



## Liberalisation of EU Port Services

**When it comes to transport within the European Single Market, there is very little that is surprising about proposed regulation of ports.**

Perhaps the only surprising thing is that, with the recent adoption by the European Parliament at 1st reading of an amended text to the “Port Services Regulation” (PSR), it has taken the EU Commission three attempts to get even this far. Whilst this is partly explained by the same kind of national interests that held up early liberalisation in the rail and aviation sector (especially in social and labour market aspects), it can also be seen as symptomatic of overreaching and a failure to grasp the challenges of establishing uniform rules to cover the wide diversity in EU ports and port structures.

### EU Common Transport Policy

The free movement of individuals, services and goods is a founding principle of the European Union and transport one of its very first common policy areas. As EU ports handle some 90% of the EU’s external freight and 40% of internal freight, it obviously attracts the attention of legislators.

*“ports are not only core to TEN-T transport policy but... likely to be key to EU economic growth.”*

Although EU transport policy has taken time to develop, European rules on movement by rail, road and maritime cabotage and aviation have transformed the way that people and goods safely move across Europe, particularly since the 1980s. Policy has focussed particularly on transport infrastructure access in pursuit of the goal of a single smooth and efficient European transport network, primarily in respect of the EU’s core Trans-European Transport Network (TEN-T). This is a huge challenge bearing in mind the vast gulf in development between the infrastructure of some Member States compared to others. Nevertheless, the TEN-T lies at the heart of EU transport policy. This is reinforced by the EU’s commitment of some €22bn of investment to 2020 in transport through the Connecting Europe Fund (CEF). The EU has designated 329 ports as part of the TEN-T of which 43 are in the UK. Consequently, ports are not only core to TEN-T transport policy but, given their role in trade outside the EU, likely to be key to EU economic growth.

*“UK ports consider themselves as highly efficient and competitive because they are privately owned and commercially autonomous”*

### The Port Services Regulation

The EU’s goals with the PSR to eliminate unfair competition, guarantee a level playing field and improve commercial efficiency in TEN-T ports may be unobjectionable in principle, particularly to port users and if they unlock CEF infrastructure funding. However, to achieve this the regulation targets (amongst other things) opening up of the market in intermediary ‘port services’ and financial transparency.

The financial transparency provisions in particular affect ports subject to public funding (on which most EU ports are reliant) and have already been watered down in part. Nevertheless they should improve public funding transparency, could alleviate some of the more overt state aid concerns over ports and the approach is consistent with that being taken in regulation of other modes of transport such as rail.

### Economic regulation and privately-owned ports

In the UK where, unlike the broader EU, the majority of ports are privately-owned and largely self-funding, it is the market access provisions for port services providers and the transparency requirements as to port charges which have provided and continue to provide greatest concern.

UK ports consider themselves as highly efficient and competitive because they are privately owned and commercially autonomous. Whilst there is currently ‘light-touch’ passive regulation of economic charges (through the Harbours Act 1964), any attempt to regulate actively the economic decisions of ports will be seen as threatening their overall financial viability and development.

As a result, the UK government, ports industry and unions have argued strongly for amendment or wholesale rejection of the PSR. There has been limited success in the European Parliament in respect of available exemptions and to paring back the scope of the market access pillar (e.g. currently limited to bunkering, mooring, port reception facilities and towage and, subject to optional national derogation, pilotage).

In addition, if adopted, there would be a period before the PSR comes into effect and transition arrangements will be in place for certain long-term port service contracts.

### Will it be 'third time lucky' for the Commission?

Although the UK government appears to have dropped its outright opposition to the PSR, significant opposition remains to the Port Services Regulation. In the current political environment, it would remain a challenge for the EU to finalise these reforms so it remains to be seen whether the PSR will be adopted or adopted in its latest form. The outcome of the ongoing EU trilogue is awaited.

*"EU transport policy favours regulation but, to deliver the TEN-T and achieve stated aims... regulation must avoid doing more harm than good".*

Taking a step back, however, looking at EU transport policy over the last few decades, the regulation of ports in the single market is notable for its absence, particularly given the significance of ports. Transport commentators might compare the position with that of the multiple regulatory packages liberalising the rail sector (albeit still dominated in the EU as a whole by state-owned enterprises) and with the Fourth Railway Package of EU legislation covering rail safety, technical and economic regulation that is now agreed and awaiting final endorsement.

The same might be noted of the three legislative packages affecting aviation which have completely changed the face of European air travel through regulatory changes to licensing, access and fares. Airports (to which sea ports are often compared) have been subject to EU legislation on slot allocation, market access to groundhandling services and airport charges since the 1990s.

In the circumstances, if it is not 'third time lucky' for the Commission as far as the PSR is concerned, ports liberalisation is unlikely to be off the table indefinitely. Prevailing EU transport policy favours regulation but, to deliver the TEN-T and achieve the stated aims of competitive growing ports on a level playing field, regulation must be sensitive to national circumstances and avoid doing more harm than good. The suggestion is that the EU is yet to have the balance quite right when it comes to private sector ports.

## Contact

For further information, please contact Elizabeth Dunn, Brian Wong or Alex Minhinick from our Marine and Ports team.



**Elizabeth Dunn**  
Partner

+44 (0)117 902 2738  
elizabeth.dunn@burges-salmon.com



**Brian Wong**  
Legal Director

+44 (0)117 902 7759  
brian.wong@burges-salmon.com



**Alex Minhinick**  
Associate

+44 (0)117 307 6874  
alex.minhinick@burges-salmon.com

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400  
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

[www.burges-salmon.com](http://www.burges-salmon.com)

Burges Salmon LLP is a limited liability partnership registered in England and Wales (LLP number OC307212), and is authorised and regulated by the Solicitors Regulation Authority. It is also regulated by the Law Society of Scotland. Its registered office is at One Glass Wharf, Bristol BS2 0ZX. A list of the members may be inspected at its registered office. Further information about Burges Salmon entities, including details of their regulators, is set out in the 'Who we are' section of the Burges Salmon website at [www.burges-salmon.com](http://www.burges-salmon.com).

© Burges Salmon LLP 2016. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting [marketing@burges-salmon.com](mailto:marketing@burges-salmon.com).