the same company mentions issues in relation to limited working days and hours and unauthorised absences, but these are not seen as a major competitive problem.

1937. In an interview, an international ro-ro carrier commented that in Tilbury, where an informal pool system applies, there is a structural shortage of skilled workers which causes delays and congestion. The port is said to offer poor quality of service. Priority is given to safety of workers above safe stowage of cargoes to be unloaded at the port of destination. Health and safety reasons are invoked to justify considerably larger gangs than in, say, Antwerp or Hamburg. Lashing and securing by the ship's crew is not allowed. The port of Southampton is organised as a commercial company, with considerable flexibility. In this port, workforce shortages do not occur and the crew is allowed to perform lashing work.

1938. A ferry company confirmed to us that operations are much more flexible in Ramsgate than in Ostend in Belgium, where labour is very strictly regulated.

- *Health and safety issues*

1939. Since the publication of the Government's ports policy paper *Modern Ports: A UK policy* in 2000, the lack of statistical data and the occupational health and safety level in the ports has repeatedly attracted the attention of national policymakers.

To begin with, *Modern Ports* highlighted the unacceptable accident rate in docks – the causes of which are very diverse²⁶⁰⁶ – and the need to develop qualifications for port workers and to

[ct_changes/?ref=rss](#), and the comments by readers. On the evolution of the closed shop in the United Kingdom, see Carby-Hall, J., "Essor et déclin du "closed shop" en Grande-Bretagne", *Revue internationale de droit comparée*, 1991, Vol. 43, No. 4, 775-827, http://www.persee.fr/web/revues/home/prescript/article/ridc_0035-3337_1991_num_43_4_4398.

²⁶⁰⁶ According to the report, contributory factors in fatal accidents included:

- inadequate induction training and supervision;
- inadequate risk assessments and weak monitoring arrangements;
- failure to apply safe systems and lack of management control;
- complacency by experienced workers and fatigue;

promote training, especially of temporary agency workers²⁶⁰⁷. The Government also announced that it was working towards ratification of ILO Convention No. 152²⁶⁰⁸ – a project that has since been abandoned.

In its 2003 report on ports policy, the Transport Committee of the House of Commons noted that the dependence of the UK major ports on temporary or casual workers, particularly at peak times, is unquestionable, and that the Committee needs to know the extent to which dock work is carried out by skilled employees, and the extent to which casualisation has led to a reduction in the skills base²⁶⁰⁹. On statistics and safety, the Committee adopted the following conclusions and recommendations:

Statistics

4. The Standard Industrial Classification (SIC) systems must be modified as a matter of urgency, in order to facilitate the collection of precise data on the port industry. [...]

5. The existing statistical information on ports falls seriously short of what is required by a modern industry. Although the Department for Transport acknowledges this, there appears to be no sense of urgency in addressing this need for accurate statistics. It is a disgrace that there is so little statistical information on an industry so vital to the United Kingdom's economic and commercial prosperity. We are astonished that so little progress has been made in developing the statistical base necessary to inform policy. The Department for Transport must produce regular statistics on port activity in collaboration with industry. This should cover in detail employment, health and safety, infrastructure and general economic data. Statistics on the accidents, injuries and illness to dockworkers are particularly important and must be made available on a national basis. [...]

Making Ports Safe

6. We expect the Government to set identifiable national targets on health and safety in ports, together with a timetable for their implementation. [...]

- commercial pressures;
- a need for more inspections

²⁶⁰⁷ (Modern ports: A UK policy, <http://webarchive.nationalarchives.gov.uk/20110503182441/http://www.dft.gov.uk/pgr/shippingports/ports/modern/modernportsaukpolicy>, para 4.1.18).

²⁶⁰⁸ See Modern ports: A UK policy, <http://webarchive.nationalarchives.gov.uk/20110503182441/http://www.dft.gov.uk/pgr/shippingports/ports/modern/modernportsaukpolicy>, item 4.

²⁶⁰⁹ Modern ports: A UK policy, <http://webarchive.nationalarchives.gov.uk/20110503182441/http://www.dft.gov.uk/pgr/shippingports/ports/modern/modernportsaukpolicy>, para 4.1.27.

House of Commons, Transport Committee, *Ports*, Ninth Report of Session, 2002-2003, I, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmtran/783/783.pdf>, 12, para 34.

7. *The current review of Dock Regulations 1988 has taken an inordinate time. The revised codes must give clear and practical guidance including an explicit definition of the term 'adequate training'. [...]*

8. *There is an acute shortage of dedicated port inspectors to fulfil the obligations of the Health and Safety Executive (HSE). We expect the HSE to set a timetable for the recruitment of a sufficient number of inspectors together with the provision of an effective training programme. [...]*

9. *We expect the HSE to take immediate action against employers who fail to fulfil their training obligations. [...]*

10. *The HSE, the Department for Transport and Port Skills and Safety Limited (PSSL) must monitor levels of safety and training for port employees to ensure adequacy. Particular regard should be given to safe working practices in this most hazardous of United Kingdom industries. The Port Passport is a voluntary scheme to demonstrate the attainment of basic dockworker skills. We recommend that this scheme be energetically pursued and used as the basis for a standard and rigorous training programme. A high level of professional training in all port related activities is essential to maintain safety in the "most dangerous land-based industry in the United Kingdom." [...]*

11. *ILO Convention 152 is concerned with the health and safety of dockworkers. We were disturbed by the changing and ambivalent attitude to this important convention and strongly recommend that it be ratified by the Government as soon as possible. [...]*

12. *During the evolution of the draft Directive on Market Access to Port Services it has been made clear that "professional qualifications and environmental matters might be among the criteria to authorise self-handling." We strongly support this. We believe that these issues must be among the criteria to authorise self handling. [...]*²⁶¹⁰

In 2006, the Government launched a ports policy review. The discussion document contained *inter alia* the following information on safety in port work:

the accident rate for direct businesses on port is estimated to be 1.2 accidents per 100 employees on average, annually (a range of 1.0 – 1.5 per cent). The accident rate is lower than estimated by Ports Skills and Safety for their members (2.8% in 2004), since PSSL are thought to have a narrower coverage of port employment activities and concentrate on companies more directly involved with port operations (cargo handlers for example), where employees are more at risk.

[...]

²⁶¹⁰ House of Commons, Transport Committee, *Ports*, Ninth Report of Session, 2002-2003, I, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmtran/783/783.pdf>, 52-53, para 187.

When the Transport Select Committee reported on ports issues in 2003, it described the sector as 'the most dangerous land-based industry in the UK'. This was informed by the unacceptably high accident rate for docks employment. This data was in part based on an incomplete understanding of the extent of dock employment, which the Committee itself highlighted. In the report mentioned in the discussion document at 4.14, DfT has now published new data estimating that the accident rate is in fact under half that reported hitherto.

[...] Even aside from that technical adjustment, good progress is being made by the industry in tackling the safety problem, helped now by a more focused approach from the Health & Safety Executive. The HSE, who have enforcement responsibility for the safety of dock workers, passengers and other visitors, and materials passing through ports up to the quayside or jetty, are now implementing a 'revitalising Health and Safety Strategy'. As this affects the HSE's ports role, this entails agreeing priorities with the industry and trade unions, and increased effort on targeting those ports with poor safety records.

[...] But the prime responsibility for delivering high safety standards rests with the industry itself. Port Skills and Safety Ltd (PSSL) is the ports industry's organisation tasked with promoting health, safety, skills and standards. Formed in 2002, PSSL represents the interests of port employers, but it works closely with trade unions and Government bodies such as DfT, the HSE and the Maritime and Coastguard Agency (which is an executive agency of the Department for Transport), who have the remit for marine-side safety. All these partners have a shared commitment to attain and maintain high standards of health and safety and a highly skilled and productive workforce in the ports sector. This is particularly important for the much smaller dock workforce we now have; the current 54,000 figure is only a fifth of the level of 40 years ago. But port operations are now much more intensive, and higher skill levels are needed to work with the range of technologies, including containers, ro-ro ferries, car transporters, and bulk handling equipment.

[...] The main progress on docks safety has been through PSSL's Safer Ports Initiative. Working from a baseline of reported 2001 accident data, it has exceeded its Phase 1 targets of reducing the incidence of 'fatal and major injury accidents' by 10% by the end of 2005, with an actual outturn of just under 22% by 2004; there has been comparable success on the parallel target on other significant accidents. All the stakeholders are now focusing on how best to maintain this record in Phase 2, launched in May 2006²⁶¹¹.

In response to the Government's proposals, the Transport Committee of the House of Commons received memoranda from stakeholders and also heard witnesses.

²⁶¹¹ Department for Transport, *Ports Policy – your views invited. DfT's discussion document for the Ports Policy Review*, May 2006, <http://webarchive.nationalarchives.gov.uk/tna/20091008191952/http://www.dft.gov.uk/consultations/archive/2006/ppr/portspolicyreview.pdf>, 73-75.

In its memorandum, Port Skills and Safety provided detailed figures on the improved accident rate in ports²⁶¹².

The Transport and General Workers Union, however, disputed these figures and insisted on the need for the UK to adhere to ILO instruments on dock labour²⁶¹³.

HSE explained that it is difficult to produce accident statistics for the dock industry that are totally accurate, because Standard Industrial Classifications (SIC) do not identify dock work as a separate category²⁶¹⁴.

At the oral hearing, industry representatives insisted that the safety track record in the ports is one showing improvement, whilst unions stated, on the contrary, that accidents had gone up²⁶¹⁵.

The Committee noted, *inter alia*:

The ports industry appears to be one of the most dangerous in which to be employed. We remain concerned about the veracity of the statistics on employment and accident rates; we are also not convinced that the safety regime monitored by Port Skills and Safety Ltd (PSSL) is effective²⁶¹⁶.

²⁶¹² House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 12-15.

²⁶¹³ House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 92-93:

We could be accused of being churlish, but we would like to take this opportunity to remind the Transport Committee that when the Nation Dock Labour Scheme was abolished there were many statements from the employers' organisation that casualisation would not be reintroduced into the ports. We believed then, and still do now, that the real reason for the abolition of the scheme was just to do that, despite the high profile statements by leaders of the employers' association. This is why we are calling on the Government to ratify the International Labour Organisation (ILO) Convention 137, Recommendation 145 and ILO Convention 152 as we believe that this would result in increased job security and raise the safety standards of this industry. We hope that in the Committee's recommendations it will also ask the Government to ratify these conventions.

[...]

We are concerned that the Government intends to continue, for the foreseeable future, broadly its present policies in regard to safety within the ports. We disagree fundamentally with the statement: "We believe there are no fundamental issues at stake around the general approach to safety and security in ports." With specific regards to accidents in the industry, we are of the opinion that the figure is higher than reported. Also the health and safety of people employed within the port industry is still a matter of concern to us, as well as the reporting of accidents and how this data is collected. This is because certain categories of workers are not included in the figures for the docks industry, for example agency workers, hauliers and members of the public.

²⁶¹⁴ House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 224.

²⁶¹⁵ See House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 82.

²⁶¹⁶ House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, I, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61i.pdf>, 36, para 90.

On statistics, the Committee stated:

94. We remain doubtful that the Government has a grip on the production of employment and accident statistics. We received a significant amount of evidence questioning the statistical base of the Government's 2005 figures in Port Employment and Accident Rates. The Health and Safety Executive (HSE) acknowledged that Standard Industrial Classification (SIC) still do not identify dock work as a separate category. This was raised with the Government by our predecessor Committee in 2003 when the Government agreed that modification of SIC was needed and that the "revision is well underway". We do wonder why, then, the problem still exists.

95. The TGWU is concerned that the employment figures for port workers are being underestimated. Ports employ approx 90,000 individuals, but approx 36,000 of these are agency workers and day labourers and are constantly changing. Given the importance of the industry, the Committee agrees with the TGWU that it is difficult to understand why the Department is basing its assumptions on such employment data²⁶¹⁷.

This time, the Transport Committee arrived at the following conclusions and recommendations on safety:

96. Port Skills and Safety Ltd appears to be a professional organisation that is working hard to improve safety in the ports industry. Similarly, the Port Marine Safety Code (PMSC) appears to be working well. But we are concerned that both PSSL and the PMSC are voluntary. We recommend that the Government establish a statutory safety inspectorate for the ports, and make the PMSC compulsory as soon as is practicable. Both of these measures will reassure port workers that they are valued by the Government and by their employers and that their safety is paramount.

97. It is impossible to evaluate any improvements in safety for port workers without reliable figures, and our evidence suggests that the employment and accident figures used by the Government are inaccurate. Our predecessor Committee was assured in 2004 that 'things were getting better' but our evidence suggests that confusion still reigns. Confidence needs to be restored; to this end port workers should have a separate Standard Industrial Classification (SIC) and an independent audit of ports safety should be carried out. Quite simply, port workers deserve better²⁶¹⁸.

The Department for Transport responded that it is not persuaded of the need for a separate ports safety inspectorate, nor for making the Port Marine Safety Code (PMSC) compulsory. It believed the voluntary approach to be the right way, given the need to ensure the onus to manage harbours safely rests with the harbour authorities. Also, it stated that the Standard

²⁶¹⁷ House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, I, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61i.pdf>, 37, paras 94-95.

²⁶¹⁸ House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, I, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61i.pdf>, 37, para 96-97.

Industrial Classification 2007 published earlier that year now includes separate classifications for port workers, and will be adopted by HSE in its accident recording in due course²⁶¹⁹.

1940. A survey for 2009/10 indicated that temporary work agencies active in UK ports usually begin their accident procedures once they have been informed by either the client or the employee of the situation. These procedures then generally work in conjunction with those of the port. Respondents often explained that the accident would be logged in the accident report book by both parties and both would often carry out full investigations of the incident, sometimes in collaboration. However, the results appear to indicate that there is a lack of clarity among ports and port based businesses about whether they should report accidents relating to agency workers to HSE directly or just to the agency for them to report. It is difficult to draw specific conclusions from the results as:

- In practice, the person responsible for reporting will vary. Where there are agency workers HSE would expect agreement between the parties on who is responsible for RIDDOR reporting. The legal definition of 'employer' under health and safety legislation is the person who has most control over the work and activities – this is often the company for which the agency employee has been working rather than the agency, but this is not always the case.
- Some ports using agency workers will be using specialist labour supply companies where the working arrangements are likely to be different to those using generalist agencies.
- It is possible that the person responsible for reporting accidents to HSE and the respondent to the surveys would be different.

However, taking into account the uncertainty on the part of some individuals responding to the survey, there was no clear evidence that accidents occurring to agency workers would go unreported or that they would be reported twice (once by the agency and once by the port business)²⁶²⁰.

1941. Also, all agencies interviewed had timesheet systems in place to capture the amount of time that workers spent working for their clients. Those supplying drivers to port based or port related businesses tended to have formal procedures in place for explicitly monitoring and dealing with excessive working hours.

For other roles, respondents felt that excessive working hours would be picked up (either because they would notice from looking at the timesheet information or because the timesheet

²⁶¹⁹ House of Commons, Transport Committee, The Ports Industry in England and Wales: Government Response to the Committee's Second Report of Session 2006-07, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/954/954.pdf>, 10-11, paras 22-23.

²⁶²⁰ Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 47-49.

system would specifically alert them to the high number of hours worked); however, as they had not typically encountered a situation where one of their workers had been deemed to be working excessive hours, they could only speculate about what action they would take where they identified such issues. Responses suggested that agencies were aware of the potential risks that workers on their books might work excessive hours; however, some respondents commented that it was difficult to apply a cap on working hours due to the fluctuations in demand for labour²⁶²¹.

1942. Responding to our questionnaire, the port employers' organisation Port Skills and Safety stated that, broadly, applicable rules on health and safety are satisfactory and properly enforced but that there is a need to update legislation. It also confirmed that identifying accident rates associated with ports is made complex by a wide range of factors which includes: identifying who should or should not count as a port worker, where the accident happened and whether accidents are multiple-reported²⁶²².

1943. In 2010, when the Transport Committee of the House of Commons discussed a proposed National Policy Statement on Ports, Unite the Union demanded that anybody working in the area of a port should have a minimum level of safety training before they can enter the port, an identification badge with their picture on it, and their core competences given on the badge. The union also believes poor safety and low wages may lead to difficulty in finding workers for ports since they can work in other industries which pay similar amounts but have a better safety record²⁶²³.

²⁶²¹ Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 47.

²⁶²² See also <http://www.hazards.org/deadlybusiness/docks.htm>.

²⁶²³ House of Commons, Transport Committee, *The proposal for a National Policy Statement on Ports*, <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmtran/217/217.pdf>, unpagged, Memorandum from Unite the Union. The union based its proposals on the following arguments:

3. PORTS PASSPORTS

3.1 In the docks industry, five causes of accidents account for 90% of all accidents experienced in 2007–08.40 So the nature of the accidents is clear for all to see. So it is disappointing that accident statistics in the last three years for Docks and Cargo Handling have got worse.

<i>DOCKS RIDDOR STATISTICS</i>			
Accident type	2005-06	2006-07	2007-08p
<i>Fatal</i>	0	4	3
<i>Major</i>	155	142	174
<i>Over 3 day</i>	709	742	751
<i>Total</i>	864	888	928

<i>CARGO HANDLING (SIC 6311 ONLY)</i>			
Accident type	2005-06	2006-07	2007-08p
<i>Fatal</i>	0	1	1
<i>Major</i>	51	43	62
<i>Over 3 day</i>	338	369	414

1944. In 2011, a union representative working at a DPW terminal in Southampton said:

Several serious physical conditions were identified as a result of unsafe equipment in the terminal. These included whole body vibration and neck and back complaints. We carried out a survey to get employees to tell us how these affected them. The survey highlighted issues and any work-related accidents they had had. We then contacted the Health and Safety Executive, which monitors workplace safety in Britain. They said the equipment was unsafe so the employers had to make adjustments to fix it. Anyone who has been injured as a result will be taking a claim to court through the union²⁶²⁴.

Total	389	413	477
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3.2 Therefore, for health, safety, welfare, and security reasons, Unite is calling for the introduction of a mandatory ports passports scheme. This scheme would be similar to the successful Construction Skills Certification Scheme operating in the construction industry.

3.3 The scheme would require anybody working in the area of a port to receive a minimum level of safety training before they can enter the port, and would have an identification badge with their picture on it, and their core competences given on the badge. Without such a scheme Unite believes that it will not be possible for health, safety and security reasons to make the ports safe.

4. TRAINING AND SAFETY

4.1 Industry has moved to using casual workers, recruited through agencies. But casual workers are largely unskilled and untrained in dock work. Paragraph 4.1.24 of "Modern ports: A UK policy" suggested "The Government is introducing new regulations to ensure that people supplied by employment agencies are trained and competent for the jobs they do" but we are not clear that anything happened on this.

4.2 Casual workers also present a serious problem in terms of safety. The industry has a very poor record for safety. The National Dock Labour Scheme provided a trained workforce which was aware of the dangers of the industry and hence resulted in a much better safety record. Privately owned and smaller ports are a bigger problem than municipal and trust ports.

4.3 There is a need for an industry wide recognised and regulated mandatory qualification programme to improve safety and training. Currently any training is offered voluntarily by employers, and trained staff may then be "poached" by rival employers—thus there is no incentive to train, particularly when agency staff, are easily available and cheap.

4.4 Currently none of the agencies or bodies (HSE, Ports Safety organisation) or regulations (ILO, Ports Passport scheme) has any teeth as they are voluntary and have therefore not been able to create extensive improvements in safety.

4.5 Responsibility for safety and training rests with port authorities, and as a result only tend to be acted upon when there are potential financial implications of a lack of training or poor safety (eg the damage to expensive equipment, insurance claims or injury claims).

4.6 Ultimately poor safety and low wages may lead to difficulty in finding workers for ports since they can work in other industries which pay similar amounts but have a better safety record.

²⁶²⁴ X., "Global Network Terminals Campaign Update", GNT Bulletin No. 3, May 2011, <http://www.itfglobal.org/dockers/gnt-bulletin.cfm>, 2.

1945. New statistics published by HSE in 2012 suggest a decrease in the number of water transport accidents between 2006 and 2011, and a similar trend, yet less outspoken, in cargo handling activities. The statistical material remains difficult to interpret however²⁶²⁵.

1946. Finally, we should point out that the UK remains bound by the outdated ILO Convention No. 32.

9.22.7. Appraisals and outlook

1947. The now repealed National Dock Labour Scheme unmistakably had a great symbolic significance²⁶²⁶ but also far-reaching practical implications.

Most observers acknowledge that the effects of abolition of the National Dock Labour Scheme in 1989 were markedly positive for the UK port industry as a whole²⁶²⁷.

In addition, the repeal paved the way for the privatisation of large parts of the UK ports industry²⁶²⁸, a subject which is however beyond the scope of the present study.

1948. The impact of the repeal of the NDLS on employment in the UK ports industry was substantial. A far greater number of severances took place than the Government had forecast. Whereas just prior to the abolition, there were more than 9,200 dockworkers²⁶²⁹, by October 1990 this number had reportedly dropped to less than 4,000 dockworkers and in many ports there were no ex-registered dockworkers at all²⁶³⁰.

²⁶²⁵ See *supra*, para 1929.

²⁶²⁶ See Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 24.

²⁶²⁷ Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 22.

²⁶²⁸ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 109.

²⁶²⁹ See also House of Commons Transport Committee, *Transport – Ninth Report*, 2003, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmtran/783/78302.htm>; compare the figures *supra*, para 1910.

²⁶³⁰ <http://www.labournet.net/docks2/9706/NDLS.HTM>. For details on employment in Liverpool, see Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 20.

1949. Productivity improved greatly and many of the UK's traditional ports such as London, Liverpool, Hull and Southampton, which had languished during the days of the NDLS, experienced a dramatic rejuvenation²⁶³¹.

1950. In 1990, Nicholas Finney, the former director of Britain's National Association of Port Employers, inventoried the results of the abolition of the NDLS as follows:

- the national labour agreements as well as all port agreements (seventy in total) were removed;
- all industry conciliation and arbitration procedures were removed;
- all national and local employers associations were disbanded;
- new industrial contracts based entirely on the relationship with each employer's own workforce were introduced;
- all artificial demarcation lines were abandoned;
- new retaining programmes without government money were introduced;
- new work patterns and flexible shift patterns were developed;
- labour pooling was eliminated;
- part time working and contracting out was introduced;
- in five ports dockworkers established major stevedoring companies with their own redundancy money²⁶³²;
- productivity improvements were achieved;
- docks and container berths which had been closed for sixteen years were opened;
- ship turn-around times were improved;
- new and innovative inward investment to the ports in the form of warehousing, cold storage, packaging, food preparation, and processing plants were established²⁶³³.

1951. Impact studies from the early nineties suggested that the abolition of the NDLS already had considerably improved productivity and led to lower costs in the former Scheme ports. These improvements were attributed to reduced manning scales, elimination of restrictive practices and more flexible working arrangements, particularly more flexible shift systems²⁶³⁴.

1952. In 1991, the international authority on port labour Peter Turnbull of Cardiff Business School wrote that there was still very little concrete evidence of a transformation in the

²⁶³¹ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 3.

²⁶³² See also Turnbull, P., and Wass, V., "The great dock and dole swindle: Accounting for the costs and benefits of port transport deregulation and the dock labour compensation scheme", *Public Administration* 1995, (513), 530.

²⁶³³ <http://www.labournet.net/docks2/9706/NDLS.HTM>.

²⁶³⁴ See Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 101 *et seq.*

performance of Britain's ports, despite the abolition of the demarcation between dock work and other work and of manning levels, increased flexibility and the regulation of working practices at company level. He noted that in some ports the workers had to form cooperatives, that the introduction of temporary work amounted to a return to casual labour and that there had been serious wage cuts²⁶³⁵.

1953. According to a paper published by academics Wass and Turnbull in 1995, the benefits of lower prices for port users and consumers and improved international competitiveness failed to materialise, largely because the Government did not appreciate the non-competitive structure of the industry or the effects of the NDLS on the economic performance of the ports, while the costs were substantially underestimated. Consequently, the costs of deregulation have exceeded the benefits. The key problem was not the NDLS *per se* but the failure of successive governments to link employment regulation with any coherent port transport policy. Furthermore, deregulation has ushered in a new era of casual employment in the docks. Changes to working practices in the industry since 1989 have been directed predominantly towards multi-task (horizontal job loading or job enlargement) rather than multi-skilled working (vertical job extension or job enrichment). Last but not least, these authors assert that accident rates had risen sharply since 1989²⁶³⁶.

1954. In 1999, Turnbull and Barton asserted that accident rates in UK ports had more than doubled since 1989 and that many dockers now worked double shifts or extended hours which contravened EU directives on working time²⁶³⁷.

1955. In 1999, *i.e.* ten years after the abolition of the National Dock Labour Scheme, Mc Namara and Tarver noted that the subject had remained controversial²⁶³⁸. On the one hand, they reported:

*Since the end of the scheme, there has been a dramatic increase in the use of casual labour, a decline in the amount of training stevedores receive, an increase in the number of accidents and a decrease in the welfare provisions for dock workers*²⁶³⁹.

²⁶³⁵ Turnbull, P., "The docks after deregulation", *Maritime Policy and Management* 1991, Vol. 18, No. 1, 15-27.

²⁶³⁶ Turnbull, P., and Wass, V., "The great dock and dole swindle: Accounting for the costs and benefits of port transport deregulation and the dock labour compensation scheme", *Public Administration* 1995, (513), 513-534, especially 513, 518-520, 526 and 530.

²⁶³⁷ Barton, H. and Turnbull, P., *Labour Regulation and Economic Performance in the European Port Transport Industry. Full Report of Research Activities and Results*, Cardiff, Cardiff Business School, May 1999, www.esrc.ac.uk, 29.

²⁶³⁸ McNamara, T.M.J and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 13.

The same authors however acknowledge that the abolition of the NDLS has resulted in a revitalised port industry²⁶⁴⁰ and conclude:

The through-put figures of Britain's ports have outstripped European Community predictions. Port operators have been able to invest in new technology and mechanical handling equipment for increasingly unitised cargo. Dockers have become flexible multi-skilled port workers, able to handle different types of cargo, machinery and work. The combination of privatisation, increased capital investment, a reversal of the negotiating-power status quo between union/employee and employer, and a plentiful supply of labour has ensured the industry's success ten years after the NDLS was scrapped. Circumstances may once again force changes on the industry. A restriction of skilled labour supply, caused by demographic trends and changing needs of the industry, may prevent companies from competing on cost terms alone. Furthermore, there may be further legislation on safety of port workers and protection of the environment from port operations. A return to an NDLS will be seen as undesirable by the industry. To avoid it, companies will need to find long-term strategies to cope with change including increased investment and training²⁶⁴¹.

1956. In 2000, Peter Stoney of the University of Liverpool mentioned the following main national benefits of abolition:

- the ex-scheme ports compete on equal terms with non-scheme ports;
- productivity throughout the port industry has improved, resulting in reduced trade handling costs;
- strike action throughout the port industry has been reduced dramatically, after a four-week national strike in protest at abolition;
- greater choice for port users has brought associated economic benefits, although reduced charges appear to have been associated more with containerised cargoes where overmanning was more prevalent before abolition²⁶⁴².

According to the same researcher, the main losers from abolition have been the smaller non-scheme ports, whilst the main beneficiaries have been larger ex-scheme ports like Liverpool. Other significant losers have been trade unions, whose influence has waned considerably²⁶⁴³.

²⁶³⁹ McNamara, T.M.J and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 15.

²⁶⁴⁰ McNamara, T.M.J and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 14.

²⁶⁴¹ McNamara, T.M.J and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 17.

²⁶⁴² Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 19.

²⁶⁴³ Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 19.

Stoney concludes that abolition gave port employers the opportunity to remove excess labour, to reorganise working arrangements and to revise industrial relations practices. Most ports seized these opportunities, but studies have tended to conclude that there has been little switching in trade from continental to British ports as a result of port labour-market reforms, and that increases in trade through British ports as a whole attributable to abolition have been minimal²⁶⁴⁴.

1957. Also, in 2000, Joe Rayner, former Head of Personnel at Tees and Hartlepool Port Authority, mentioned the following short-term effects of abolition:

- the removal immediately of the more outrageous restrictive practices, such as ghosting, wetting and bobbing;
- the removal from the industry of large numbers of employees, many of whom had neither the necessary skills, in particular the ability to drive mobile plant, nor the potential or willingness to acquire them;
- conversely a substantial number of ex-registered dockworkers with both the skills and experience needed by the industry also left – providing a pool for worker co-operatives and contracting companies which have sprung up in the past ten years;
- for the first time in many years employers no longer had a surplus of labour at their disposal;
- new patterns of work and more flexible shift systems were introduced almost immediately²⁶⁴⁵.

Still according to Rayner,

The consequences of these immediate changes across the industry are to be found in improvements in productivity of between 25% and 400%; the development of newly formed stevedoring companies of various types; improvements in ship turnaround times; innovative inward investment to the ports; the re-opening of berths, jetties and docks which had been unable to thrive under the scheme and the ability of the ex-scheme ports now to compete on equal terms with their non-scheme competitors – particularly Felixstowe, Dover and Portsmouth.

[...]

It is a sobering thought that if repeal had come ten years earlier, both coastal trading, which went into terminal decline under the scheme, and the ability to compete for trade with continental ports might well have been retained²⁶⁴⁶.

²⁶⁴⁴ Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 19.

²⁶⁴⁵ Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 6-7.

²⁶⁴⁶ Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 7.

The same commentator states that docker pay remained well into the upper quartile for semi-skilled work²⁶⁴⁷. On the other hand,

*'True casualisation', a term which refers to the use of untrained, inexperienced and low-paid labour on a very short-term basis certainly exists. The cost of capital equipment and customer expectations have however ensured that there is no place within the vast majority of ports and cargo-handling facilities for such an employment relationship*²⁶⁴⁸.

[...]

*Events within the industry in the past decade may well be open to criticism from some perspectives. They should not, however, be seen as a move backwards to the casualisation of the nineteenth century, but rather a move forward to the twenty-first century and its obsessions with flexibility, quality systems, diversity, rapid change and to some extent uncertainty*²⁶⁴⁹.

The author concluded on a positive note:

*Repeal of the NDLS would appear to have played a significant part in the rejuvenation of the ailing port industry in Britain. Under the scheme, those employed appeared to have forgotten that ultimately for the employee to flourish, the employer must also flourish. The reinstatement of this fundamental notion may well have some way to go, but there is every reason to anticipate that the future of all those engaged in an employment relationship in the docks industry is hopeful*²⁶⁵⁰.

1958. During the 2002 debate within ILO on the present-day relevance of ILO Convention No. 137, the Government member of the United Kingdom – quite surprisingly – supported the main objectives of the Convention and the accompanying Recommendation. While the Convention had not been ratified by his country, many of the principles contained therein were implemented in practice, and a national code of practice on safety in docks was being reviewed in consultation with the International Labour Office²⁶⁵¹.

1959. In a paper on port privatisation in the UK of 2007, Baird and Valentine comment that the abolition of the NDLS removed restrictive and archaic employment regulations and helped to

²⁶⁴⁷ Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 8.

²⁶⁴⁸ Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 9.

²⁶⁴⁹ Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 10.

²⁶⁵⁰ Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 10.

²⁶⁵¹ International Labour Conference (Ninetieth Session, 2002), No. 28, Part One, *Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations. Report of the Committee on the Application of Standards*, Provisional Record, <http://www.ilo.org/public/english/standards/reIm/ilc/ilc90/pdf/pr-28p1.pdf>, 28, para 141.

create an environment for the introduction of a range of new and flexible employment practices, which was urgently required due to fundamental technological changes affecting the industry²⁶⁵².

1960. In his 2010 account of the 1989 reform, Dempster writes that concern that repeal of the NDLS would lead to a massive increase in the use of casual or temporary labour has not been borne out. As a matter of fact, the increasing sophistication of cargo handling equipment makes the use of casual labour quite inappropriate²⁶⁵³.

1961. The (in)accuracy of statistics on occupational safety in UK ports has been a matter of debate since 2000. Astonishingly, the lack of adequate accident statistics for port labour had already been criticized in an official Report of Inquiry published back in 1962²⁶⁵⁴, *i.e.* exactly 50 years ago, at a time when dock work along the National Dock Labour Scheme was still in full swing. The most recent statistics published by HSE in 2012 still do not appear to provide a firm basis to assess the safety level in UK ports.

1962. The Department for Work and Pensions' March 2011 strategy document *Good Health and Safety, Good for Everyone*, which presents the next steps in the Government's plans for reform of the health and safety system in Britain, classifies docks as one of the "[l]ower risk areas where proactive inspection will no longer take place"²⁶⁵⁵.

1963. At the time of writing, the Docks Regulations 1988 were being considered for revocation and may be removed from UK law in 2013. If they do go, then the associated Approved Code of Practice will also probably be removed.

²⁶⁵² Baird, A.J. and Valentine, V.F., "Port privatisation in the United Kingdom", in Brooks, M.R. and Cullinane, K. (Eds.), *Devolution, Port Governance and Port Performance*, Amsterdam, Elsevier, 2007, <http://www.sciencedirect.com/science/article/pii/S0739885906170031>, (55), 63.

²⁶⁵³ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 113. The author refers to the 2005 report on behalf of the Department for Transport (see *supra*, para 1910).

²⁶⁵⁴ As a result, the Committee of Inquiry was unable to judge whether the safety record of the docks is or is not reasonably satisfactory. It recommended that the Ministry of Labour should consider whether measures can be taken to enable accidents to dock workers to be identified separately in accident figures for the docks (*Report of the Committee of Inquiry into the Major Ports of Great Britain*, London, HMSO, 1962, 151, paras 427-428).

²⁶⁵⁵ See <https://www.gov.uk/government/publications/good-health-and-safety-good-for-everyone>.

1964. The current approach of the UK Government towards safety in port labour was severely criticised in the January / March 2012 issue of *Hazards magazine*²⁶⁵⁶. The authors launch a scathing attack on HSE's inability to maintain precise accident statistics:

HSE says obtaining statistics on injury rates in ports is problematic because of difficulties “coding” jobs, but believes the rate is “above the national all-industry average.”

And how. To be in line with the 2010/11 national fatality rate of 0.6 deaths per 100,000 workers, docks should experience no more than one death a year. In recent months, the industry has had a fatality rate of around one a month. Depending on which employment figure you use, the last year’s death total means docks are running at a fatality rate of at least five times and possibly over 20 times the UK average.

HSE’s difficulties with its figures, though, mean it is statistically oblivious to the carnage. The deaths are there – it’s just HSE doesn’t know they are there.

[...]

The watchdog subsequently admitted its figures exclude deaths in cargo handling, one of the most deadly jobs in the ports, because the coding problems mean it can’t separate out the dock-related cargo handling fatalities from those in air and road transport. Still, Hazards had little difficulty identifying five dock work deaths, all in jobs enforced by HSE, in the 13 weeks from 23 October 2011 alone.

Unbeknown to HSE, at least three other deaths on the docks do appear in its 2011/2012 fatalities list, which as of 27 February 2012 only included deaths up to the end of 2011. But one is classified as a “service” sector death and the other two are classified as deaths in “manufacturing”.

[...]

Unite believes it can identify at least eight deaths in the last year. And there are others, but they don’t appear in HSE’s statistics because some fall under the remit of the Maritime and Coastguard Agency.

Shuffling the deaths into a series of different industry columns – water transport, cargo handling, service sector, manufacturing – and then amplifying the effect by splitting the casualties across different enforcing agencies so they don’t all appear in a single annual body count, means a shockingly deadly industry can appear relatively benign.

HSE’s inability to recognise deaths on the docks is not just a statistical oddity. If HSE cannot even identify dock-related fatalities in its own published figures, this casts serious doubt on the rationale underpinning its current hands-off approach to dock safety.

[...]

The law becomes irrelevant if there is no-one to police it. Provisional HSE statistics for 2010/11 record 69 major injuries to employees in “water transport,” excluding cargo handling. But figures obtained by Hazards reveal only 7 – just one in 10 – were investigated by HSE. Five years ago, in 2006/07, HSE investigated 18 per cent of fatal and major injuries in the sector. By 2010/11, the official figures obtained by Hazards reveal, this had fallen to just 9 per cent.

²⁶⁵⁶ <http://www.hazards.org/deadlybusiness/docks.htm>. Hazards magazine presents itself as an independent, union-friendly publication (see <http://www.hazards.org/about hazards/index.htm>).

Still according to *Hazards*, Andy Green, the convenor of Unite at Tilbury Docks said:

We intend to expose the dock industry as a lethal environment which requires strict regulation and an HSE inspection and enforcement regime if we are to stem the loss of life in our docks and waterways. [...] Docks are a high risk industry, that's not a slanderous remark or a criticism, it's a fact. The workers within the industry need high health and safety standards, standards with teeth. The industry needs the HSE to undertake a high level of inspection and when needed enforcement. [...] Categorising the dock industry as low risk is bordering on criminal negligence; docks are death traps and should be treated with the respect they deserve. It's time the industry and the government faced the facts.

Finally, the publication reports that Unite raised concerns about excessive agency worker hours and that the Docks Regulations 1988, which unions believe place essential, thorough and specific requirements on a very different type of industry, are in the next tranche of laws to be scrapped under the government's plan to halve the number of health and safety regulations.

A shipping manager in Liverpool with 30 years of experience in the port commented on these "inflammatory" union statements that today, while still very dangerous, the port industry is much safer than twenty years ago and that the safety record improves year on year.

1965. In the opinion of Port Skills and Safety, the current labour regime in UK Ports is satisfactory and also offers sufficient legal certainty. The relationship between port employers and port workers and their respective organisations is considered good. The port labour regime has a positive impact on the competitive position of UK ports. Still according to Port Skills and Safety, UK ports organisations need a skilled, flexible workforce to deliver world class performance. An open and flexible labour market, with employment based on capability and merit, is said to be a priority for continuously improving safety and maintaining growth. Port Skills and Safety is of the opinion that the UK model does on the whole deliver on this need, though there is still work to be done to enhance UK existing workforce skills, to succession plan and train future generations and to continuously improve safety performance, while having regard to affordability.

Still according to Port Skills and Safety, the vast majority of UK port businesses are firmly and clearly of the view that they would not wish to return to a national scheme and that the present open market approach provides the best opportunities for a safe and economically successful sector.

Port Skills and Safety concludes that the current UK port labour model is the best model.

1966. In the same vein, ship owner DFDS considers the port labour regime in the ports of Dover and Immingham satisfactory and has no complaints in relation to legal certainty. The relationship with port workers' unions is good, and the UK port labour regime is seen as the best possible model. Especially in Dover, the ship owner applauds the freedom of choice of the service supplier (in-house or third party), the flexibility of the labour force and the much less stringent labour laws.

1967. With regard to EU action in the field of port labour, Port Skills and Safety believes that any EU action should focus on facilitation of open markets and removal of restrictive practices. Employment should be on the basis of capability and merit. The focus should be on common reasonable employment and safety laws applicable to all workers rather than on particular groups of workers.

1968. Ship owner DFDS sees a need to align rules and regulations on port labour at EU level, ensuring freedom for terminal operators or owners to choose to handle the jobs in-house or outsource to third party companies of their choice.

9.22.8. Developments between January 2013 and September 2014

1968A. In 2014, dockers working for SCA Logistics in the port of Tilbury resorted to strike action over the imposition of zero hours contracts. The Unite members fear the permanent workforce will be replaced by lower-paid agency/casual workers on zero hours contracts. Unite regional officer Jane Jeffery said: "If this is allowed to happen, we will be turning the clock back 50 years to the bad old days when you had to rely on the tap on the shoulder to see if you had work for the day in the docks. Only today, the call will come on your mobile – but the culture will be the same, low waged and insecure employment. Wages could drop substantially, while the cost of living continues to rise." Unite said a collective agreement is in place which allows a certain percentage of agency workers, but this was being severely undermined by the ongoing replacement of permanent trained dockers, who number about 24, by even more agency/casual staff. Jane Jeffery said: "Although the action is for 48-hours, our members are being denied overtime and prevented from booking holidays. Agency labour is being used to cover their duties and working 14 hour days in order to do so"²⁶⁵⁷.

²⁶⁵⁷ Lezard, T., "Zero hours contracts = zero hours work as Tilbury dockers strike over wages", 28 May 2014, <http://union-news.co.uk/2014/05/zero-hours-contracts-zero-hours-work-tilbury-dockers-strike-wages/>.

1968B. In 2013, a Guide to Good Practice on Port Marine Operations was published²⁶⁵⁸. This document is a supplement to the Port Marine Safety Code. It contains more detailed guidance on issues relevant to harbour authorities. It is designed to provide general guidance and examples of how a harbour authority can meet its commitments in terms of compliance with the code. The guidance applies to all harbour authorities in the UK that have statutory powers and duties.

1968C. The Docks Regulations 1988 were revoked in April 2014 because the duties had been replaced by equivalent requirements in more modern legislation. Some of the guidance with 'Approved Code of Practice' (ACOP) status has been transferred from HSE's Safety in docks: Docks Regulations 1988: Approved Code of Practice with Regulations and guidance publication (COP25) to the new document *L148 Safety in Docks: Approved Code of Practice and guidance*²⁶⁵⁹. This new ACOP covers safety in dock operations and is aimed at those who have a duty to comply with provisions of the Health and Safety at Work etc Act 1974. This includes people who control dock premises, suppliers of plant and equipment, dock employers, managers, safety officers, safety representatives and workers. The ACOP has been developed through close consultation with employer and employee representatives, and has been designed to address both the larger end of the industry as well as those engaged in dock work in small harbours. The focus is on helping dutyholders of all sizes to easily understand the key requirements needed to comply with the general duties of the Health and Safety at Work etc Act 1974 and other relevant statutory provisions.

1968D. Recently, several more specific guidance documents on safety in ports were published. These documents have been jointly developed by Port Skills and Safety, the Health and Safety Executive and UNITE the Union. Eight new documents from 2014 along with the existing ten underpin many of the sections in the new "Safety in Docks" L148 ACOP. The new documents cover the following topics:

- SiP011 Info on Occupational Health
- SiP012 Passenger/Cruise
- SiP013 Non-Permanent Employees
- SiP014 Safe Access & Egress
- SiP015 Confined Spaces
- SiP016 Emergencies
- SiP019 Buoyancy Aids
- SiP020 Water Safety.

²⁶⁵⁸ The document can be downloaded from <https://www.gov.uk/government/publications/a-guide-to-good-practice-on-port-marine-operations>.

²⁶⁵⁹ The Code can be downloaded from <http://www.hse.gov.uk/pubns/priced/l148.pdf>.

1968E. Also in 2014, the Health and Safety Authority also launched a consultation process to revise the outdated Dangerous Substances in Harbour Areas Regulations 1987 which govern various aspects of the handling, storage, loading, unloading and carriage of dangerous substances in harbours and harbour areas.

9.22.9. Synopsis

<p>1969.</p> <p align="center">SYNOPSIS OF PORT LABOUR IN THE UNITED KINGDOM²⁶⁶⁰</p>		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 120 commercial ports • Mix of management models • 500.9m tonnes • 6th in the EU for containers • 17th in the world for containers • Appr. 150-195 employers (?) • Appr. 18,000 port workers • Trade union density: between 50 and 95% 	<ul style="list-style-type: none"> • No <i>lex specialis</i> (Dock Labour Scheme abolished in 1989) • No Party to ILO C137 • Company CBAs • All permanent and temporary workers employed under general labour law • No restrictions on temporary agency work • Restrictive working practices eliminated 	<ul style="list-style-type: none"> • Job insecurity (locally) • Shortage of workers (locally)
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Company-based training • Several training centres 	<ul style="list-style-type: none"> • Self-regulation by sector association Port Skills and Safety • National Occupational Standards and National Vocational Qualifications available 	<ul style="list-style-type: none"> • Only minority of temporary work agencies offers training
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No specific statistics available 	<ul style="list-style-type: none"> • Docks Regulations 1988, based on ILO C152 • Code of Practice Safety in Docks • Regulations on handling of dangerous goods • Regulations on Loading and Unloading of Fishing Vessels • No Party to ILO C32 or C152 	<ul style="list-style-type: none"> • Inaccuracy of accident statistics • Dispute over figures between employers and unions • Union concerns over high accident rates despite improvement of safety level • Proposed repeal of Docks Regulations

²⁶⁶⁰ Throughput figures relate to maritime traffic for 2012. Container throughput ranking is for 2011. 'Lex specialis' refers to specific laws and regulations on port labour. Relevant general laws and regulations are not mentioned. 'Issues' refers to matters which may deserve special attention from policy and law makers, enforcement authorities and/or social partners. They do not necessarily relate to incompatibilities with international, EU and/or national law.

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ANNEX B: INVENTORY OF CONVENTIONS, LAWS, REGULATIONS, COLLECTIVE AGREEMENTS AND CASE LAW

1. REGULATORY INSTRUMENTS

1.1. International regulatory instruments

1.1.1. ILO Instruments

- ILO Conventions

Weekly Rest (Industry) Convention, 1921 (ILO Convention No. 14)

Labour Inspection Convention, 1947 (ILO Convention No. 81)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (ILO Convention No. 87)

Right to Organise and Collective Bargaining Convention, 1949 (ILO Convention No. 98)

Discrimination (Employment and Occupation) Convention, 1958 (ILO Convention No. 111)

Workers' Representatives Convention, 1971 (ILO Convention No. 135)

Dock Work Convention, 1973 (ILO Convention No. 137)

Paid Educational Leave Convention, 1974 (ILO Convention No. 140)

Labour Relations (Public Service) Convention, 1978 (ILO Convention No. 151)

Occupational Safety and Health (Dock Work) Convention, 1979 (ILO Convention No. 152)

Human Resources Development Convention, 1975 (ILO Convention No. 142)

Collective Bargaining Convention, 1981 (ILO Convention No. 154)

Night Work Convention, 1990 (ILO Convention No. 171)

Protocol of 1995 to the Labour Inspection Convention, 1947

Private Employment Agencies Convention, 1997 (ILO Convention No. 181)

- ILO Recommendations

Labour Inspection Recommendation, 1947 (ILO Recommendation No. 81)

Discrimination (Employment and Occupation) Recommendation, 1958 (ILO Recommendation No. 111)

Dock Work Recommendation, 1973 (ILO Recommendation No. 145)

Occupational Safety and Health (Dock Work) Recommendation, 1979 (ILO Recommendation No. 160)

Night Work Recommendation, 1990 (ILO Recommendation No. 178)

Human Resources Development Recommendation, 2004 (ILO Recommendation No. 195)

- Other ILO instruments

ILO Code of practice 'Accident prevention on board ship at sea and in port' (1996), http://www.ilo.org/public/libdoc/ilo/1996/96B09_305_engl.pdf

ILO-IMO Code of practice on security in ports (2003), <http://www.imo.org/ourwork/security/instruments/documents/iloimocodeofpracticeenglish.pdf>

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ILO Port Safety and Health Audit manual (2005), http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_161214.pdf.

ILO Guidelines on training in the port sector (2011)

1.1.2. IMO instruments

International Maritime Dangerous Goods Code (IMDG Code) (1965)

International Convention for Safe Containers (CSC) (1972)

(Revised) Code of Safe Practice for Cargo Stowage and Securing (CSS Code) (1991)

Code of Practice for the Safe Loading and Unloading of Bulk Carriers (BLU Code) (1997)

(Revised) Recommendations on the Safe Transport of Dangerous Cargoes and Related Activities in Port Areas (2006)

1.1.2. Other international regulatory instruments

Universal Declaration of Human Rights, adopted on 10 December 1948

International Covenant on Civil and Political Rights, adopted on 16 December 1966

International Covenant on Economic Social and Cultural Rights, adopted on 16 December 1966

UN Convention on the Elimination of All Forms of Discrimination Against Women, adopted on 18 December 1979.

1.2. European regulatory instruments

Regulation No 17 implementing Articles 85 and 86 of the Treaty, *OJ* 21 February 1962, 13/204

Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, *OJ* 4 April 1964, L 56/850

Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community, *OJ* 19 October 1968, L 257/2

Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, *OJ* 19 October 1968, L 257/13

Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, *OJ* 28 June 1973, L 172/14

Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries, *OJ* 31 December 1986, L 378/1

Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport, *OJ* 31 December 1986, L 378/4

Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector, *OJ* 31 December 1987, L 374/1

Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, *OJ* 29 June 1989, L 183/1

Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace, *OJ* 30 December 1989, L 393/1

Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed- duration employment relationship or a temporary employment relationship, *OJ* 29 July 1991, L 206/19

Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), *OJ* 12 December 1992, L 364/7

Commission Decision 21 December 1993, *Rødby*, *OJ* 26 February 1994, L 55/52

Commission Decision 28 June 1995, *Regie der Luchtwegen*, *OJ* 12 September 1995, L 216/8

Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports, *OJ* 25 October 1996, L 272/36

Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (the 'Posted Workers Directive'), *OJ* 21 January 1997, L 18/1

Commission Decision 21 October 1997, *Italian port labour*, OJ 5 November 1997, L 301/17

Commission Decision 14 January 1998, *Frankfurt Airport*, OJ 11 March 1998, L 72/30

Commission Decision 1999/199/EG, 10 February 1999, *Portuguese Airports*, OJ 16 March 1999, L 69/31

Directive 1999/95/EC of the European Parliament and of the Council of 13 December 1999 concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports, OJ 20 January 2000, L 14/29

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ 19 July 2000, L 180/22

Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues, OJ 28 December 2000, L 332/81

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ 2 December 2000, L 303/16

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (the 'Transfers of Undertakings Directive'), OJ 22 March 2001 L 82/16

Commission Decision 2001/834/EC, 18 July 2001 on the State aid implemented by Italy in favour of the port sector OJ 29 November 2001, L 312/5

Directive 2001/96/EC of the European Parliament and of the Council of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers, OJ 16 January 2002, L 13/9

Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ 4 January 2003, L 1/1

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (the 'Working Time Directive'), OJ 18 November 2003, L 299/9

Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ 30 September 2005, L 255/22

Directive 2006/123/EC on services in the internal market, OJ 27 December 2006, L 376/36

Council Directive 2008/104/EC of 19 November 2008 on temporary agency work (the 'Temporary Agency Work Directive'), *OJ* 5 December 2008, L 327/9

Commission Recommendation No. 2009/824/EC of 29 October 2009 on the use of the International Standard Classification of Occupations (ISCO-08), *OJ* 10 November 2009, L 292/31

Commission Regulation (EC) No 1022/2009 of 29 October 2009 amending Regulations (EC) No 1738/2005, (EC) No 698/2006 and (EC) No 377/2008 as regards the International Standard Classification of Occupations (ISCO), *OJ* 30 October 2009, L 283/3

European Convention for the Protection of Human Rights and Fundamental Freedoms

European Social Charter on health and safety and the working environment

Treaty on European Union

Treaty on the Functioning of the European Union

1.3. National regulatory instruments

1.3.1. Belgium

Arrêté Royal du 20 novembre 1906 prescrivant les mesures spéciales à observer dans les entreprises de chargement, de déchargement, de réparation et d'entretien des navires et bateaux

General Regulations concerning Protection at Work which of 11 February 1946 and 27 September 1947 (Algemeen Reglement voor de Arbeidsbescherming (ARAB) / Règlement Général pour la Protection du Travail (RGTP))

Wet van 7 juli 1952 houdende goedkeuring van de Internationale Overeenkomst (nr. 32) betreffende de bescherming tegen ongevallen van arbeiders werkzaam bij het laden en lossen van schepen, door de Internationale Arbeidsconferentie in de loop van haar zestiende zitting, op 27 April 1932, te Genève, aangenomen / Loi du 7 juillet 1952 portant approbation de la Convention internationale (nr. 32) concernant la protection contre les accidents des travailleurs occupés au chargement et au déchargement des bateaux, adoptée à Genève, le 27 avril 1932, par la Conférence internationale du Travail, au cours de sa seizième session

Koninklijk Besluit van 26 november 1968 tot oprichting van een Bestendig bureau bij het Gewestelijk Paritair Comité voor de haven van Antwerpen, genaamd "Nationaal Paritair Comité der Haven van Antwerpen" / Arrêté Royal du 26 novembre 1968 instituant un Bureau permanent a la Commission paritaire régionale pour le port d'Anvers, dénommée " Nationaal Paritair Comité der Haven van Antwerpen

Koninklijk besluit van 6 november 1969 tot vaststelling van de algemene regels voor de werking van de paritaire comités en paritaire subcomités / Arrêté royal du 6 novembre 1969 déterminant les modalités générales de fonctionnement des commissions et des sous-commissions paritaires

Port Labour Act of 8 June 1972 (Wet van 8 juni 1972 betreffende de havenarbeid / Loi du 8 juin 1972 organisant le travail portuaire)

Royal Decree of 12 January 1973 establishing a (national) Joint Committee for ports (Koninklijk besluit van 12 januari 1973 tot oprichting en tot vaststelling van de benaming en van de bevoegdheid van het Paritair Comité van het havenbedrijf / Arrêté royal du 12 janvier 1973 instituant la Commission paritaire des ports et fixant sa dénomination et sa compétence)

Royal Decree of 12 August 1974 establishing (local) Joint Subcommittees for ports (Koninklijk besluit van 12 augustus 1974 tot oprichting en tot vaststelling van de benaming en van de bevoegdheid van paritaire subcomités voor het havenbedrijf en tot vaststelling van het aantal leden ervan / Arrêté royal du 12 août 1974 instituant des sous-commissions paritaires pour des ports, fixant leur dénomination et leur compétence et en fixant leur nombre de membres)

Employment Contract Act of 3 July 1978 (Wet van 3 juli 1978 betreffende de arbeidsovereenkomsten / Loi du 3 juillet 1978 relative aux contrats de travail)

Koninklijk Besluit van 21 november 1985 waarbij algemeen verbindend wordt verklaard de collectieve arbeidsovereenkomst van 8 augustus 1985, gesloten in het Paritair Subcomité voor de haven van Gent houdende het statuut van de vaklui in het Gentse havengebied / Arrêté Royal du 21 novembre 1985 rendant obligatoire la convention collective de travail du 8 août 1985, conclue au sein de la Sous-commission paritaire pour le port de Gand, portant le statut des gens de métier dans la zone portuaire de Gand

Temporary Work Act of 24 July 1987 (Wet van 24 juli 1987 betreffende de tijdelijke arbeid, de uitzendarbeid en het ter beschikking stellen van werknemers ten behoeve van gebruikers / Loi du 24 juillet 1987 sur le travail temporaire, le travail intérimaire et la mise de travailleurs à la disposition d'utilisateurs)

Koninklijk Besluit van 25 oktober 1988 waarbij algemeen verbindend wordt verklaard de collectieve arbeidsovereenkomst van 24 mei 1988, gesloten in het Paritair Subcomité voor de haven van Antwerpen, Nationaal Paritair Comité der haven van Antwerpen genaamd, houdende het statuut van de natiebazen / Arrêté Royal du 25 octobre 1988 rendant obligatoire la convention collective de travail du 24 mai 1988, conclue au sein de la Sous-commission

paritaire pour le port d'Anvers, dénommée " Nationaal Paritair Comité der haven van Antwerpen ", portant le statut des membres-actionnaires de nations

Decreet van 19 April 1995 betreffende de organisatie en de werking van de loodsdienst van het Vlaamse Gewest en betreffende [de brevetten van havenloods en bootman / Décret du 19 avril 1995 relatif à l'organisation et au fonctionnement du service de pilotage de la Région flamande et relatif [aux brevets de pilote de port et de maître d'équipage

Act of 4 August 1996 on Welfare of Workers in the Performance of Their Work (Wet 4 augustus 1996 betreffende het welzijn van de werknemers bij de uitvoering van hun werk / Loi du 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail)

Flemish Ports Decree of 2 March 1999 (Decreet van 2 maart 1999 houdende het beleid en het beheer van de zeehavens)

Koninklijk besluit van 12 november 1999 waarbij algemeen verbindend wordt verklaard de collectieve arbeidsovereenkomst van 15 juni 1998, gesloten in het Paritair Subcomité voor de havens van Oostende en Nieuwpoort, betreffende het kuipers- en schoorderswerk aan boord van zeeschepen in het havengebied Oostende-Nieuwpoort / Arrêté royal du 12 novembre 1999 rendant obligatoire la convention collective de travail du 15 juin 1998, conclue au sein de la Sous-commission paritaire pour les ports d'Ostende et de Nieuport, relative à l'accorage et à l'arrimage des marchandises à bord de navires de mer dans la zone portuaire d'Ostende-Nieuport

Wet van 12 augustus 2000 houdende sociale, budgettaire en andere bepalingen / Loi du 12 août 2000 portant des dispositions sociales, budgétaires et diverses

Koninklijk besluit van 19 maart 2004 tot wijziging van het koninklijk besluit van 20 juli 1973 houdende zeevaartinspectiereglement

Royal Decree of 5 July 2004 on the registration of dockworkers (Koninklijk besluit van 5 juli 2004 betreffende de erkenning van havenarbeiders in de havengebieden die onder het toepassingsgebied vallen van de wet van 8 juni 1972 betreffende de havenarbeid / Arrêté royal du 5 juillet 2004 relatif à la reconnaissance des ouvriers portuaires dans les zones portuaires tombant dans le champ d'application de la loi du 8 juin 1972 organisant le travail portuaire)

Besluit van de Brusselse Hoofdstedelijke Regering van 18 november 2004 betreffende de voorschriften en procedures voor veilig laden en lossen van bulkschepen; Arrêté du Gouvernement wallon du 19 mai 2005 établissant des exigences et des procédures harmonisées pour le chargement et le déchargement sûrs des vraquiers

Decreet van 17 maart 2006 tot omzetting van Richtlijn 2001/96/EG van het Europees Parlement en de Raad van 4 december 2001 tot vaststelling van geharmoniseerde voorschriften en procedures voor het veilig laden en lossen van bulkschepen

Besluit van de Vlaamse Regering van 20 oktober 2006 tot uitvoering van het decreet van 17 maart 2006 tot omzetting van Richtlijn 2001/96/EG van het Europees Parlement en de Raad van 4 december 2001 tot vaststelling van geharmoniseerde voorschriften en procedures voor het veilig laden en lossen van bulkschepen

1.3.2. Bulgaria

Act of 28 January 2000 on Maritime Areas, Inland Waterways and Ports of the Republic of Bulgaria (Закон за морските пространства, вътрешните водни пътища и пристанища на Република България, обн. ДВ. бр. 12 от 11.02.2000 г., посл. изм., ДВ. бр. 53 от 13.07.2012 г.)

Ordinance No. 18 of 3 December 2004 on the registration of port operators in Bulgaria (Наредба № 18 от 3 декември 2004 г. за регистрацията на пристанищните оператори в република България)

Ordinance No. 19 of 9 December 2004 on the registration of ports in the Republic of Bulgaria (Наредба № 19 от 9 декември 2004 г. за регистрацията на пристанищата на република България)

Ordinance No. 9 of 29 July 2005 on the Requirements for Operational Suitability of Ports (Наредба № 9 от 29.07.2005 г. за изискванията за експлоатационна годност на пристанищата)

Ordinance No. 12 of 30 December 2005 (Наредба № 12 от 30.12.2005 г. за осигуряване на здравословни и безопасни условия на труд при извършване на товарно-разтоварни работи)

Разпореждане № 91 от 5.09.2006 г. относно изискванията и процедурите за безопасно товарене и разтоварване на кораби за насипни товари

Bulgarian Labour Inspection Act of 28 November 2008 (Закон за инспектиране на труда)

Law on Amendments and Supplements to the Labour Code of 15 November 2012

1.3.3. Croatia

Zakon o zaštiti na radu, 1996

Maritime Domain and Seaports Act (OG no. 158/03,100/04, 141/06 and 38/09)

Labour Act (Zakona o Radu) of 4 December 2009 (Text No. 3635)
Pravilnik o Poslovima s Posebnim Uvjetima Rada (NN 5/84)

1.3.4. Cyprus

Port Workers (Regulation of Employment) Act of 31 December 1952 (Ο περί Λιμενεργατών (Ρύθμιση Απασχόλησης) Νόμος (ΚΕΦ.184))

Port Workers (Regulation of Employment) Regulations of 1952 (Οι περί Λιμενεργατών (Ρύθμιση Απασχόλησης) Κανονισμοί του 1952)

Cyprus Ports Authority Act No. 38 of 1973 (Ο περί Αρχής Λιμένων Κύπρου Νόμος του 1973 (N. 38/1973))

Occupational Safety and Health in Dockwork Regulations (No. 349/1991) (Οι περί Επαγγελματικής Ασφάλειας και Υγείας στις Εργασίες Λιμένων Κανονισμοί του 1991)

Safety and Health at Work Act of 1996 (Ο περί Ασφάλειας και Υγείας στην Εργασία Νόμος του 1996 (N. 89(I)/1996))

Act No. 70(I) of 2000 (Ο περί Ειδικού Τέλους επί των Απολαβών των Λιμενεργατών και Σημειωτών Νόμος τον 2000 (N. 70(I)/2000))

Regulations on the Manual Handling of Loads (Οι περί Ασφάλειας και Υγείας στην Εργασία (Χειρωνακτική Διακίνηση Φορτίων) Κανονισμοί του 2001)

Occupational Safety and Health in Dockwork (Medical Examinations) Order (No. 321/2002) (Το περί Επαγγελματικής Ασφάλειας και Υγείας στις Εργασίες Λιμένων (Ιατρικές Εξετάσεις) Διάταγμα του 2002)

Ο περί Εναρμονισμένων Απαιτήσεων και Διαδικασιών Ασφαλούς Φόρτωσης και Εκφόρτωσης των Φορηγών Πλοίων Μεταφοράς Φορτίου Χύδην Νόμος του 2004 (28(I)/2004)

Occupational Safety and Health in Dockwork (Identifying Competent International Organisations) Order (No. 55/2008) (Επαγγελματικής Ασφάλειας και Υγείας στις Εργασίες Λιμένων (Αναγνώριση Αρμόδιων Διεθνών Οργανώσεων) Διάταγμα του 2008)

Code of Practice for the Training of Mobile Crane Operators (Κώδικας Πρακτικής για την Εκπαίδευση Χειριστών Κινητών Γερανών)

1.3.5. Denmark

Copenhagen Freeport Act of 31 March 1960 (Lov om Københavns frihavn (Lov nr 141 af 31/03/1960))

Executive Order on Loading and Unloading of Ships of 18 May 1965 (Bekendtgørelse (BEK nr 181 af 18/05/1965) om regulativ for lastning og losning af skibe)

Circular No. 3057 of 29 September 1977 on Collaboration between the Danish Working Environment Authority and the Danish Maritime Authority on the Implementation of the Regulations concerning Loading and Unloading Ships (Cirkulære om samarbejde mellem arbejdstilsynet og skibstilsynet om gennemførelse af regulativ for lastning og losning af skibe)

Port of Copenhagen Concession of 31 March 1980 (Bekendtgørelse af koncession for Københavns Frihavns- og Stevedoreselskab A/S til i Københavns Frihavn at udøve frihavnsvirksomhed (BEK nr 144 af 31/03/1980))

Royal Decree of 3 November 1989 (Bekendtgørelse (18 april 1991) af ILO-konvention nr. 152 af 25. juni 1979 om sikkerhed og sundhed i forbindelse med havnearbejde)

Order on Hoists and Winches (Bekendtgørelse om hejseredskaber og spil (BEK nr 1101 af 14/12/1992))

Ports Act of 28 May 1999 (Lov om havne (Lov nr 326 af 28/05/1999). A consolidated version was published under Bekendtgørelse af lov om havne (LBK nr 457 af 23/05/2012))

Regulations on Lifting Gear On Board Ships (Teknisk forskrift om hejsemidler og lossegrej m.v. i skibe (BEK nr 11643 af 12/10/2000))

Teknisk forskrift nr. 9639 af 09/10/2002 om lastning og losning af bulkskibe

Standard Regulations for the Observance of Good Order in Danish Commercial Ports (Bekendtgørelse om standardreglement for overholdelse af orden i danske erhvervshavne (BEK nr 1146 af 25/11/2004))

Metro Company and City Development Company Act of 6 June 2007 (Lov om Metroselskabet I/S og Arealudviklingsselskabet I/S (Lov nr 551 af 06/06/2007))

Working Environment Act (Bekendtgørelse af lov om arbejdsmiljø (LBK nr. 1072 af 7. september 2010))

Bekendtgørelse om arbejdsmiljøfaglige uddannelser (BEK nr 1088 af 28/11/2011)

1.3.6. Estonia

Ports Act of 22 October 1997 (Sadamaseadus Vastu võetud 22. oktoobril 1997. A)

Occupational Health and Safety Act of 16 June 1999 (Töötervishoiu ja tööohutuse seadus)

Regulation No. 106 of 6 December 2000 (Nõuded kemikaali hoiukohale, peale-, maha- ja ümberlaadimiskohale ning teistele kemikaali käitlemiseks vajalikele ehitistele sadamas, autoterminalis, raudteejaamas ja lennujaamas ning erinõuded ammooniumnitraadi käitlemisele vastu võetud teede- ja sideministri 6.12.2000. a määrusega nr 106)

Regulation No. 26 of the Minister of Social Affairs of 27 February 2001 (Raskuste käsitsi teisaldamise töötervishoiu ja tööohutuse nõuded)

Regulation No 105 of the Government of the Republic of 20 March 2001 (Ohtlike kemikaalide ja neid sisaldavate materjalide kasutamise töötervishoiu ja tööohutuse nõuded)

Employment Contracts Act of 17 December 2008 (Töölepingu seadus)

Puistlastilaevade lisaohutusnõuded, puistlastilaevade ohutu laadimise ja lossimise nõuded, puistlastilaevade terminalide ohutusnõuded ning laeva kapteni ja terminali esindaja teavitamise kord

1.3.7. Finland

Asetus (86/1976) satamissa käytettyjen uusien lastinkäsittelymenetelmien sosiaalisia vaikutuksia koskevan yleissopimuksen voimaansaattamisesta

Asetus (381/1982) työturvallisuutta ja- terveyttä satamatyössä koskevan yleissopimuksen voimaansaattamisesta

Act No. 955/1976 on Municipal Port Ordinances and Traffic Dues (Laki (955/1976) kunnallisista satamajärjestyksistä ja liikennemaksuista)

Act No. 1156/1994 on Private Public Ports (Laki (1156/1994) yksityisistä yleisistä satamista)

Act No. 55/2001 on Employment Contracts (Työsopimuslaki (55/2001))

Occupational Safety and Health Act (Työturvallisuuslaki (738/2002))

Laki eräiden irtolastialusten turvallisesta lastaamisesta ja lastin purkamisesta (2004/1206);
Liikenne- ja viestintäministeriön asetus eräiden irtolastialusten turvallisesta lastaamisesta ja lastin purkamisesta

Government Decree No. 633/2004 on Occupational Safety in Loading and Unloading of Ships (Valtioneuvoston asetus (633/2004) alusten lastauksen ja purkamisen työturvallisuudesta)

Government Decree No. 251/2005 on the Transport and Temporary Storage of Dangerous Goods in a Port Area (Valtioneuvoston asetus (251/2005) vaarallisten aineiden kuljetuksesta ja tilapäisestä säilytyksestä satama-alueella)

1.3.8. France

Loi du 28 juin 1941 relative à l'organisation du travail de manutention dans les ports maritimes de commerce

Loi n° 47-1746 du 6 septembre 1947 sur l'organisation du travail de manutention dans les ports

Décret n° 55-314 du 14 mars 1955 portant application aux navires des dispositions prévues par la convention n° 32 du Bureau international du travail concernant la protection des travailleurs occupés au chargement et au déchargement

Décret n° 56-321 du 27 mars 1956 portant codification sous le nom de code des ports maritimes des textes législatifs les concernant

Décret n° 78-487 du 22 mars 1978 portant codification des textes législatifs concernant les ports maritimes (première partie: Législative) et revision du code des ports maritimes

Décret n° 81-245 du 9 mars 1981 portant publication de la convention internationale du travail n° 137 concernant les répercussions sociales des nouvelles méthodes de manutention dans les ports, adoptée par la conférence à sa cinquante-huitième session, à Genève, le 25 juin 1973

Loi n° 85-611 du 18 juin 1985 autorisant l'approbation de la Convention internationale du travail n° 152 concernant la sécurité et l'hygiène du travail dans les manutentions portuaires

Décret n°86-1274 du 10 décembre 1986 portant publication de la Convention internationale du travail n° 152 concernant la sécurité et l'hygiène du travail dans les manutentions portuaires, faite à Genève le 25 juin 1979

Arrêté du 23 novembre 1987 relatif à la sécurité des navires; see especially Division 214 of the Règlement

Loi n° 92-496 du 9 juin 1992 modifiant le régime du travail dans les ports maritimes

Arrêté du 25 septembre 1992 désignant les ports maritimes de commerce de la métropole comportant la présence d'une main-d'oeuvre d'ouvriers dockers professionnels intermittents et portant constitution de bureaux centraux de la main-d'oeuvre

Décret n° 92-1130 du 2 octobre 1992 portant modification du livre V du code des ports maritimes (deuxième partie: Réglementaire) relatif au régime du travail dans les ports maritimes

Arrêté du 29 septembre 1994 portant extension de la convention collective nationale de la manutention portuaire complétée par un avenant

Arrêté du 26 avril 1996 pris en application de l'article R. 237-1 du code du travail et portant adaptation de certaines règles de sécurité applicables aux opérations de chargement et de déchargement effectuées par une entreprise extérieure

Décret n°98-1084 du 2 décembre 1998 relatif aux mesures d'organisation, aux conditions de mise en oeuvre et aux prescriptions techniques auxquelles est subordonnée l'utilisation des équipements de travail et modifiant le code du travail

Loi n° 99-1140 du 29 décembre 1999 de financement de la sécurité sociale pour 2000

Arrêté du 7 juillet 2000 fixant la liste des ports susceptibles d'ouvrir droit à l'allocation de cessation anticipée d'activité des travailleurs de l'amiante en faveur des ouvriers dockers professionnels

Loi n° 2001-1246 du 21 décembre 2001 de financement de la sécurité sociale pour 2002

Ordonnance n° 2004-691 du 12 juillet 2004 portant diverses dispositions d'adaptation au droit communautaire dans le domaine des transports

Décret n° 2005-255 du 14 mars 2005 portant dispositions d'adaptation au droit communautaire dans le domaine portuaire et modifiant le code des ports maritimes

Loi n° 2008-660 du 4 juillet 2008 portant réforme portuaire

Loi n° 2008-789 du 20 août 2008 portant rénovation de la démocratie sociale et réforme du temps de travail

Décret n° 2008-1032 du 9 octobre 2008 pris en application de la loi n° 2008-660 du 4 juillet 2008 portant réforme portuaire et portant diverses dispositions en matière portuaire

Décret n° 2008-1240 du 28 novembre 2008 pris en application de l'article 11 de la loi n° 2008-660 du 4 juillet 2008 portant réforme portuaire

Ordonnance n° 2010-1307 du 28 octobre 2010 relative à la partie législative du Code des Transports

Arrêté du 21 février 2011 fixant le montant de l'indemnité de garantie des ouvriers dockers professionnels intermittents Arrêté du 21 février 2011 fixant le montant de l'indemnité de garantie des ouvriers dockers professionnels intermittents

Arrêté du 6 août 2012 portant extension de la convention collective nationale unifiée "ports et manutention" et d'accords et d'un avenant conclus dans le cadre de ladite convention collective (n° 3017)

Maritime Ports Code (Code des Ports Maritimes)

Labour Code (Code du Travail)

Transport Code (Code des Transports)

1.3.9. Germany

Gesetz zur Ordnung der nationalen Arbeit vom 20. Januar 1934; 12. Verordnung zur Durchführung des Gesetzes zur Ordnung der nationalen Arbeit (Bildung und Aufgaben von Gesamthafenbetrieben) vom 8. April 1935

Gesetz zu dem Übereinkommen Nr. 152 der Internationalen Arbeitsorganisation vom 25. Juni 1979 über den Arbeitsschutz bei der Hafearbeit vom 21. Juli 1982

Act on the Establishment of a Special Employer of Port Workers of 3 August 1950 (Gesetz über die Schaffung eines besonderen Arbeitgebers für Hafearbeiter, 3. August 1950)

Regulations on the Handling of Dangerous Goods in the Port of Hamburg (Landesgefahrgutverordnung Hafen Hamburg (LGGVHH) Vom 4. Juni 1996)

Act on the Implementation of Protective Measures for the Improvement of Safety and Health of Employees at Work (Gesetz über die Durchführung von Maßnahmen des Arbeitsschutzes zur

Verbesserung der Sicherheit und des Gesundheitsschutzes der Beschäftigten bei der Arbeit (Arbeitsschutzgesetz - ArbSchG), 7. August 1996)

Vierte Schiffssicherheitsanpassungsverordnung vom 25. September 2002

Erste Gesetz zur Änderung des Arbeitnehmerüberlassungsgesetzes - Verhinderung von Missbrauch der Arbeitnehmerüberlassung (1. AÜGÄndG) vom 28. April 2011

Accident Prevention Rule BGV C 21 on Port Labour (Unfallverhütungsvorschrift BGV C 21 Hafendarbeit)

Federal Guidelines on Container Packing (Richtlinien für das Packen von Lading außer Schüttgut in oder auf Beförderungseinheiten (CTUs) bei Beförderung mit allen Verkehrsträgern zu Wasser und zu Lande)

Gesetz betreffend der Anstellung eines Hafenspektors

Temporary Agency Work Act (Gesetz zur Regelung der Arbeitnehmerüberlassung (Arbeitnehmerüberlassungsgesetz - AÜG))

Bürgerliches Gesetzbuch, BGB

Sozialgesetzbuch, SGB

1.3.10. Greece

Act No. 5167/1932 on Port Workers (Νόμος 5167 ΠΕΡΙ ΤΡΟΠΟΠΟΙΗΣΕΩΣ ΚΑΙ ΣΥΜΠΛΗΡΩΣΕΩΣ ΤΟΥ ΝΟΜΟΥ 5453 ΤΗΣ 17 ΜΑΡΤΙΟΥ 1928 "ΠΕΡΙ ΚΥΡΩΣΕΩΣ ΤΟΥ ΑΠΟ 12 ΝΟΕΜΒΡΙΟΥ 1927 Ν.Δ. "ΠΕΡΙ ΚΥΡΩΣΕΩΣ ΤΟΥ ΑΠΟ 26 ΜΑΡΤΙΟΥ 1926 Ν.Δ. ΠΕΡΙ ΡΥΘΜΙΣΕΩΣ ΤΩΝ ΦΟΡΤΟΕΚΦΟΡΤΩΤΙΚΩΝ ΕΡΓΑΣΙΩΝ ΕΙΣ ΤΟΥΣ ΛΙΜΕΝΑΣ ΤΟΥ ΚΡΑΤΟΥΣ")

Legislative Decree No. 1254/1949 on Port Workers (Νομοθετικό Διάταγμα 1254 ΠΕΡΙ ΤΡΟΠΟΠΟΙΗΣΕΩΣ ΚΑΙ ΣΥΜΠΛΗΡΩΣΕΩΣ ΕΝΙΩΝ ΔΙΑΤΑΞΕΩΝ ΤΩΝ ΠΕΡΙ ΦΟΡΤΟΕΚΦΟΡΤΩΣΕΩΝ ΝΟΜΩΝ)

Act No. 1082/1980 (Νόμος 1082 ΠΕΡΙ ΤΡΟΠΟΠΟΙΗΣΕΩΣ, ΑΝΤΙΚΑΤΑΣΤΑΣΕΩΣ ΚΑΙ ΣΥΜΠΛΗΡΩΣΕΩΣ ΔΙΑΤΑΞΕΩΝ ΤΙΝΩΝ ΕΝΙΩΝ ΕΡΓΑΤΙΚΩΝ ΝΟΜΩΝ ΚΑΙ ΡΥΘΜΙΣΕΩΣ ΣΥΝΑΦΩΝ ΘΕΜΑΤΩΝ)

Presidential Decree No. 31/1990 on the qualifications of crane and machinery operators (Προεδρικό Διάταγμα 31 ΕΠΙΒΛΕΨΗ ΤΗΣ ΛΕΙΤΟΥΡΓΙΑΣ, ΧΕΙΡΙΣΜΟΣ ΚΑΙ ΣΥΝΤΗΡΗΣΗ ΜΗΧΑΝΗΜΑΤΩΝ ΕΚΤΕΛΕΣΗΣ ΤΕΧΝΙΚΩΝ ΕΡΓΩΝ)

Presidential Decree No. 405/1996 (Προεδρικό Διάταγμα 405 ΚΑΝΟΝΙΣΜΟΣ ΦΟΡΤΩΣΗΣ, ΕΚΦΟΡΤΩΣΗΣ ΔΙΑΚΙΝΗΣΗΣ ΚΑΙ ΠΑΡΑΜΟΝΗΣ ΕΠΙΚΙΝΔΥΝΩΝ ΕΙΔΩΝ ΣΕ ΛΙΜΕΝΕΣ ΚΑΙ ΜΕΤΑΦΟΡΑ ΑΥΤΩΝ ΔΙΑ ΘΑΛΑΣΣΗΣ)

Act 2688/1999 (Νόμος 2688 ΜΕΤΑΤΡΟΠΗ ΤΟΥ ΟΡΓΑΝΙΣΜΟΥ ΛΙΜΕΝΟΣ ΠΕΙΡΑΙΩΣ ΚΑΙ ΤΟΥ ΟΡΓΑΝΙΣΜΟΥ ΛΙΜΕΝΟΣ ΘΕΣ/ΝΙΚΗΣ ΣΕ ΑΝΩΝΥΜΕΣ ΕΤΑΙΡΕΙΕΣ)

Act No. 2738/1999 (Νόμος 2738 ΣΥΛΛΟΓΙΚΕΣ ΔΙΑΠΡΑΓΜΑΤΕΥΣΕΙΣ ΣΤΗ ΔΗΜΟΣΙΑ ΔΙΟΙΚΗΣΗ ΜΟΝΙΜΟΠΟΙΗΣΕΙΣ ΣΥΜΒΑΣΙΟΥΧΩΝ ΑΟΡΙΣΤΟΥ ΧΡΟΝΟΥ ΚΑΙ ΑΛΛΕΣ ΔΙΑΤΑΞΕΙΣ)

Act No. 2932/2001 (Νόμος 2932 ΕΛΕΥΘΕΡΗ ΠΑΡΟΧΗ ΥΠΗΡΕΣΙΩΝ ΣΤΙΣ ΘΑΛΑΣΣΙΕΣ ΕΝΔΟΜΕΤΑΦΟΡΕΣ - ΣΥΣΤΑΣΗ ΓΕΝΙΚΗΣ ΓΡΑΜΜΑΤΕΙΑΣ ΛΙΜΕΝΩΝ ΚΑΙ ΛΙΜΕΝΙΚΗΣ ΠΟΛΙΤΙΚΗΣ - ΜΕΤΑΤΡΟΠΗΣ ΛΙΜΕΝΙΚΩΝ ΤΑΜΕΙΩΝ ΣΕ ΑΝΩΝΥΜΕΣ ΕΤΑΙΡΕΙΕΣ ΚΑΙ ΑΛΛΕΣ ΔΙΑΤΑΞΕΙΣ)

Act No. 2987/2002 (Νόμος 2987 ΤΡΟΠΟΠΟΙΗΣΗ ΤΩΝ ΔΙΑΤΑΞΕΩΝ ΤΟΥ Ν. 959/1979 «ΠΕΡΙ ΝΑΥΤΙΚΗΣ ΕΤΑΙΡΕΙΑΣ» (ΦΕΚ 192 Α) ΚΑΙ ΡΥΘΜΙΣΗ ΑΛΛΩΝ ΘΕΜΑΤΩΝ ΑΡΜΟΔΙΟΤΗΤΑΣ ΤΟΥ ΥΠΟΥΡΓΕΙΟΥ ΕΜΠΟΡΙΚΗΣ ΝΑΥΤΙΛΙΑΣ)

Presidential Decree No. 66/2004 (Προεδρικό Διάταγμα 66 ΚΑΘΟΡΙΣΜΟΣ ΕΝΑΡΜΟΝΙΣΜΕΝΩΝ ΑΠΑΙΤΗΣΕΩΝ ΚΑΙ ΔΙΑΔΙΚΑΣΙΩΝ ΓΙΑ ΤΗΝ ΑΣΦΑΛΗ ΦΟΡΤΩΣΗ ΚΑΙ ΕΚΦΟΡΤΩΣΗ ΤΩΝ Φ/Γ ΠΛΟΙΩΝ ΜΕΤΑΦΟΡΑΣ ΧΥΔΗΝ ΦΟΡΤΙΩΝ ΣΕ ΣΥΜΜΟΡΦΩΣΗ ΠΡΟΣ ΤΗΝ ΟΔΗΓΙΑ 2001/96/ΕΚ ΤΟΥ ΕΥΡΩΠΑΪΚΟΥ ΚΟΙΝΟΒΟΥΛΙΟΥ ΚΑΙ ΤΟΥ ΣΥΜΒΟΥΛΙΟΥ ΤΗΣ 4/12/2001)

Act No. 3755/2009 (Νόμος 3755 ΚΥΡΩΣΗ ΤΗΣ ΣΥΜΒΑΣΗΣ ΠΑΡΑΧΩΡΗΣΗΣ ΤΩΝ ΛΙΜΕΝΙΚΩΝ ΕΓΚΑΤΑΣΤΑΣΕΩΝ ΤΩΝ ΠΡΟΒΛΗΤΩΝ II ΚΑΙ III ΤΟΥ ΣΤΑΘΜΟΥ ΕΜΠΟΡΕΥΜΑΤΟΚΙΒΩΤΙΩΝ ΤΗΣ ΑΝΩΝΥΜΗΣ ΕΤΑΙΡΕΙΑΣ «ΟΡΓΑΝΙΣΜΟΣ ΛΙΜΕΝΟΣ ΠΕΙΡΑΙΩΣ Α.Ε.» (ΟΛΠ Α.Ε.) ΚΑΙ ΡΥΘΜΙΣΗ ΣΥΝΑΦΩΝ ΘΕΜΑΤΩΝ)

Internal Regulations on Organisation and Operations (Αριθμ. 8311.2/01/10/28-01-2010 Νέος Κανονισμός Εσωτερικής Οργάνωσης και Λειτουργίας (Κ.Ε.Ο.Λ.) της εταιρείας Οργανισμός Λιμένος Πειραιώς ανώνυμη εταιρεία (ΟΛΠ Α.Ε.))

Act No. 3846 of 2010 on Guarantees related to Occupational Safety (Νόμος 3846 Εγγυήσεις για την Εργασιακή Ασφάλεια και άλλες διατάξεις)

Act No. 3850/2010 (Νόμος 3850 ΚΥΡΩΣΗ ΤΟΥ ΚΩΔΙΚΑ ΝΟΜΩΝ ΓΙΑ ΤΗΝ ΥΓΕΙΑ ΚΑΙ ΤΗΝ ΑΣΦΑΛΕΙΑ ΤΩΝ ΕΡΓΑΖΟΜΕΝΩΝ)

Act No. 3919/2011 (Νόμος 3919 ΑΡΧΗ ΤΗΣ ΕΠΑΓΓΕΛΜΑΤΙΚΗΣ ΕΛΕΥΘΕΡΙΑΣ, ΚΑΤΑΡΓΗΣΗ ΑΔΙΚΑΙΟΛΟΓΗΤΩΝ ΠΕΡΙΟΡΙΣΜΩΝ ΣΤΗΝ ΠΡΟΣΒΑΣΗ ΚΑΙ ΑΣΚΗΣΗ ΕΠΑΓΓΕΛΜΑΤΩΝ)

Act No. 4024/2011 (Νόμος 4024 ΟΣΥΝΤΑΞΙΟΔΟΤΙΚΕΣ ΡΥΘΜΙΣΕΙΣ, ΕΝΙΑΙΟ ΜΙΣΘΟΛΟΓΙΟ - ΒΑΘΜΟΛΟΓΙΟ, ΕΡΓΑΣΙΑΚΗ ΕΦΕΔΡΕΙΑ ΚΑΙ ΑΛΛΕΣ ΔΙΑΤΑΞΕΙΣ ΕΦΑΡΜΟΓΗΣ ΤΟΥ ΜΕΣΟΠΡΟΘΕΣΜΟΥ ΠΛΑΙΣΙΟΥ ΔΗΜΟΣΙΟΝΟΜΙΚΗΣ ΣΤΡΑΤΗΓΙΚΗΣ 2012-2015)

Act No. 4046/2012 (ΕΓΚΡΙΣΗ ΤΩΝ ΣΧΕΔΙΩΝ ΣΥΜΒΑΣΕΩΝ ΧΡΗΜΑΤΟΔΟΤΙΚΗΣ ΔΙΕΥΚΟΛΥΝΣΗΣ ΜΕΤΑΞΥ ΤΟΥ ΕΥΡΩΠΑΙΚΟΥ ΤΑΜΕΙΟΥ ΧΡΗΜΑΤΟΠΙΣΤΩΤΙΚΗΣ ΣΤΑΘΕΡΟΤΗΤΑΣ (Ε.Τ.Χ.Σ.), ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ ΚΑΙ ΤΗΣ ΤΡΑΠΕΖΑΣ ΤΗΣ ΕΛΛΑΔΟΣ, ΤΟΥ ΣΧΕΔΙΟΥ ΤΟΥ ΜΝΗΜΟΝΙΟΥ ΣΥΝΕΝΝΟΗΣΗΣ ΜΕΤΑΞΥ ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ, ΤΗΣ ΕΥΡΩΠΑΙΚΗΣ ΕΠΙΤΡΟΠΗΣ ΚΑΙ ΤΗΣ ΤΡΑΠΕΖΑΣ ΤΗΣ ΕΛΛΑΔΟΣ ΚΑΙ ΑΛΛΕΣ ΕΠΕΙΓΟΥΣΕΣ ΔΙΑΤΑΞΕΙΣ ΓΙΑ ΤΗ ΜΕΙΩΣΗ ΤΟΥ ΔΗΜΟΣΙΟΥ ΧΡΕΟΥΣ ΚΑΙ ΤΗ ΔΙΑΣΩΣΗ ΤΗΣ ΕΘΝΙΚΗΣ ΟΙΚΟΝΟΜΙΑΣ)

Circular No. 3643/249 of 28 February 2012 (Αριθ. πρωτ.: 3643/249/28.2.2012 Εφαρμογή των άρθρων 1, 2 και 3 του Ν. 3919/2011 (ΦΕΚ 32 Α') και του άρθρου 1 παρ. 16 του Ν. 4038/2012 (ΦΕΚ 14 Α') Αθήνα 28-2-2012 Α.Π.: 3643/249)

Emergency Act No. 38/2012 (Ρύθμιση θεμάτων για την εφαρμογή της παρ. 6 του άρθρου 1 του ν. 4046/2012)

Joint Ministerial Decision No. 9296/300/1.4.2013 on the Conditions and Procedure for the Training and Certification of Cargo-handling Workers (Κ.Υ.Α. Αριθ. 9296/300/1.4.2013 Προϋποθέσεις και Διαδικασία Πιστοποίησης Επαγγελματικής Κατάρτισης Φορτοεκφορτωτών Ξηράς – Λιμένος)

Joint Ministerial Decision No. 14366/416/9.5.2013 on the National Register of Cargo Workers (Κ.Υ.Α. Αριθμ. 14366/416 Εθνικό Μητρώο Φορτοεκφορτωτών – καθορισμός δικαιο- λογητικών για την άσκηση του επαγγέλματος του Φορτοεκφορτωτή ξηράς και λιμένος)

Joint Ministerial Decision No. 1507/437/15.5.2013 on a General Regulation of Port Cargo Work (Κ.Υ.Α. Αριθ. 15107/437 Γενικός Ενιαίος Κανονισμός Εργασίας Διεξαγωγής των Φορτοεκφορτωτικών Εργασιών Λιμένος)

1.3.11. Ireland

Docks (Safety, Health and Welfare) Regulations, 1960

Docks (Safety, Health and Welfare) (Forms) Regulations, 1965

Dangerous Substances (Oil Jetties) Regulations, 1979

Safety, Health and Welfare at Work (Biological Agents) Regulations 1994

Harbours Acts 1996

Harbours (Amendment) Act 2000

Safety, Health and Welfare at Work (Chemical Agents) Regulations 2001

Safety, Health and Welfare at Work (Confined Spaces) Regulations 2001

European Communities (Safe Loading and Unloading of Bulk Carriers) Regulations 2003

Safety, Health and Welfare at Work Act 2005

Safety Health and Welfare at Work (Construction) Regulations, 2006

Safety, Health and Welfare at Work (General Application) Regulations 2007

CLP Regulations (Classification, Labelling and Packaging of substances and mixtures) Regulations 2008

Harbours (Amendment) Act 2009

Industrial Relations Act

Payment of Wages Act

Protection of Employees (Fixed-Term Work) Act

REACH Regulations (Registration, Evaluation, Authorisation and Restriction of Chemicals)

Terms of Employment (Information) Acts

Unfair Dismissals Acts

1.3.12. Italy

Act No. 833/1978 on the establishment of the national health service (Legge 23 dicembre 1978, n. 833, Istituzione del servizio sanitario nazionale)

Legge 10 aprile 1981, n. 157, Ratifica ed esecuzione delle convenzioni numeri 74, 109, 129, 132, 134, 135, 136, 137, 138 e 139 dell'Organizzazione internazionale del lavoro

L. 19 novembre 1984, n. 862, Ratifica ed esecuzione delle convenzioni dell'Organizzazione internazionale del lavoro (OIL) numeri 148, 149, 150, 151 e 152 adottate nel corso della 63^a, della 64^a e della 65^a sessione della Conferenza generale

Act No. 84 of 28 January 1994 on the reform of port legislation (Legge 28 gennaio 1994, n. 84, Riordino della legislazione in materia portuale)

Decree No. 585/1995 on the regulations governing the issuance, suspension and revocation of authorisations for the exercise of port activities (Decreto 31 marzo 1995, n. 585, Regolamento recante la disciplina per il rilascio, la sospensione e la revoca delle autorizzazioni per l'esercizio di attivita' portuali)

Decree-Law No. 535/1996 on urgent measures for the port, maritime, shipbuilding and shipping sectors as well as measures to ensure certain air connections (Decreto-Legge 21 ottobre 1996, n. 535, Disposizioni urgenti per i settori portuale, marittimo, cantieristico ed armatoriale, nonche' interventi per assicurare taluni collegamenti aerie)

Legge 23 dicembre 1996, n. 647, Conversione in legge, con modificazioni, del decreto-legge 21 ottobre 1996, n. 535, recante disposizioni urgenti per i settori portuale, marittimo, cantieristico ed armatoriale, nonche' interventi per assicurare taluni collegamenti aerie

Decree-Law No. 669/1996 on urgent provisions on tax, financial and accounting matters to complete the budgetary measures for 1997 (Decreto-Legge 31 dicembre 1996, n. 669, Disposizioni urgenti in materia tributaria, finanziaria e contabile a completamento della manovra di finanza pubblica per l'anno 1997)

Legge 28 febbraio 1997, n. 30, Conversione in legge, con modificazioni, del decreto-legge 31 dicembre 1996, n. 669, recante disposizioni urgenti in materia tributaria, finanziaria e contabile a completamento della manovra di finanza pubblica per l'anno 1997

Legge 27 febbraio 1998, Conversione in legge, con modificazioni, del decreto-legge 30 dicembre 1997, n. 457, recante disposizioni urgenti per lo sviluppo del settore dei trasporti e l'incremento dell'occupazione

Act No. 485/98 on delegation to the government on occupational safety in the maritime ports sector (Legge 31 dicembre 1998, n. 485, Delega al Governo in materia di sicurezza del lavoro nel settore portuale marittimo)

Legislative Decree No. 272/1999 on safety and health in cargo handling and ship maintenance and repair (Decreto Legislativo 27 luglio 1999, n. 272, Adeguamento della normativa sulla sicurezza e salute dei lavoratori nell'espletamento di operazioni e servizi portuali, nonche' di operazioni di manutenzione, riparazione e trasformazione delle navi in ambito portuale, a norma della legge 31 dicembre 1998, n. 485)

Act No. 472/1999 on measures in the transport sector (Legge 7 dicembre 1999, n. 472, Interventi nel settore dei trasporti)

Act No. 186/2000 on amendments to Act No. 84/1994 relating to port operations and the supply of temporary port work (Legge 30 giugno 2000, n. 186, Modifiche alla legge 28 gennaio 1994, n. 84, in materia di operazioni portuali e di fornitura del lavoro portuale temporaneo)

Decree No. 132/2001 on regulations concerning the binding criteria for the regulation of port services by port and maritime authorities, in accordance with Article 16 of Act No. 84/1994 (Decreto 6 febbraio 2001, n. 132, Regolamento concernente la determinazione dei criteri vincolanti per la regolamentazione da parte delle autorità portuali e marittime dei servizi portuali, ai sensi dell'articolo 16 della legge n. 84/1994)

Act No. 172/2003 on provisions for the reorganisation and revitalisation of recreational boating and nautical tourism (Legge 8 luglio 2003, n. 172, Disposizioni per il riordino e il rilancio della nautica da diporto e del turismo nautico)

Decreto Legislativo 10 settembre 2003, n. 276, Attuazione delle deleghe in materia di occupazione e mercato del lavoro, di cui alla legge 14 febbraio 2003, n. 30

Legge 27 luglio 2004, n. 186, Conversione in legge, con modificazioni, del decreto-legge 28 maggio 2004, n. 136, recante disposizioni urgenti per garantire la funzionalità di taluni settori della pubblica amministrazione. Disposizioni per la rideterminazione di deleghe legislative e altre disposizioni connesse

Decreto del Ministro delle Infrastrutture e dei Trasporti del 16 dicembre 2004 recante recepimento della direttiva 2001/96/CE in materia di "Requisiti e procedure armonizzate per la sicurezza delle operazioni di carico e scarico delle navi portarinfuse"

Act No. 247/2007 on rules implementing the Protocol of 23 July 2007 on social security, labour and competitiveness to promote fairness and sustainable growth and additional rules on labour and social security (Legge 24 dicembre 2007, n. 247, Norme di attuazione del Protocollo del 23 luglio 2007 su previdenza, lavoro e competitività per favorire l'equità e la crescita sostenibili, nonché ulteriori norme in materia di lavoro e previdenza sociale)

Legislative Decree No. 81/2008 on the implementation of Article 1 of Act 123/2007 relating to health and safety in the workplace (Decreto Legislativo 9 aprile 2008, n. 81, Attuazione dell'articolo 1 della legge 3 agosto 2007, n. 123, in materia di tutela della salute e della sicurezza nei luoghi di lavoro)

Ordinanza N. 347 del 22 aprile 2011, Organizzazione del settore del lavoro portuale nel porto di Venezia: definizione, anche ai fini della sicurezza, dei segmenti di operazioni portuali appaltabili e dei servizi specialistici, complementari e accessori al ciclo delle operazioni portuali, da rendersi ai soggetti autorizzati ai sensi degli articoli 16 e 18 della legge 84/1994

Legge 12 luglio 2011, n. 106, Conversione in legge, con modificazioni, del *decreto-legge 13 maggio 2011, n. 70*, concernente Semestre Europeo - Prime disposizioni urgenti per l'economia

Legge 24 marzo 2012, n. 27, Conversione in legge, con modificazioni, del *decreto-legge 24 gennaio 2012, n. 1*, recante disposizioni urgenti per la concorrenza, lo sviluppo delle infrastrutture e la competitività

Decree-Law No. 5/2012 on simplification and development (Decreto-Legge 9 febbraio 2012, n. 5, Disposizioni urgenti in materia di semplificazione e di sviluppo)

Decreto legislativo 2 marzo 2012, n. 24 Attuazione della direttiva 2008/104/CE, relativa al lavoro tramite agenzia interinale

Legge 4 aprile 2012, n. 35, Conversione in legge, con modificazioni, del *decreto-legge 9 febbraio 2012, n. 5*, recante disposizioni urgenti in materia di semplificazione e di sviluppo

Legge 28 giugno 2012 , n. 92, Disposizioni in materia di riforma del mercato del lavoro in una prospettiva di crescita

Legge 7 agosto 2012, n. 134, Conversione in legge, con modificazioni, del *decreto-legge 22 giugno 2012, n. 83*, recante misure urgenti per la crescita del Paese

1.3.13. Latvia

Ports Act of 12 July 1994 (Likums par ostām)

Ventspils Freeport Act of 19 December 1996 (Ventspils brīvostas likums)

Liepāja Special Economic Zone Act of 17 February 1997 (Liepājas speciālās ekonomiskās zonas likums)

Riga Freeport Act of 28 March 2000 (Rīgas brīvostas likums)

Labour Protection Act of 20 June 2001 (Darba aizsardzības likums)

Labour Act of 6 July 2001 (Darba likums)

State Labour Inspectorate Act of 19 June 2008 (Valsts darba inspekcijas likums)

1.3.14. Lithuania

Klaipėda State Seaport Act No. I-1340 of 16 May 1996 (Lietuvos Respublikos Klaipėdos Valstybinio Jūrų Uosto Įstatymas (1996 m. gegužės 16 d. Nr. I-1340))

Order No. 264 of 7 July 1997 of the Ministry of Transport and Communications (Lietuvos Respublikos Susisiekimo Ministerijos Įsakymas (1997 m. liepos 7 d. Nr. 264 Dėl Klaipėdos Valstybinio Jūrų Uosto Naudojimo Taisyklių Patvirtinimo))

Labour Code (Act No. IX-926 of 4 June 2002) (Lietuvos Respublikos Darbo Kodeksas)

Occupational Safety and Health Act (Act No. IX-1672 of 1 July 2003 (Darbuotojų Saugos Ir Sveikatos (DSS) Įstatymas)

Lietuvos Respublikos Saugios laivybos įstatymo pakeitimo įstatymas Nr. X-116; Susisiekimo ministro 2004 sausio 15 d. įsakymas 3-24 Dėl Saugaus sausakrūvių laivų pakrovimo ir iškrovimo taisyklių patvirtinimo

1.3.15. Malta

Ordinance No. XXI of 28 April 1939 "that regulates the employment of Stevedores and Port Labourers and makes other provisions regarding this"

Ordinance XIV of 1962 to regulate the employment of port workers and to make other provisions connected therewith (Chapter 171 of of the Laws of Malta)

Act XXVI of 1989 to provide for the establishment of a Freeport system in Malta and to regulate its operation (Chapter 334 of the Laws of Malta)

Act XVII of 1991 to provide for the establishment of ports in Malta, for the registration and licensing of boats and ships and to regulate the use thereof within the territorial waters of Malta and to establish fees and dues and other matters ancillary to shipping (Chapter 352 of the Laws of Malta)

Act XXVIII of 2000 to provide for the establishment of an Authority to be known as the Occupational Health and Safety Authority, an Occupational Health and Safety Appeals Board, and for the exercise by or on behalf of that Authority of regulatory functions regarding resources relating to Occupational Health and Safety and to make provision with respect to matters connected therewith or ancillary thereto

Act XVIII of 2002 Relating to the Mutual Recognition of Qualifications (Chapter 451 of the Laws of Malta)

Merchant Shipping Notice No. 60 of 21 April 2004 on Safe Loading and Unloading of Bulk Carriers

Act XV of 2009 to provide for the establishment of a body corporate to be known as the Authority for Transport in Malta which will assume the functions previously exercised by the Malta Maritime Authority, the Malta Transport Authority and the Director and Directorate of Civil Aviation and for the exercise by or on behalf of that Authority of functions relating to roads, to transport by air, rail, road, or sea, within ports and inland waters, and relating to merchant shipping; to provide for the transfer of certain assets to the Authority established by this Act; and to make provision with respect to matters ancillary thereto or connected therewith (Chapter 499 of of the Laws of Malta)

Ports (Handling of Baggage) Regulations, S.L. 499.42

Tallying of Goods Regulations, S.L. 499.05

1.3.16. Netherlands

Stevedores Act (Wet van 16 oktober 1914 houdende bepalingen in het belang van de personen, werkzaam bij het laden en lossen van zeeschepen (Stuwadoorswet))

Stevedoring Safety Regulations (Stuwadoors-Veiligheidsbesluit van 5 september 1916)

Wet van 20 december 1995 tot regeling van tijdelijke bijdragen aan havenbedrijven voor herstructurering van de arbeidsvoorziening in havens ter vervanging van hoofdstuk V van de Werkloosheidswet (Wet tijdelijke bijdrage herstructurering arbeidsvoorziening havens)

Labour Conditions Regulations (Besluit van 15 januari 1997, houdende regels in het belang van de veiligheid, de gezondheid en het welzijn in verband met de arbeid (Arbeidsomstandighedenbesluit))

Labour Conditions Act (Wet van 18 maart 1999, houdende bepalingen ter verbetering van de arbeidsomstandigheden (Arbeidsomstandighedenwet 1998 or Arbowed))

Wet van 22 december 2005 tot goedkeuring van het voornemen tot opzegging van het op 25 juni 1973 te Genève totstandgekomen Verdrag betreffende de havenarbeid, 1973 (Verdrag nr.

137, aangenomen door de Internationale Arbeidsconferentie in haar achtenvijftigste zitting; Trb. 1974, 70)

1.3.17. Poland

Labour Code (Act of 26 June 1974) (Kodeks pracy)

Regulation of the Minister of Transport and Maritime Economy on health and safety at work in sea and inland ports of 6 July 1993 (Rozporządzenie Ministra Transportu i Gospodarki Morskiej z dnia 6 lipca 1993 r. w sprawie bezpieczeństwa i higieny pracy w portach morskich i śródlądowych)

Act on Ports and Harbours of 20 December 1996 (Ustawa z dnia 20 grudnia 1996 r. o portach i przystaniach morskich)

Ministerial Decree of 2 July 2001 (Rozporządzenie Ministra Zdrowia z dnia 2 lipca 2001 r. w sprawie terytorialnego zakresu działania oraz siedzib portowych inspektorów sanitarnych)

National Labour Inspectorate Act of 13 April 2007 (Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy)

1.3.18. Portugal

Decreto n.º 56 de 1 de Agosto de 1980 Aprova, para ratificação, a Convenção n.º 137, relativa às repercussões sociais dos novos métodos de manutenção nos portos

Decree-Law No. 358/89 (Decreto-Lei n.º 358/89 de 17 de Outubro de 1989 Define o regime jurídico do trabalho temporário exercido por empresas de trabalho temporário)

Decree-Law No. 280/93 of 13 August 1993 establishing the legal regime of port labour, as rectified by Rectification No. 202/93 of 30 October 1993 (Decreto-Lei n.º 280/93 de 13 de Agosto de 1993 Estabelece o regime jurídico do trabalho portuário)

Decree-Law No. 298/93 of 28 August 1993 establishing the regime of port operations, as amended by Decree-Law no. 65/95 of 7 April 1995 (Decreto-Lei n.º 298/93 de 28 de Agosto de 1993 Estabelece o regime de operação portuária)

Regulatory Decree No. 2/94 of 28 January 1994 regulating the carrying out of port activities (Decreto Regulamentar nº 2/94 de 28 de Janeiro de 1994 Regulamenta o exercício da actividade portuária)

Ordinance No. 178/94 of 29 March 1994 laying down rules on the granting of licences to Port Labour Companies (Portaria n.º 178/94 de 29 de Março de 1994 Estabelece normas sobre a atribuição de licença às entidades que pretendam exercer a actividade de cedência de mão-de-obra portuária)

Decree-Law No. 324/94 of 30 December 1994 approving the general conditions for public service concessions for cargo handling in ports (Decreto-Lei n.º 324/94 de 30 de Dezembro de 1994 Aprova as bases gerais das concessões do serviço público de movimentação da cargas em áreas portuárias)

Labour Code (Act No. 99/2003 of 27 August 2003) (Código del Trabajo)

Occupational Safety and Health Act No. 102/2009 of 10 September 2009 (Lei n.º 102/2009 de 10 de Setembro Regime jurídico da promoção da segurança e saúde no trabalho)

Lei n.º 3/2013 - Primeira alteração ao Decreto-Lei n.º 280/93, de 13 de agosto, que estabelece o regime jurídico do trabalho portuário

Decreto-Lei n.º 78/2014 – Estatutos da Autoridade da Mobilidade e dos Transportes

1.3.19. Romania

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 (Ordonanta 22 (r. 2) din 29 ianuarie 1999 (Ordonanta 22/1999) privind administrarea porturilor si a cailor navigabile, utilizarea infrastructurilor de transport naval apartinand domeniului public, precum si desfasurarea activitatilor de transport naval in porturi si pe caile navigabile interioare)

Order No. 287 of 27 February 2003 on the Authorisation of Economic Operators Performing Shipping Activities (Ordinul 287 din 27 februarie 2003 (Ordinul 287/2003) privind autorizarea agentilor economici care desfasoara activitati de transport naval)

Act No. 319/2006 on Safety and Health at Work (Legea nr. 319 din 14 iulie 2006 securității și sănătății în muncă)

Government Decree No. 1425 of 2006 (Hotararea de Guvern 1425 din 2006 pentru aprobarea Normelor metodologice de aplicare a prevederilor Legii securitatii si sanatatii in munca nr. 319 din 2006)

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" (Hotărâre nr. 1051 din 9 august 2006 privind cerințele minime de securitate și sănătate pentru manipularea manuală a maselor care prezintă riscuri pentru lucrători, în special de afecțiuni dorsolombare)

Procedural Rules on the Issuance of Port Worker's Books and the Registration of Port Workers of 5 April 2011 (Metodologia din 5 aprilie 2011 (Metodologia din 2011) de eliberare a carnetelor de lucru in port si de inregistrare a muncitorilor portuari)

Order No. 1832/856 of 6 July 2011 for the Approval of the Classification of Professions in Romania (Ordin nr. 1832/856 din 6 iulie 2011 privind aprobarea Clasificarii ocupatiilor din Romania — nivel de ocupatie (sase caractere))

1.3.20. Slovenia

Decree of 30 January 2002 (Uredba o določitvi pristanišč, ki so namenjena za mednarodni javni promet)

Employment Relations Act of 24 April 2002 (Zakon O Delovnih Razmerjih (Zdr))

National Professional Qualifications Act of 20 December 2006 (Zakon o nacionalnih poklicnih kvalifikacijah)

Decree No. 721-9/2008/11 of 10 July 2008 on the management of the cargo port of Koper, port operations and the granting of concessions for the management, administration, development and maintenance of port infrastructure in the port (Uredba o upravljanju koprskega tovornega pristanišča, opravljanju pristaniške dejavnosti, podelitvi koncesije za upravljanje, vodenje, razvoj in redno vzdrževanje pristaniške infrastrukture v tem pristanišču)

Health and Safety at Work Act of 24 May 2011 (Zakon O Varnosti In Zdravju Pri Delu (ZVZD-1))

1.3.21. Spain

Instrumento de Ratificación de España [de 22 de marzo 1977] del Convenio número 137 de la Organización Internacional del Trabajo sobre las Repercusiones Sociales de los Nuevos Métodos de Manipulación de Cargas en los Puertos, hecho el 25 de junio de 1973

Instrumento de Ratificación de 13 de febrero de 1982 del Convenio de la OIT número 152, sobre «Seguridad e Higiene en los Trabajos Portuarios», hecho en Ginebra el 25 de junio de 1979

Act No. 2/86 of 23 May 1986 (Real Decreto-ley 2/1986, de 23 de mayo, sobre el servicio público de estiba y desestiba de buques)

Royal Decree No. 371/1987 of 13 March 1987 (Real Decreto 371/1987, de 13 de marzo, por el que se aprueba el reglamento para la ejecución del Real Decreto-ley 2/1986, de 23 de mayo, de estiba y desestiba)

National Regulations on the Handling of Dangerous Goods in Ports (Real Decreto 145/1989, de 20 de enero, por el que se aprueba el Reglamento Nacional de Admisión, Manipulación y Almacenamiento de Mercancías Peligrosas en los Puertos)

Statute of Workers (Real Decreto legislativo 1/1995, de 24 de marzo, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores)

Act No. 31/1995 of 8 November 1995 on Labour Risk Prevention (Ley 31/1995, de 8 de noviembre, de Prevención de Riesgos Laborales; see also Real Decreto 39/1997, de 17 de enero, por el que se aprueba el Reglamento de los Servicios de Prevención)

Act No. 48/03 of 26 November 2003 on the economic regime and the provision of services of in port of general interest (Ley 48/03, de 26 de noviembre, de régimen económico y de prestación de servicios de los puertos de interés general)

Royal Decree No. 1033/2011 of 15 July 2011 (Real Decreto 1033/2011, de 15 de julio, por el que se complementa el Catálogo Nacional de Cualificaciones Profesionales, mediante el establecimiento de cuatro cualificaciones profesionales de la familia profesional Marítimo-Pesquera)

Act on the Ports of the State and on Merchant Shipping (Real Decreto Legislativo 2/2011, de 5 de septiembre, por el que se aprueba el Texto Refundido de la Ley de Puertos del Estado y de la Marina Mercante)

1.3.22. Sweden

Employment (Co-Determination in the Workplace) Act (Lag (1976:580) om medbestämmande i arbetslivet (Medbestämmandelagen, MBL)

Work Environment Act (Arbetsmiljölagen (1977:1160))

Work Environment Ordinance (Arbetsmiljöförordningen (SFS 1977:1166))

Act (1983:293) on the Establishment, Enlargement and Closure of Public Waterways and Public Ports (Lag (1983:293) om inrättande, utvidgning och avlysning av allmän farled och allmän hamn)

Public Order Act (Ordningslag (1993:1617))

Environmental Code (Miljöbalk (1998:808))

Provisions of the Swedish Work Environment Authority on Dock Work and the General Recommendations on the Implementation of the Provisions (Arbetsmiljöverkets föreskrifter om hamnarbete samt allmänna råd om tillämpningen av föreskrifterna (AFS 2001:09))

Port Labour Ordinance

1.3.23. United Kingdom

An Act to abolish the Dock Workers Employment Scheme 1967 and repeal the Dock Workers (Regulation of Employment) Act 1946, to make provision for the dissolution of the National Dock Labour Board and for connected purposes

Docks Regulations 1988

1.4. Foreign regulatory instruments

United States of America

22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals

1.5. Collective agreements

1.5.1. Belgium

Codex for Mechanics in the port of Antwerp

Codex for the General Register in the port of Antwerp

Codex for the General Register in the port of Zeebrugge-Brugge

Codex for the Logistics Register in the port of Antwerp

Codex for the Logistics Register in the port of Zeebrugge-Brugge

Codex for the port of Ghent

Codex for the ports of Ostend and Nieuwpoort

Collectieve arbeidsovereenkomst van 8 mei 2000 tot vaststelling van het statuut van havenarbeider van het aanvullend contingent aan de haven van Gent

1.5.2. Bulgaria

Agreement concluded by Port of Varna EAD with SPO Confederation Varna East, SPO Confederation Varna West, SS "Support" and the Dockers' Syndicate on 12 January 2010

1.5.3. Denmark

Common National Agreement for the Transport and Logistics Sector for 2012-2014

Lokale bestemmelser aftalt mellem 3F Transport, Logistik & Byg Århus (Tidl. Havnearbejdernes Fagforening i Århus) og Arbejdsgiverforeningen for Handel, Transport og Service for Aarhus og Omegn gældende for havnearbejde på Århus Havn 2004 - 2007

Overenskomst 2010 - 2012 er indgået mellem DI Overenskomst II (DSA) og 3F Aabenraa

Overenskomst 2012-2014 indgået mellem DI Overenskomst II (HTS Arbejdsgiverforeningen, Hovedstadsområdet) for Udviklingselskabet By & Havn I/S og 3F/BJMF, Bygge-, Jord- og Miljøarbejdernes Fagforening

Overenskomst 2012-2014 mellem DI Overenskomst II (HTS-A Vendsyssel) og 3F, Frederikshavn gældende for arbejdere beskæftiget hos Skagen Lossekompagni ApS

Overenskomst mellem Bilfærgernes Rederiforening og 3F Fagligt Fælles Forbund, Transportgruppen Transportgruppen Overenskomst 2010-2012 for trosseførere
Tillægsoverenskomst til Fællesoverenskomst 2010 - 2012 mellem DI Overenskomst II (Bornholms Havne- og Købmandsforening) og 3F Bornholm vedrørende lastning og losning

Tillægsoverenskomst (til Fællesoverenskomst) mellem DI Overenskomst II (Nakskov og Omegns Arbejdsgiverforening) og 3 F, Vestlolland (2010-2012)

Tillægsoverenskomst 2012-2014 til fællesoverenskomst mellem DI Overenskomst II (HTS- Arbejdsgiverforeningen Nordjylland) og 3F, Aalborg gældende for havnearbejdere i Aalborg

Tillægsoverenskomst til Fællesoverenskomsten 2012-2014 Indgået mellem DI Overenskomst II (Vejle Arbejdsgiverforening) og 3 F, Vejle gældende for havnearbejdere i Vejle

Tillægsoverenskomst til Fællesoverenskomst 2012-2014 indgået mellem DI Overenskomst II (Vejle Arbejdsgiverforening/DSA) og 3F Vejle og 3F Midtjylland gældende for Claus Sørensen A/S, Terminal Vejle Nord og Engesvang

Tillægsoverenskomst til Fællesoverenskomst 2012 - 2014 mellem DI Overenskomst II og 3F Transport, Logistik og Byg, Århus

Tillægsoverenskomst til Fællesoverenskomsten 2012-2014 mellem DI Overenskomst II (Sydvestjysk Arbejdsgiverforening) og 3F Esbjerg Transport for Esbjerg Havn

Tillægsoverenskomst til Fællesoverenskomst 2012-2014 mellem DI Overenskomst II (DSA) og 3F - Skagerak gældende for Claus Sørensen A/S, Hirtshals (frysehus og pakkeri)

Tillægsoverenskomst til Fællesoverenskomst 2012 - 2014 mellem DI Overenskomst II (DSA) og Fagligt Fælles Forbund, Randers (Transportarbejdere)

Tillægsoverenskomst til Fællesoverenskomsten 2012-2014 om løn- og arbejdsforhold ved havnearbejde i Horsens indgået mellem DI Overenskomst II (HTS-A, Horsens) og 3F, Horsens

1.5.4. Finland

Collective Agreement for Harbour and Warehouse Terminal Employees in the Forwarding Industry (Huolinta-alan varastoterminaali- ja satamatyöntekijöitä koskeva työehtosopimus) between the Service Sector Employers PALTA (Palvelualojen työnantajat PALTA ry, aiemmin Erityispalvelujen Työnantajaliitto ry) and Transport Workers Union AKT for the period between 10 March 2010 and 31 January 2012

Collective Agreement for permanent employees in stevedoring (Ahtausalan vakinaisia työntekijöitä koskeva työehtosopimus) between the Finnish Port Operators Association and Transport Workers Union AKT for the period between 19 March 2010 and 31 January 2012

Collective Agreement for salaried employees working in stevedoring (Ahtausalan toimihenkilöiden työehtosopimus) between the Finnish Port Operators Association and the Union of Salaried employees PRO for the period between 1 May 2010 and 30 April 2012

Collective Agreement for supervisors working in stevedoring (Ahtausalan työnjohtajien työehtosopimus) between the Finnish Port Operators Association and the Union of Port Foremen AHT for the period between 11 May 2010 and 31 March 2012

1.5.5. France

Accord du 6 juillet 2005 relatif à la formation professionnelle

Accord du 30 octobre 2006 relatif à l'organisation du travail sur le port de Montoir - Saint-Nazaire

Accord du 19 décembre 2006 relatif à la création de certificats de qualification professionnelle dans la manutention portuaire (filière exploitation portuaire)

Accord du 17 mars 2011 relatif à la formation professionnelle

Accord du 25 octobre 2011 relatif aux conditions d'emploi et à la revalorisation des salaires (Bordeaux)

Accord-cadre interbranches du 30 octobre 2008 conclu en application de l'article 11 de la loi du 4 juillet 2008 portant réforme portuaire

Avenant N° 2 du 17 mars 2011 relatif à la création des CQP

Conditions d'emploi et de rémunération particulières des personnels dockers des entreprises de manutention dans les ports maritimes du département du nord - Avenant du 18 avril 2006

Convention collective nationale de la manutention portuaire du 31 décembre 1993

Convention Collective Nationale Unifiée "Ports & Manutention" of 10 March 2011

Emploi, RTT et salaires des dockers (Bordeaux) - Accord du 11 juillet 2000

1.5.6. Germany

Besitzstandstarifvertrag mit Anlagen für die Hafentarbeiter der Lübecker Seehafenbetriebe, 28. Mai 1998

Geschäftsordnung Hafenbetriebsverein Lübeck e.V., 28. Mai 1998

Rahmentarifvertrag für die Umschlagarbeiter der Lübecker Seehafenbetriebe, 30. April 1998

Rahmentarifvertrag für gewerbliche Arbeitnehmer und Arbeitnehmerinnen in Logistik-Unternehmen des Hamburger Hafens gültig ab 01.07.2007

Satzung für den Gesamthafenbetrieb Hamburg vom 30. April 1969 i.d.F. vom 26. Juni 1994

Vereinbarung über die Schaffung eines besonderen Arbeitgebers für Hafentarbeiter in Hamburg (Gesamthafenbetrieb), 9 Februar 1951

Vereinbarung über die Schaffung eines besonderen Arbeitgebers für Hafentarbeiter in Lübeck (Gesamthafenbetrieb), 31. März 1985

Vereinbarung über die Schaffung eines besonderen Arbeitgebers für Hafentarbeiter in Rostock (Gesamthafenbetrieb), 16 Januar 1992

Vereinbarung über die Schaffung eines Gesamthafenbetriebes für die Häfen im Lande Bremen (Bremen-Stadt und Bremerhaven), 01. März 1982

Verwaltungsordnung für den Gesamthafenbetrieb im Lande Bremen, 5. September 1989

Verwaltungsordnung für den Gesamthafenbetrieb Lübeck, 6. Februar 1986

Verwaltungsordnung für den Gesamthafenbetrieb Rostock, 14 März 1994

1.5.7. Italy

C.C.N.L. dei lavoratori dei porti, 1 gennaio 2009 - 31 dicembre 2012

1.5.8. Malta

Collective Agreement between Malta Freeport Terminals LTD and Union Haddiema Maghqudin regarding Senior Shift Leaders, Senior Planners, Duty Supervisors, Shift Leaders, Supervisors Equipment / Operators of 23 June 2005

1.5.9. Netherlands

Collective Agreement for Terminal Operators, Gate Inspectors and Mechanics of APM Terminals Rotterdam, 1 July 2009 - 30 September 2011

Collective Agreement of DFDS Seaways at Vlaardingen, 1 January 2011 - 31 December 2011

Collective Agreement of ECT, 1 July 2009 - 1 October 2012, version of September 2010

Collective Agreement of IGMA, 1 April 2009 - 31 March 2011

Collective Agreement of International Lashing Services, 1 July 2009 - 31 December 2011

Collective Agreement of Matrans Marine Services, 1 July 2009 - 30 September 2012

Collective Agreement of Rotterdam Port Services, 2009 – 2011

Collective Agreement of Verbrugge Terminals, 2008 - 2010

Collective Bargaining Agreements of EMO, 1 January 2009 - 1 January 2011 and 1 January 2011 - 1 January 2013

Collective Labour Agreement for the General Cargo Sector in the Port of Rotterdam for 1975

Collective Labour Agreement of Stena Line Stevedoring at Hoek van Holland, 1 January 2009 - 31 December 2010

1.5.10. Portugal

ACT entre a OPERFOZ - Operadores do Porto da Figueira da Foz, L.^{da}, e outra e o Sind. dos Conferentes de Cargas Marítimas de Importação e Exportação dos Dist. de Lisboa e Setúbal e outros, Lisboa, 15 de Novembro 1993

CCT entre a AOPL - Assoc. de Operadores do Porto de Lisboa e outra e o Sind. dos Conferentes de Cargas Marítimas de Importação dos Dist. de Lisboa e Setúbal e outros, Lisboa, 12 de Novembro de 1993

CCT entre a Assoc. dos Operadores Portuários dos Portos do Douro e Leixões e outra e o Sind. dos Estivadores e Conferentes Marítimos e Fluviais do Dist. do Porto e outro, Matosinhos, 29 de Setembro de 1993

1.5.11. Slovenia

Collective labour agreement of 18 September 2008 between Luka Koper and the two representative trade unions

1.5.12. Spain

III Acuerdo para la regulación de las relaciones laborales en el sector portuario, Madrid, 27 September 1999

Convenio Colectivo de Sociedad de Estiba y desestiba del Puerto de Algeciras-La Línea (published on 10 February 2009)

Convenio Colectivo de trabajo del sector portuario de la Provincia de Barcelona para el período 18.6.2010-31.12.2014

Convenio Colectivo Provincial regulador de las condiciones de trabajo en las empresas estibadoras portuarias de la provincia de Barcelona y los trabajadores de las mismas. Barcelona, 1 de enero de 2008

Estibadores portuarios Sociedad de Estiba y Desestiba del Puerto de Almería (SESTIALSA). Convenio colectivo (valid from 1 January 2006 to 31 December 2011)

1.5.13. Sweden

Hamn- och Stuveriavtalet mellan Sveriges Hamnar och Svenska Transportarbetareförbundet (Port and Stevedoring Agreement between Ports of Sweden and Swedish Transport Workers' Union)

2. CASES

2.1. International cases

CFA case No. 120, Report No. 17, *National Federation of Christian Publishing, Paper, Cardboard and allied Trade Unions / France*

CFA case No. 188, Report No. 34, *Swiss Printing Workers' Union and the Swiss Federation of National Christian Trade Unions / Denmark*

2.2. European cases

ECJ 10 December 1968, Commission / Italy, 7/68, *ECR* 1968, 423

ECJ 1 July 1969, Commission / Italy, 24/68, *ECR* 1969, 193

ECJ 12 July 1973, Geddo, 2/73, *ECR* 1973, 865

ECJ 21 June 1974, Reyners, 2/74, *ECR* 1974, 631

ECJ 11 July 1974, Dassonville, 8/74, *ECR* 1974, 837

ECJ 4 December 1974, Van Duyn, 41/74, *ECR* 1974, 1337

ECJ 12 December 1974, Walrave and Koch, 36/74, *ECR* 1974, 1405

ECJ 8 April 1976, Royer, 48/75, *ECR* 1976, 497

ECJ 15 June 1978, Defrenne, 149/77, *ECR* 1978, 1365

ECJ 20 February 1979, Cassis de Dijon, 120/78, *ECR* 1979, 649

ECJ 14 October 1980, Burgoa, 812/79, *ECR* 1980

ECJ 14 July 1981, Oebel, 155/80, *ECR* 1981, 1993

ECJ 17 December 1981, Webb, 279/80, *ECR* 1981, 3305

ECJ 11 March 1986, Conegate, 121/85, *ECR* 1986, 1007

ECJ 12 March 1987, German beer, 178/84, *ECR* 1987, 1227

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ECJ 7 July 1988, Wolf, 154-155/87, *ECR* 1988, 3897

ECJ 13 December 1989, Corsica Ferries, C-49/89, *ECR* 1989, 4441

ECJ 27 March 1990, Rush Portuguesa, C-113/89, *ECR* 1990, I-1417

ECJ 23 April 1991, Höfner and Elser, C-41/90, *ECR* 1991, I-1979

ECJ 7 May 1991, Vlassopoulou, C-340/89, *ECR* 1991, I-2357

ECJ 25 July 1991, Collectieve Antennevoorziening Gouda, C-288/89, *ECR*. 1991, I-4007

ECJ 25 July 1991, Aragonesa, C-1/90 and C-176/90, *ECR* 1991, I-4151

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ECJ 31 March 1993, *Kraus*, C-19/92, *ECR* 1993, I-1663

ECJ 24 November 1993, *Keck and Mithouard*, C-267/91, *ECR* 1993, I-6097

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ECJ 14 July 1994, *Peralta*, C-379/92, *ECR* 1994, I-3453

ECJ 28 March 1995, *Evans Medical Ltd and Macfarlan Smith Ltd*, C-324/93, *ECR* 1995, I-563

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ECJ 28 March 1996, *Guiot*, C-272/94, *ECR* 1996, I-1905

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ECJ 11 March 1997, *UIC*, C-264/95, *ECR* 1997, I-1287

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ECJ 28 April 1998, *Decker*, C-120/95, *ECR* 1998, I-1831

ECJ 28 April 1998, *Kohll*, C-158/96, 1998, I-1931

ECJ 18 June 1998, *Corsica Ferries*, C-366/96, *ECR* 1998, I-3949

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ECJ 21 September 1999, Drijvende bokken, C-219/97, *ECR* 1999, I-6121

ECJ 23 November 1999, Arblade, C-369/96 and C-376/96, *ECR* 1999, I-8453

ECJ 6 June 2000, Angonese, C-281/98, *ECR* 2000, I-4139

ECJ 4 July 2000, Haim, C-424/97, *ECR* 2000, I-5123

ECJ 11 July 2000, Kemikalieinspektionen, C-473/98, *ECR* 2000, I-5681

ECJ 3 October 2000, Corsten, C-58/98, *ECR* 2000, I-7919

CFI 12 December 2000, Aéroports de Paris, T-128/98, *ECR* 2000, II-3929

ECJ 20 February 2001, Analir, C-205/99, *ECR* 2001, I-1271

CFI 20 March 2001, Pietro Chiesa, T-59/00, *ECR* 2001, II-1019

ECJ 19 February 2002, Wouters, C-309/99, *ECR* 2002, I-1577

CFI 28 February 2002, Compagnie Générale Maritime, T-86/95, *ECR* 2002, II-1011

ECJ 24 October 2002, Aéroports de Paris, C-82/01 P, *ECR* 2002, I-9297

ECJ 5 November 2002, Überseering, C-2088/00, *ECR* 2002, I-9919

CFI 19 March 2003, CMA CGM, T-213/00, *ECR* 2003, II-913

CFI 17 June 2003, Coe Clerici Logistics SpA, T-52/00, *ECR* 2003, II-2123

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2.3. National cases

2.3.1. Belgium

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Court of Appeal of Ghent, 20 February 1992, *De Gentenaar* 30 March 1992

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ANNEX C: QUESTIONNAIRE FORM

CONTEXT AND PURPOSE

The Portius Port Labour Team is currently conducting a study on Port Labour, Health, Safety and Qualifications on behalf of the European Commission, DG MOVE (ref: MOVE/C2/2010-81-1).

The Portius Port Labour Team is an *ad hoc* consortium formed by Prof Dr Eric Van Hooydonk, Studio Legale Zunarelli, Global Port Training and Portius - International and EU Port Law Centre.

The aim of the study is to provide an in-depth overview on labour related issues in the stevedoring sector in EU ports (labour conditions, labour arrangements, training and qualifications, health and safety issues), to identify possible shortcomings in these areas and to propose recommendations, including action at EU level.

The study deals with all cargo handling and passenger terminal services but not with technical-nautical services (pilotage, towage and mooring).

In order to ensure maximum efficiency and quality of the study, the Portius Port Labour Team favours an interactive process in which consultation of the different stakeholders is of high importance. To that end, the Portius Port Labour Team is conducting the present questionnaire.

The Portius Port Labour Team kindly requests you to complete the questionnaire and return it either by e-mail to eric@portius.org, by fax to +32 3 248 88 63 or by mail to Portius, Emiel Banningstraat 21-23, 2000 Antwerp, BELGIUM, before 1 December 2011.

You are kindly invited to submit responses to all questions, but of course we will take into account partial replies to the questionnaire as well.

Please add any background data, studies, papers, laws and regulations which you consider relevant.

If you want all, or any part, of your response to be treated as confidential, please state so explicitly. No findings will be published which enable readers to identify any individual respondent.

Your contribution is essential to the success of the study.

Many thanks in advance
Prof Dr Eric Van Hooydonk

QUESTIONNAIRE

A. Identification and contact details

A.1. Please provide the name and address of your organisation as well as the contact person for this questionnaire

name:

address:

country:.....

contact person:

contact details (phone or email):

website:

A.2. Please indicate the role of your organisation

- ministry
- governmental agency
- port authority employing port workers
- port authority not employing port workers
- employee organisation representing port workers only
- employee organisation representing port and transport workers
- employee organisation representing port and other workers
- employer organisation representing port employers only
- employer organisation representing port and other employers
- employer of port workers
- other, please specify:

A.3. Please indicate the territorial scope of your organisation (multiple answers possible)

one port, please specify:

more than one port, please specify:

region, please specify:.....

country, please specify:

B. Draft national fact sheet

B.1. Please have a look at the attached draft fact sheet regarding port labour in your country and send us your corrections, additions or any other relevant data or suggestions.

C. Statistical data

C.1. Are there statistics on the number of port employers and port workers (including categories of port workers) in your port, region or country? If so, please provide us with these statistics or state where they can be consulted. If not, provide us with estimates. Please note that the study deals with all cargo handling and passenger terminal services but not with technical-nautical services (pilotage, towage and mooring). Please do not include figures on retired port workers.

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C.2. How many port workers (with the exclusion of retired port workers) are a member of a trade union?

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.....
.....

Which percentage of the total number of port workers does this represent?

- in the port:
- in the region:
- in the country:

Please state the name of the trade union(s) and, if possible, provide membership details for each union.

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C.3. Are there statistics on the number, types and causes of (1) occupational accidents (including categories of accidents and near-accidents) and (2) occupational diseases (for example, caused by exposure to chemicals, emissions, dust or noise) in your port, region or country where port workers were involved? If so, please provide us with these statistics or state where they can be consulted.

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D. Legal framework

D.1. Do specific legal instruments on port labour (law, decree, act, regulations, ...) apply in your port, region or country? If so, please provide us with the details (issuing authority, date, official title) and the text of these instruments.

.....

.....

.....

If applicable, please specify which of the following aspects are dealt with in the legal framework (multiple answers possible):

- labour organisation (e.g. employment and registration of port workers, provisions on a pool system)
- training of port workers
- health and safety of port workers.

D.2. Are there any collective labour agreements in your company, port, region or country which specifically relate to port labour? If so, please provide us with the details (parties, date, official title, scope of application) and the text of these instruments (preferably in English, French, German, Dutch, Italian or Spanish).

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If applicable, please specify which of the following aspects (*i.e.* the main three subjects of the study) are dealt with in the collective labour agreements (multiple answers possible):

- labour organisation (e.g. employment and registration of port workers, provisions on a pool system)
- training of port workers
- health and safety of port workers.

D.3. In case port labour is covered by a specific legal framework or a specific collective labour agreement, do these instruments include a definition of port labour and lay down the territorial scope of the regime? If so, please provide the definition and the delimitation (and if applicable, relevant maps indicating port boundaries).

.....
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.....

E. Labour arrangements

E.1. Are port workers in your port, region or country employed by (multiple answers possible):

- the government (or a governmental or national agency)
- a national port authority
- a local port authority
- a pool
- a terminal operator or other company
- a shipping company
- other, please specify:

In this respect, is there a distinction between the situation of port workers working on shore and workers working on board?

- yes
- no.

If yes, please clarify:

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.....
.....

Does the port labour regime make a distinction between port workers in the narrow sense (who are employed at the ship/shore-interface) and warehouse or logistics workers employed within the port?

- yes
- no.

If yes, please clarify:

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.....

E.2. Do port employers have to be licensed (or obtain any other form of registration, recognition or authorisation, other than the ownership or right of use over a terminal or port land)?

- yes
- no.

If yes, please state by whom, under which conditions and for which duration the licence is granted:

.....

.....

.....

E.3. Is there any legal or factual obligation on port employers to be a member of an employers' association or a similar professional organisation?

- yes
- no.

If yes, please state the name, status and role of this organisation:

.....

.....

.....

E.4. Is there competition between various port employers (such as terminal operators) in your port(s)?

- yes
- no.

E.5. Which categories of port workers exist in your port, region or country (multiple answers possible)?

- permanent workers (under a normal employment contract with a single employer)
- regularly employed casual or temporary workers (always or in most cases employed by the same employer)
- irregularly employed casual or temporary workers (or reserve workers)
- occasionally employed workers (for example, students)
- other categories, namely:

E.6. Do port workers in your port, region or country have to be registered?

- yes
- no.

If yes, is the register a register within the meaning of ILO Convention 137 (ensuring priority of employment for registered workers)?

- yes
- no.

E.7. Which conditions have to be fulfilled in order to obtain a registration as a port worker?

- minimum age, please specify:
- training, please specify:
- physical requirements, please specify:
- mental requirements, please specify:
- language skills, please specify:
- good behaviour
- no criminal record
- trade union membership
 - legal requirement
 - factual requirement

other, please specify:

E.8. Do registered port workers enjoy any exclusivity or priority of employment?

- exclusivity
- priority
- neither exclusivity, nor priority.

E.9. Is there a pool system (with the exclusion of job recruitment or employment agencies) for port workers in your port, region or country?

- yes
- no.

If yes,

- please provide the name of the pool or pools:

- please specify who manages the pool:

- public body
- employer organisation
- employee organisation
- joint management (employer and employee organisation)
- tripartite management (public body, employer and employee organisation).

- are workers – from a strict labour law perspective – employed by the pool or directly by the individual employer?

- by the pool
- by the individual employer.

- how and by whom is the number of registered or pool workers set?

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.....

- please explain how the pool (and its infrastructure, staff, dispatching etc.) is financed:

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.....

E.10. How are port workers in your port, region or country employed (multiple answers possible)?

- permanently
- on an annual basis
- on a monthly basis
- on a weekly basis
- on a daily basis
- for a shift
- for a shift or a half shift
- on another basis, namely:

Is permanent employment of port workers by individual employers allowed?

- yes
- no
- in some cases, please specify:

Are port workers recruited via hiring halls?

- yes
- no
- in some cases, please specify:

Is it allowed to employ temporary port workers via job recruitment or employment agencies outside the pool?

- yes
- no
- in some cases, please specify:

If yes, please provide the names of these agencies as well as details on the categories of the workers concerned and on their share in the overall employment in the port, region or country.

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E.11. If a port worker is temporarily unemployed, does he receive an income?

- yes
- no.

If yes, specify whether the income is an unemployment benefit, attendance money or another form of income guarantee. Please also specify how the income guarantee is financed.

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.....

E.12. Can port workers be transferred temporarily from employer to employer?

- yes
- no
- in some cases, please specify:

If yes, how often does this occur?

.....
.....
.....

E.13. Can port workers be transferred temporarily to another port?

- yes
- no
- in some cases, please specify:

If yes, how often does this occur?

.....
.....
.....

E.14. Are service providers from other EU countries allowed to establish themselves in your port, region or country?

- yes
- no.

In the absence of establishment, are service providers from other EU countries allowed to offer port services in your port, region or country?

- yes
- no.

If yes, are they allowed to employ port workers of their own choice?

- yes
- no.

If yes, do these port workers have to be registered or otherwise authorized before they can carry out their work?

- yes
- no.

E.15. Do legal (criminal, administrative, financial) sanctions apply to breaches of rules on employment of port workers?

- yes
- no.

If yes, please specify:

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.....

.....

E.16. Who enforces the rules on labour arrangements (multiple answers possible)?

- public prosecutor
- police
- national transport ministry or agency
- national employment ministry or agency
- port authority
- harbour master
- terminal operator or company
- trade unions
- other, please specify:

E.17. Are applicable rules on labour arrangements properly enforced?

- yes
- no.

If not, please specify:

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.....
.....

E.18. In case a port or port terminal is transferred to a new operator or employer, is he under an obligation to take over port workers (under identical contractual conditions)?

- yes
- no.

F. Training

F.1. Are there any local / regional / national / sector minimum requirements regarding skills and competences for port workers?

- yes
- no.

If yes, please provide us with these requirements:

.....
.....
.....

F.2. How is training for port workers organised in your port, region or country (multiple answers possible)?

- by an official education institution (regular school)
- at company level
- at port level
- at national level
- by a public organisation
- by a private organisation
- by a mixed public-private organisation
- by an organisation managed by an association of employers
- by an organisation managed by trade unions
- by an organisation managed jointly by employers and unions
- by a jointly managed labour pool.

F.3. If applicable, state the name, address and website and briefly describe the infrastructure and equipment (for example, crane or straddle carrier simulators) of the port training institution(s):

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.....
.....

F.4. Which types of formal port training or instruction – apart from on-the-job learning – are available in your port, region or country (multiple answers possible)?

- specialized training as part of a regular educational programme (secondary school)
- continued or advanced training after regular educational programme
- induction courses for new entrants (indicate whether compulsory or voluntary)
- courses for the established port worker (indicate whether compulsory or voluntary)
- training in safety and first aid (indicate whether compulsory or voluntary)
- specialist courses for certain categories of port workers such as
 - crane drivers (indicate whether compulsory or voluntary)
 - container equipment operators (indicate whether compulsory or voluntary)
 - ro-ro truck drivers (indicate whether compulsory or voluntary)
 - forklift operators (indicate whether compulsory or voluntary)
 - lashing and securing personnel (indicate whether compulsory or voluntary)
 - tallymen (indicate whether compulsory or voluntary)
 - signalmen (indicate whether compulsory or voluntary)
 - reefer technicians (indicate whether compulsory or voluntary)
- training aimed at the availability of multi-skilled or all-round port workers (indicate whether compulsory or voluntary)
- retraining of injured and redundant port workers (indicate whether compulsory or voluntary).

F.5. Are there any local / regional / national / sector curricula for the training of port workers in your port, region or country?

- yes
- no.

If yes, provide us with these curricula:

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.....
.....

G. Health and safety

G.1. Are there in your port, region or country specific rules on health and safety in port work?

- yes
- no.

If yes, please specify:

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.....
.....

G.2. In your view, are applicable rules on health and safety satisfactory?

- yes
- no.

If not, please specify:

.....
.....
.....

G.3. Who enforces the rules on health and safety in port work (multiple answers possible)?

- public prosecutor
- police
- national transport ministry or agency
- national employment ministry or agency
- port authority
- harbour master
- terminal operator or company
- trade unions

other, please specify:

G.4. Are applicable rules on health and safety properly enforced?

- yes
- no.

If not, please specify:

.....
.....
.....

G.5. Does any legal regime, scheme or system for the reporting of occupational accidents and / or occupational diseases apply in your port, region or country?

- yes
- no.

If yes, describe the regime, scheme or system:

.....
.....
.....

H. Policy issues

H.1. Has port labour in your port, region or country been the subject of recent (1985-present) reforms, or are any such reforms envisaged in the near future?

- yes
- no.

If yes, please specify:

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.....
.....

H.2. In your view, which legal and policy issues (including legal but also operational problems) in the field of port labour deserve priority attention? At which level (local, regional, national, EU) should these issues be addressed?

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.....
.....

H.3. Do you consider the current port labour regime (in other words, the set of rules governing employment arrangements, training, health and safety) in your port, region or country satisfactory?

- yes
- no.

If not, please specify:

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.....
.....

H.4. Does the current port labour regime offer sufficient legal certainty?

- yes
- no.

If not, please specify:

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.....

H.5. Do you consider the current relationship between port employers and port workers and their respective organisations

- excellent
- good
- satisfactory
- unsatisfactory
- bad.

Please specify:

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.....
.....

H.6. Does the current port labour regime directly impact on the competitive position of your port(s)?

- yes, positive impact
- yes, negative impact
- no.

If yes, please describe the nature and relative effect of this impact and provide data on concrete cases (especially on contracts with customers and shifts of cargo flows):

.....
.....
.....

H.7. Do sub-standard or otherwise unacceptable labour conditions exist in your terminal, company, port, region or country? If so, indicate their nature (multiple answers possible):

- job insecurity
- temporary unemployment
- unfavourable employment practices
- lack of social security
- no freedom of association
- insufficient involvement of trade unions in decision making
- other obstacles to trade unionism
- unhealthy working conditions
- unsafe working conditions
- lack of training
- other, please specify:

Please provide additional details on the conditions:

.....
.....

.....

H.8. Do restrictive rules or practices apply in your terminal, company, port, region or country?
If so, indicate their nature (multiple answers possible):

Restrictions on employment

- prohibition on employment of permanent workers
- prohibition on employment of temporary workers through employment agencies
- prohibition on self-handling (for example for lashing and unlashng)
- prohibition on employment of non-nationals or workers employed by employers from other EU or non-EU countries
- mandatory use of port workers for non-port work
- exclusive rights for certain categories of workers
- mandatory composition of gangs
- ban on multi-skilling or multi-tasking
- exclusive right of trade union members (closed shop)
- other, please specify:

Restrictive working practices

- limited working days and hours
- inadequate duration of shifts
- late starts, early knocking off
- unjustified interruptions of work and breaks
- unauthorised absences
- overmanning
- inadequate composition of gangs
- ban on mobility of labour between hold and hold, ship and ship, ship and shore and between shore jobs
- limitations on use of new techniques
- other, please specify:

If so, do you consider these restrictive rules or practices as a major competitive disadvantage?

- yes
- no.

Please provide additional details on the restrictions:

.....
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.....

H.9. Which port labour regime (inside or outside your country or the EU) would you consider as a model or a best practice?

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H.10. Do you believe that there is a need or scope for EU action in the field of port labour? If so, do you have any specific suggestion?

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.....
.....

THANK YOU FOR YOUR COOPERATION

ANNEX D: METHODOLOGY OF QUESTIONNAIRE AND OVERVIEW OF INDIVIDUAL RESPONSES

A first draft questionnaire was presented to the European Commission together with the interim report of 15 September 2011. On that occasion, it was decided to give the European social partners (ETF, IDC-E, ESPO and FEPOR) the opportunity to comment on the draft questionnaire. The draft questionnaire was also presented at the ETF dockers meeting of 24 October 2011. The social partners' comments on the draft questionnaire were taken into consideration for the drafting of the final version. This final version of the questionnaire was sent to the European Commission, ETF, ESPO, FEPOR and IDC-E on 7 November 2011. The European Commission forwarded the questionnaire to the national administrations, whereas ETF, ESPO, FEPOR and IDC-E forwarded the questionnaire to their membership.

The table below show the response to the questionnaire.

	national administrations	employers organisations	employee organisations	port authorities	shipowners	TOTAL
1. Belgium	X	X	X X X	X X X	X	9
2. Bulgaria	X		X			2
3. Cyprus	forwarded to port authority			X		1
4. Denmark	X	X		X		3
5. Estonia						0
6. Finland	X	X		X		3
7. France	announced	X	X		X X X	5
8. Germany	X					1
9. Greece				X X X X X	X	6
10. Ireland	X			X X X X	X	6
11. Italy	X	X	X X X	X X X X		9
12. Latvia	X		X			2
13. Lithuania	forwarded to third parties	X X	X X	X		5
14. Malta	forwarded to port authority			X		1

15. Netherlands			X	X X		3
16. Poland	X			X		2
17. Portugal	X					1
18. Romania	forwarded to port authorities			X X X X		4
19. Slovenia	X			X		2
20. Spain	X	XX	X X	X	X	7
21. Sweden	forwarded to third parties	X	X X			3
22. United Kingdom		X			X X	3
TOTAL	12	11	16	30	9	78

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