PORT LABOUR IN THE EU

Labour Market
Qualifications & Training
Health & Safety

Volume II – The Member State Perspective
Annexes

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9. PORT LABOUR IN EU MEMBER STATES AND INDIVIDUAL PORTS

9.1. Belgium

9.1.1. Port system

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 12th 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 2011, the gross weight of seaborne goods handled in Belgian ports was about 265 million tonnes. As for container throughput, Belgian ports ranked 4th in the EU and 13th in the world in 2010.

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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 1972, which was implemented by the Royal Decree of 12 January 1973 establishing a (national) Joint Committee for ports, the Royal Decree of 12 August 1974 establishing (local) Joint Subcommittees for ports and the Royal Decree 5 July 2004 on the registration of dockworkers.

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3 Wet van 8 juni 1972 betreffende de havenarbeid / Loi du 8 juin 1972 organisant le travail portuaire.
5 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.
6 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.
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 1978. 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 Work.

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 1947.

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 instruments.

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\(^7\) Wet van 3 juli 1978 betreffende de arbeidsovereenkomsten / Loi du 3 juillet 1978 relative aux contrats de travail.
\(^8\) 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.
\(^9\) Algemeen Reglement voor de Arbeidsbescherming (ARAB) / Règlement Général pour la Protection du Travail (RGTB).
\(^10\) See 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; 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.
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 rules. 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 Labour. 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. 160. The intention to ratify ILO Convention No. 152 never materialized however. Apparently, Belgium is still bound by ILO Convention No. 32 of 1932.

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 footing.

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

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11 See infra, para 473.
13 Parliamentary Documents, Chamber of Representatives, 1980-81, no. 856.
14 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 a Genève, le 27 avril 1932, par la Conférence internationale du Travail, au cours de sa seizième session.
15 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'.
level which are codified into so-called ‘Codices’. 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).

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 law.

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16 See also Vandevoorde, J.-L., “Havenarbeid in België is een huis met vier kamers”, De Lloyd 21 February 2012, 8-9.
17 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.
18 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 background

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.

The Belgian lawyer and historian Baron Gillès de Pélighy, who studied the history of labour arrangements in Flemish ports 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 Gillès de Pélighy, C., *L’organisation du travail dans les port 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 payment21.

21 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 natïën in de geschiedenis van het midden der XIIde eeuw tot rond 1550, Antwerp,
Kiliaan, 1922, 78 p.; Prims, F., De Antwerpsche natïën in de geschiedenis. II. Van rond 1550 tot aan
de Barreeltractaten, Antwerp, Kiliaan, 1922, 112 p.
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’ corporations. 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 privileges. 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 times. Even so, the mediaeval spirit continued to linger along the quays until the 1850s.

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 labour.

Prior to the adoption of the 1972 Port Labour Act, cargo handling in ports was exclusively regulated by collective agreements and customs. 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

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22 On these laws, see also infra, para 833.
23 Claey s, P., Les Associations d’ouvriers d’ébardeurs ou portefaix « aerbeiders » à Gand au XVIIe siècle, Ghent, J. Vuylsteke Editeur, 1906, 108. See also De V reese, A.M., De haven van Gent, Brussels, Standaard Uitgeverij, 1933, 190-201.
24 See Pandectes belges, v° Débardeur, paras 3-4.
26 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.
27 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 employment\textsuperscript{28}. At first, registration of workers was not restricted to a fixed maximum number of workers\textsuperscript{29}.

\textbf{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 (\textit{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.

\textbf{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 below\textsuperscript{30}.

\textbf{390.} As regards 20\textsuperscript{th} 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, \textit{etc.}\textsuperscript{31}. 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)\textsuperscript{32}.

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


\textsuperscript{30} See infra, para 391 et seq.

\textsuperscript{31} On the Antwerp example of "labour exchanges", established in 1902 and soon copied in Hamburg and Rotterdam, see Helle, H.J., \textit{Die unstetig beschäftigten Hafenarbeiter 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 "institutionalisirte 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., \textit{Ports de Commerce et Vie Littorale}, Paris, Hachette, 1979, 417.

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*) 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 worker. 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 Code. 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 Convention, we concur with Peter Turnbull that the current Belgium system of employment and training of port workers can be considered fully consistent with its requirements.

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

34 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.

35 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.

36 See supra, para 379.

Practically speaking, registered port workers receive a personal registration card and/or an access card as well as a personal wages book\textsuperscript{38}.

\textbf{392.} Pursuant to Article 3\textit{bis} of the Port Labour Act, the King, upon the advice of the local Joint Sub委员会, 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 laws\textsuperscript{39}. In order to be registered as an employers' association, the association must already have the majority of port employers as its members\textsuperscript{40}.

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)\textsuperscript{41}, Brugge-Zeebrugge (Centrale der werkgevers aan de haven van Zeebrugge, CEWEZ)\textsuperscript{42}, Ghent (Centrale van de werkgevers aan de haven van Gent, earlier Centrale des Employeurs au Port de Gand, still operating as CEPG)\textsuperscript{43}, Ostend and Nieuwpoort (Centrale der werkgevers aan de haven van Oostende, CEWO)\textsuperscript{44} and Brussels and Vilvoorde (Centrale de werkgevers aan de haven van Brussel en Vilvoorde / Centrale des employeurs des ports de Bruxelles et de Vilvorde, CEMPO)\textsuperscript{45,46}.

\textbf{393.} For the purposes of the Port Labour Act (as well as the Collective Bargaining Act of 5 December 1968\textsuperscript{47}), 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

\begin{itemize}
  \item \textsuperscript{38} See, for example, Art. 1, 3\textsuperscript{a} 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.
  \item \textsuperscript{39} 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).
  \item \textsuperscript{40} 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 Welzijns wet: 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.
  \item \textsuperscript{41} Royal Decree of 4 September 1985.
  \item \textsuperscript{42} Royal Decree of 10 July 1986.
  \item \textsuperscript{43} Royal Decree of 29 January 1986.
  \item \textsuperscript{44} Royal Decree of 1 March 1989.
  \item \textsuperscript{45} Royal Decree of 20 March 1986.
  \item \textsuperscript{46} 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.
  \item \textsuperscript{47} See Art. 2 of the Port Labour Act.
\end{itemize}
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 unlashing.

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 mêne 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 2004, 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 18;
(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;

48 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.

49 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 years\(^\text{50}\) (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 recognition\(^\text{51}\).

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
requirements\(^\text{52}\). 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;

\(^{50}\) 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).

\(^{51}\) 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.

\(^{52}\) 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 Codices53.

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 seniority54. New recruits join subgroup B and can move up to subgroup A after 18 months. An overview of the classification system is provided above55.

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

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53 See, for example, Chapter X (Art. 581 et seq.) of the Codex for the General Register in the port of Antwerp.
54 See Chapter IX (Art. 568 et seq.) of the Codex for the General Register in the port of Antwerp.
55 See infra, para 415.
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 the 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)\(^\text{56}\).

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

\(^{56}\) 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 basis. 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 allowance. Specific provisions apply to logistics workers.

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). 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 1988. According to the Antwerp Codex, the natiebazen are the only port workers who may perform port labour on a self-employed basis.

57 Data provided by CEPA. See also De Roo, M., “Havenarbeid in catch 22”, De Tijd 15 July 2011, 7.
59 See Art. 165 of the Codex for the Logistics Register in the port of Antwerp.
60 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 Article 916 of the Codex for the General Register in the port of Antwerp.
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). The employment of mechanics is governed by a separate Codex.

The work of mechanics may only be performed by a registered port worker or by a registered mechanic. 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 Antwerp.

The port of Ghent also maintains a separate register of mechanics, which is regulated in a collective agreement which was declared generally binding. 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.

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63 See Art. 1 and 2 of the Codex for Mechanics in the port of Antwerp.
64 See already supra, para 380.
65 See again Art. 2 of the Codex for Mechanics in the port of Antwerp.
66 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.
- 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 groups. 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 11 port employers in the port of Brussels, and 41 registered port workers. 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 (2012) about 10,325 registered port workers in Belgium. This would appear to represent, roughly, about 10 percent of total direct employment in port areas in Belgium.

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68 See further infra, para 473.
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 and CEPA70)

<table>
<thead>
<tr>
<th>Year</th>
<th>General register</th>
<th>Additional register (fruit sorters, mechanics, logistics and warehouse workers)</th>
<th>Total of registered workers</th>
<th>Total number of performed tasks (general register)</th>
<th>Average annual number of tasks per worker (general register)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>9,270</td>
<td>1,026</td>
<td>10,296</td>
<td>1,613,105</td>
<td>174</td>
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<tr>
<td>1990</td>
<td>7,009</td>
<td>1,434</td>
<td>8,443</td>
<td>1,384,598</td>
<td>198</td>
</tr>
<tr>
<td>2000</td>
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<td>7,097</td>
<td>1,071,813</td>
<td>193</td>
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<tr>
<td>2001</td>
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<td>1,402</td>
<td>6,790</td>
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</tr>
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<td>2003</td>
<td>5,739</td>
<td>1,377</td>
<td>7,116</td>
<td>1,182,298</td>
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<td>1,555</td>
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<td>1,232,722</td>
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<td>8,393</td>
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<td>8,596</td>
<td>1,303,664</td>
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<td>2007</td>
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<td>1,679</td>
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<td>1,356,651</td>
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<td>1,996</td>
<td>7,958</td>
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<td>n.a.</td>
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Table 4. Evolution of port labour employment in Zeebrugge, 1980-2012 (source: Flemish Ports Commission and CEWEZ71)

<table>
<thead>
<tr>
<th>Year</th>
<th>General register</th>
<th>Additional register (fruit sorters, mechanics, logistics workers)</th>
<th>Total of registered workers</th>
<th>Total number of performed tasks (general register)</th>
<th>Average annual number of tasks per worker (general register)</th>
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<tbody>
<tr>
<td>1980</td>
<td>327</td>
<td>0</td>
<td>327</td>
<td>36,162</td>
<td>111</td>
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<tr>
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<td>862</td>
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<td>862</td>
<td>158,725</td>
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<tr>
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<tr>
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<td>277</td>
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<td>323</td>
<td>1,810</td>
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<tr>
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<tr>
<td>2010</td>
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<tr>
<td>2011</td>
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<td>1,812</td>
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<td>222</td>
</tr>
<tr>
<td>2012</td>
<td>1,450</td>
<td>365</td>
<td>1,815</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
</tbody>
</table>

Table 5. Evolution of port labour employment in Ghent, 1980-2012 (source: Flemish Ports Commission and CEPG\textsuperscript{72})

<table>
<thead>
<tr>
<th>Year</th>
<th>General register</th>
<th>Additional register (crane drivers, mechanics, tallymen)</th>
<th>Total of registered workers</th>
<th>Total number of performed tasks (general register)</th>
<th>Average annual number of tasks per worker (all registers)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>787</td>
<td>0</td>
<td>787</td>
<td>131,095</td>
<td>167</td>
</tr>
<tr>
<td>1990</td>
<td>761</td>
<td>119</td>
<td>880</td>
<td>126,293</td>
<td>144</td>
</tr>
<tr>
<td>2000</td>
<td>479</td>
<td>207</td>
<td>686</td>
<td>81,142</td>
<td>118</td>
</tr>
<tr>
<td>2001</td>
<td>459</td>
<td>190</td>
<td>649</td>
<td>75,185</td>
<td>116</td>
</tr>
<tr>
<td>2002</td>
<td>430</td>
<td>179</td>
<td>609</td>
<td>67,620</td>
<td>111</td>
</tr>
<tr>
<td>2003</td>
<td>424</td>
<td>175</td>
<td>599</td>
<td>68,768</td>
<td>115</td>
</tr>
<tr>
<td>2004</td>
<td>442</td>
<td>169</td>
<td>611</td>
<td>76,980</td>
<td>126</td>
</tr>
<tr>
<td>2005</td>
<td>430</td>
<td>168</td>
<td>598</td>
<td>74,967</td>
<td>125</td>
</tr>
<tr>
<td>2006</td>
<td>432</td>
<td>163</td>
<td>595</td>
<td>79,465</td>
<td>134</td>
</tr>
<tr>
<td>2007</td>
<td>464</td>
<td>164</td>
<td>628</td>
<td>81,536</td>
<td>130</td>
</tr>
<tr>
<td>2008</td>
<td>458</td>
<td>163</td>
<td>621</td>
<td>88,500</td>
<td>143</td>
</tr>
<tr>
<td>2009</td>
<td>445</td>
<td>159</td>
<td>604</td>
<td>66,990</td>
<td>111</td>
</tr>
<tr>
<td>2010</td>
<td>419</td>
<td>164</td>
<td>583</td>
<td>81,659</td>
<td>140</td>
</tr>
<tr>
<td>2011</td>
<td>463</td>
<td>166</td>
<td>629</td>
<td>86,807</td>
<td>138</td>
</tr>
<tr>
<td>2012</td>
<td>457</td>
<td>158</td>
<td>615</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
</tbody>
</table>

Table 6. Evolution of port labour employment in Ostend, 1980-2012 (source: Flemish Ports Commission and CEWO\textsuperscript{73})

<table>
<thead>
<tr>
<th>Year</th>
<th>General register</th>
<th>Total number of performed tasks (general register)</th>
<th>Average annual number of tasks per worker (general register)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>55</td>
<td>5,135</td>
<td>93</td>
</tr>
<tr>
<td>2000</td>
<td>40</td>
<td>6,838</td>
<td>171</td>
</tr>
<tr>
<td>2001</td>
<td>34</td>
<td>7,308</td>
<td>215</td>
</tr>
<tr>
<td>2002</td>
<td>45</td>
<td>9,157</td>
<td>203</td>
</tr>
<tr>
<td>2003</td>
<td>59</td>
<td>12,206</td>
<td>207</td>
</tr>
<tr>
<td>2004</td>
<td>57</td>
<td>12,143</td>
<td>213</td>
</tr>
<tr>
<td>2005</td>
<td>53</td>
<td>11,949</td>
<td>225</td>
</tr>
<tr>
<td>2006</td>
<td>58</td>
<td>12,792</td>
<td>221</td>
</tr>
<tr>
<td>2007</td>
<td>66</td>
<td>14,203</td>
<td>215</td>
</tr>
<tr>
<td>2008</td>
<td>76</td>
<td>15,757</td>
<td>207</td>
</tr>
<tr>
<td>2009</td>
<td>74</td>
<td>10,941</td>
<td>148</td>
</tr>
<tr>
<td>2010</td>
<td>40</td>
<td>5,698</td>
<td>142</td>
</tr>
<tr>
<td>2011</td>
<td>34</td>
<td>4,135</td>
<td>122</td>
</tr>
<tr>
<td>2012</td>
<td>32</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
</tbody>
</table>

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 company\textsuperscript{74}.

\textbf{415.} In the port of Antwerp, in 2012 the numerical strength of the port workers’ register and its various subcategories was as follows:


\textsuperscript{74} See infra, paras 473 and 475 \textit{et seq.}
Table 7. Composition of the port labour pool in Antwerp, 30 June 2012 (source: CEPA)

<table>
<thead>
<tr>
<th>REGISTER / PROFESSIONAL CATEGORY</th>
<th>ACTIVE</th>
<th>SUSPENDED</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. GENERAL REGISTER</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Port workers rank A</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PORT WORKERS ALL TASKS</td>
<td>1,635</td>
<td>186</td>
<td>1,821</td>
</tr>
<tr>
<td>Other professional categories</td>
<td>1,669</td>
<td>156</td>
<td>1,825</td>
</tr>
<tr>
<td>Dock drivers / crane drivers</td>
<td>298</td>
<td>33</td>
<td>331</td>
</tr>
<tr>
<td>Dock drivers</td>
<td>590</td>
<td>41</td>
<td>631</td>
</tr>
<tr>
<td>Signalmen</td>
<td>62</td>
<td>12</td>
<td>74</td>
</tr>
<tr>
<td>Guards</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Lashers</td>
<td>417</td>
<td>28</td>
<td>445</td>
</tr>
<tr>
<td>Container tallymen</td>
<td>23</td>
<td>10</td>
<td>33</td>
</tr>
<tr>
<td>General cargo tallymen</td>
<td>71</td>
<td>15</td>
<td>86</td>
</tr>
<tr>
<td>Multicompetent tallymen</td>
<td>208</td>
<td>17</td>
<td>225</td>
</tr>
<tr>
<td>Dry bulk workers</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Dry bulk signalmen</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Permanent professional categories</td>
<td>1,174</td>
<td>30</td>
<td>1,204</td>
</tr>
<tr>
<td>Permanently employed port workers</td>
<td>21</td>
<td>7</td>
<td>28</td>
</tr>
<tr>
<td>Warehouse workers A</td>
<td>8</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Container inspectors</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Permanent container tallymen</td>
<td>115</td>
<td>3</td>
<td>118</td>
</tr>
<tr>
<td>Crane drivers</td>
<td>17</td>
<td>0</td>
<td>17</td>
</tr>
<tr>
<td>Crane drivers / Special equipment</td>
<td>27</td>
<td>0</td>
<td>27</td>
</tr>
<tr>
<td>Dock drivers / Crane drivers special equipment</td>
<td>984</td>
<td>18</td>
<td>1,002</td>
</tr>
<tr>
<td><strong>Executive categories</strong></td>
<td>924</td>
<td>27</td>
<td>951</td>
</tr>
<tr>
<td>Supervisors</td>
<td>115</td>
<td>5</td>
<td>120</td>
</tr>
<tr>
<td>Lashing supervisors</td>
<td>14</td>
<td>0</td>
<td>14</td>
</tr>
<tr>
<td>Dry bulk supervisors</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Chief tallymen</td>
<td>92</td>
<td>3</td>
<td>95</td>
</tr>
<tr>
<td>Foremen</td>
<td>444</td>
<td>11</td>
<td>455</td>
</tr>
<tr>
<td>Lashing foremen</td>
<td>91</td>
<td>0</td>
<td>91</td>
</tr>
<tr>
<td>Dry bulk foremen</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Assistant chief tallymen</td>
<td>149</td>
<td>6</td>
<td>155</td>
</tr>
<tr>
<td>Chief warehousemen</td>
<td>19</td>
<td>2</td>
<td>21</td>
</tr>
<tr>
<td><strong>TOTAL OF PORT WORKERS RANK A</strong></td>
<td>5,402</td>
<td>399</td>
<td>5,801</td>
</tr>
</tbody>
</table>

75 Dutch ceelbazen, which can also be translated as 'chief foremen'.
76 Dutch conterbazen.
2. Port workers rank B

<table>
<thead>
<tr>
<th>PORT WORKERS ALL TASKS</th>
<th>Rank A</th>
<th>Rank B</th>
<th>Rank C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other professional categories</td>
<td>53</td>
<td>6</td>
<td>59</td>
</tr>
<tr>
<td>Dock drivers / crane drivers</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Dock drivers</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Signalmen</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Guards</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Lashers</td>
<td>44</td>
<td>3</td>
<td>47</td>
</tr>
<tr>
<td>Container tallymen</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>General cargo tallymen</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Multicompetent tallymen</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Dry bulk workers</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Dry bulk signalmen</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>TOTAL OF PORT WORKERS RANK B</strong></td>
<td>127</td>
<td>34</td>
<td>161</td>
</tr>
</tbody>
</table>

**TOTAL OF PORT WORKERS RANKS A + B** 5,529 433 5,962

II. LOGISTICS REGISTER

<table>
<thead>
<tr>
<th>Logistics workers</th>
<th>Rank A</th>
<th>Rank B</th>
<th>Rank C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warehouse workers</td>
<td>854</td>
<td>9</td>
<td>863</td>
</tr>
<tr>
<td>Fruit sorters</td>
<td>47</td>
<td>5</td>
<td>52</td>
</tr>
<tr>
<td>Fruit packers</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Logistics workers</td>
<td>151</td>
<td>7</td>
<td>158</td>
</tr>
<tr>
<td><strong>TOTAL OF LOGISTICS WORKERS</strong></td>
<td>1,052</td>
<td>21</td>
<td>1,073</td>
</tr>
</tbody>
</table>

III. OTHER WORKERS UNDER THE JOINT COMMITTEE

<table>
<thead>
<tr>
<th>Mechanics</th>
<th>Rank A</th>
<th>Rank B</th>
<th>Rank C</th>
</tr>
</thead>
<tbody>
<tr>
<td>898</td>
<td>25</td>
<td>923</td>
<td></td>
</tr>
<tr>
<td>Partly incapacitated</td>
<td>0</td>
<td>712</td>
<td>712</td>
</tr>
<tr>
<td><strong>Awaiting registration</strong></td>
<td>331</td>
<td>7</td>
<td>338</td>
</tr>
<tr>
<td><strong>CEPA books</strong></td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

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.

77 Dutch *verminderd arbeidsgeschikt*.
78 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.
79 This category mainly comprises shop stewards or union staff employed at the Prevention and Protection Service and the training centre OCHA.
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>
<thead>
<tr>
<th></th>
<th>BTB</th>
<th>ACV Transcom</th>
<th>ACLVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antwerp</td>
<td>50-55</td>
<td>35-38</td>
<td>10-12</td>
</tr>
<tr>
<td>Zeebrugge-Brugge</td>
<td>52-55</td>
<td>45-48</td>
<td>0</td>
</tr>
<tr>
<td>Ghent</td>
<td>50-60</td>
<td>40-50</td>
<td>0</td>
</tr>
<tr>
<td>Brussels</td>
<td>0</td>
<td>65</td>
<td>35</td>
</tr>
<tr>
<td>All ports</td>
<td>50</td>
<td>38</td>
<td>10-11</td>
</tr>
</tbody>
</table>

9.1.4. Qualifications and training

- Regulatory set-up

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...

---

80 Reportedly, ACV Transcom has a stronger position in the logistics register.
81 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 only.\footnote{\textsuperscript{36}}

\textbf{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).

\textbf{419.} In Antwerp, the training takes place at a purpose-built training centre, the Port Worker Training Centre (\textit{Opleidingscentrum voor Havenarbeiders, OCHA})\footnote{\textsuperscript{83}}; 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 regulations.\footnote{\textsuperscript{84}}

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.

\footnote{\textsuperscript{82} See \textit{supra}, paras 398-399.}
\footnote{\textsuperscript{83} See \url{www.ocha.be} and Van Krunkelsven, G., "Port of Antwerp. Training Center for Port Workers", \url{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).
In recent years, OCHA scaled back its activities and the number of trainers was reduced dramatically (from 37 in 2008 to 12 today\textsuperscript{86}). 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 (\textit{peters}, or ‘godfathers’) to coach new workers on an individual basis.

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


\textsuperscript{86} See \url{www.ocha.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 6 trainers are employed. The Rostra facility was achieved with the support of the European Union and the European Regional Development Fund. 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 required.

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 unions. 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 ports.

89 On this certificate, see *infra*, para 1465.
91 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.
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 everywhere. 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 measures.

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 meeting.

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 workers.

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.

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

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94 See Art. 40 of the Codex for the General Register in the Port of Zeebrugge-Brugge.
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 scope96.

The Belgian Labour Inspectorate cooperates within an EU cooperation framework on labour inspection of ports97.

97 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 Maldegem 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, 2010 (source: Occupational Accidents Fund and Federal Public Service for Employment, Labour and Social Dialogue)

<table>
<thead>
<tr>
<th>NACE Code</th>
<th>Storage in refrigerated warehouses and other storage</th>
<th>NACE Code</th>
<th>Cargo handling at seaports</th>
<th>NACE Code</th>
<th>Other cargo handling, outside seaports</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours of exposure</td>
<td>25,966,705.44</td>
<td>12,314,465.82</td>
<td>5,304,219.20</td>
<td>7,010,246.62</td>
<td></td>
</tr>
<tr>
<td>No. of accidents</td>
<td>847</td>
<td>1,435</td>
<td>1,154</td>
<td>281</td>
<td></td>
</tr>
<tr>
<td>No. of fatal accidents</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Sum of incapacity degree</td>
<td>549.00</td>
<td>1,476.00</td>
<td>1,319.00</td>
<td>157.00</td>
<td></td>
</tr>
<tr>
<td>Lost days</td>
<td>18,688.00</td>
<td>34,758.00</td>
<td>28,478.00</td>
<td>6,280.00</td>
<td></td>
</tr>
<tr>
<td>Frequency rate</td>
<td>32.62</td>
<td>116.53</td>
<td>217.56</td>
<td>40.08</td>
<td></td>
</tr>
<tr>
<td>Severity rate</td>
<td>0.72</td>
<td>2.82</td>
<td>5.37</td>
<td>0.90</td>
<td></td>
</tr>
<tr>
<td>Global severity rate</td>
<td>2.31</td>
<td>12.42</td>
<td>25.43</td>
<td>2.58</td>
<td></td>
</tr>
</tbody>
</table>

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. 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, 2008-2010 (source: Occupational Accidents Fund and Federal Public Service for Employment, Labour and Social Dialogue\textsuperscript{99}; our adaptation)

<table>
<thead>
<tr>
<th>NACE Code</th>
<th>Frequency rate</th>
<th>Severity rate</th>
<th>Global severity rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cargo handling at seaports</td>
<td>52.241</td>
<td>242.9</td>
<td>171.9</td>
</tr>
<tr>
<td>Other mining and quarrying</td>
<td>08</td>
<td>60.18</td>
<td>48.70</td>
</tr>
<tr>
<td>Manufacture of wood and of</td>
<td>16</td>
<td>44.80</td>
<td>40.37</td>
</tr>
<tr>
<td>products of wood and cork,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>except furniture; manufacture</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>of articles of straw and</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>plaiting materials</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Casting of metals</td>
<td>24.5</td>
<td>68.33</td>
<td>56.52</td>
</tr>
<tr>
<td>Construction of buildings,</td>
<td>41</td>
<td>65.24</td>
<td>60.96</td>
</tr>
<tr>
<td>development of building projects</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General construction of</td>
<td>41.201</td>
<td>71.00</td>
<td>67.90</td>
</tr>
<tr>
<td>residential buildings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction of bridges and</td>
<td>42.130</td>
<td>57.38</td>
<td>53.26</td>
</tr>
<tr>
<td>tunnels</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Removal services</td>
<td>49.42</td>
<td>64.20</td>
<td>55.62</td>
</tr>
<tr>
<td>Sea and coastal freight water</td>
<td>50.2</td>
<td>51.21</td>
<td>16.37</td>
</tr>
<tr>
<td>transport</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inland freight water transport</td>
<td>50.4</td>
<td>23.01</td>
<td>14.69</td>
</tr>
<tr>
<td>Temporary employment agency</td>
<td>78.2</td>
<td>82.52</td>
<td>57.66</td>
</tr>
</tbody>
</table>

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 standards\textsuperscript{100}.

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, 2008-2011 (source: Gemeenschappelijke Dienst voor Preventie & Bescherming Haven van Antwerpen\textsuperscript{101})

<table>
<thead>
<tr>
<th>Year</th>
<th>Fatal</th>
<th>Permanent incapacity</th>
<th>Temporary incapacity</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>2</td>
<td>164</td>
<td>1,404</td>
<td>1,570</td>
</tr>
<tr>
<td>2009</td>
<td>0</td>
<td>148</td>
<td>878</td>
<td>1,026</td>
</tr>
<tr>
<td>2010</td>
<td>1</td>
<td>191</td>
<td>1,008</td>
<td>1,200</td>
</tr>
<tr>
<td>2011</td>
<td>5</td>
<td>190</td>
<td>1,109</td>
<td>1,304</td>
</tr>
</tbody>
</table>

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

\textsuperscript{100} See http://www.faofat.be/site_nl/stats_etudes/infos_gen/variables/variables-SEAT/variables-SEAT.html.

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 gravity of accidents in the port of Antwerp, 1956-2011 (source: Gemeenschappelijke Dienst voor Preventie & Bescherming Haven van Antwerpen\(^{102}\))

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 Antwerpen)

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 Cepa / 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.

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.

---

Table 12. Occupational accidents in the General Register of port workers in Zeebrugge-Brugge, with frequency and severity rates, 2001-2011 (source: CEWEZ)

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of occupational accidents</th>
<th>Frequency rate</th>
<th>Severity rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>218</td>
<td>139.02</td>
<td>3.58</td>
</tr>
<tr>
<td>2002</td>
<td>181</td>
<td>118.98</td>
<td>3.46</td>
</tr>
<tr>
<td>2003</td>
<td>162</td>
<td>107.36</td>
<td>2.68</td>
</tr>
<tr>
<td>2004</td>
<td>132</td>
<td>79.66</td>
<td>1.88</td>
</tr>
<tr>
<td>2005</td>
<td>193</td>
<td>101.49</td>
<td>2.72</td>
</tr>
<tr>
<td>2006</td>
<td>230</td>
<td>111.35</td>
<td>2.98</td>
</tr>
<tr>
<td>2007</td>
<td>244</td>
<td>104.81</td>
<td>2.25</td>
</tr>
<tr>
<td>2008</td>
<td>255</td>
<td>112.09</td>
<td>2.48</td>
</tr>
<tr>
<td>2009</td>
<td>157</td>
<td>86.47</td>
<td>2.11</td>
</tr>
<tr>
<td>2010</td>
<td>302</td>
<td>139.42</td>
<td>4.00</td>
</tr>
<tr>
<td>2011</td>
<td>296</td>
<td>138.66</td>
<td>3.82</td>
</tr>
</tbody>
</table>

In 2011, 51 accidents occurred in the port of Ghent, 5 of which resulted in definitive incapacity. The exposure rate was 632,515 hours. The incidence rate of accidents in the port of Ghent was 80.63 and the severity rate 3.24.


<table>
<thead>
<tr>
<th>Year</th>
<th>Incidence rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>152.04</td>
</tr>
<tr>
<td>2003</td>
<td>123.65</td>
</tr>
<tr>
<td>2004</td>
<td>121.18</td>
</tr>
<tr>
<td>2005</td>
<td>113.45</td>
</tr>
<tr>
<td>2006</td>
<td>119.12</td>
</tr>
<tr>
<td>2007</td>
<td>95.92</td>
</tr>
<tr>
<td>2008</td>
<td>107.05</td>
</tr>
<tr>
<td>2009</td>
<td>63.43</td>
</tr>
<tr>
<td>2010</td>
<td>89.10</td>
</tr>
<tr>
<td>2011</td>
<td>80.63</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Severity rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>5.11</td>
</tr>
<tr>
<td>2003</td>
<td>4.11</td>
</tr>
<tr>
<td>2004</td>
<td>4.67</td>
</tr>
<tr>
<td>2005</td>
<td>2.95</td>
</tr>
<tr>
<td>2006</td>
<td>3.85</td>
</tr>
<tr>
<td>2007</td>
<td>2.56</td>
</tr>
<tr>
<td>2008</td>
<td>3.49</td>
</tr>
<tr>
<td>2009</td>
<td>2.18</td>
</tr>
<tr>
<td>2010</td>
<td>2.90</td>
</tr>
<tr>
<td>2011</td>
<td>3.24</td>
</tr>
</tbody>
</table>

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, 2006-2009 (source: CEWO)

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of port workers involved in an occupational accident</th>
<th>Days of incapacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>7</td>
<td>368</td>
</tr>
<tr>
<td>2007</td>
<td>9</td>
<td>166</td>
</tr>
<tr>
<td>2008</td>
<td>7</td>
<td>120</td>
</tr>
<tr>
<td>2009</td>
<td>2</td>
<td>187</td>
</tr>
</tbody>
</table>

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 productivity and the undeniably

high reputation of Belgian ports as amongst the most productive in the EU and probably in the whole world\(^{105}\), together with some trade unions in other countries regarding the Belgian system as best practice\(^{106}\), 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.

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.

\(^{105}\) 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).

\(^{106}\) See *infra*, para 505.
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 (dominiconcessie) granted by the local port authority, and they must join the local employers' association.¹⁰⁷

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 terms.¹⁰⁸

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 cases 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

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¹⁰⁷ See infra, para 392.
¹⁰⁸ See supra, paras 393-394.
¹⁰⁹ See supra, para 403.
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 explained\textsuperscript{110}, the level of unionisation in Belgian ports is between 90 and 100 per cent (which is considerably higher than the national average\textsuperscript{111}).

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

\textsuperscript{110} See supra, para 416.

\textsuperscript{111} Depending on the source, national trade union density is estimated at 52 percent or between 80 and 89 per cent (see Carley, M. “Trade union membership 2003–2008”, Eironline 22 September 2009, \url{http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm}; Fulton, L., “Worker representation in Europe”, \url{http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2}). Another source, apparently based on OECD figures, mentions 55.8 per cent density.
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 death.\textsuperscript{112}

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 category on condition, \textit{inter alia}, that he applies for it with the Administrative Commission through one of the official trade unions.\textsuperscript{113}

Yet another provision obliges employers calling upon office staff on a rest day to inform the trade unions in advance.\textsuperscript{114}

\textsuperscript{112} In this respect, an issue of discrimination on the grounds of gender and descent may arise as well.
\textsuperscript{113} See, for example, Art. 308, 375, 395 and 434 of the Codex for the General Register in the port of Antwerp.
\textsuperscript{114} Art. 365 of the Codex for the General Register in the port of Antwerp.
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 union\(^{115}\).

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 Antwerp\(^{116}\).

The existence of a closed shop in Belgian ports has been a well-known fact among legal and other commentators for many years\(^{117}\). 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 today\(^{118}\). 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 altogether\(^{119}\).

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.

\(^{115}\) Art. 11 of the Codex for the Logistics Register in the port of Antwerp.

\(^{116}\) Art. 7 of the Codex for Mechanics in the port of Antwerp.


> *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.*


\(^{118}\) See Van Isacker, K., *De Antwerpse dokwerker 1830-1940*, Antwerp, De Nederlandsche Boekhandel, 1963, 174 et seq.

\(^{119}\) See *Parliamentary Questions and Answers*, Senate, 1 April 1986, Question no. 45 by Mr. Van Ooteghem.
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 explained, 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 Antwerp. 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 membership would infringe freedom of commerce. 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.

120 See supra, para 392.
It has also been submitted that the scope of the legal monopoly granted to the employers' organisations goes beyond the original intention of the lawmaker\textsuperscript{123}.

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.

\textbf{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 hire' occurs frequently)\textsuperscript{124}.

Since the 1960s, the social partners, inspired by developments in the UK and the Netherlands, attempted to enhance permanency of employment\textsuperscript{125}. As a result, the number of permanently employed port workers has increased considerably.

\textsuperscript{123} See Beckers, J., "Werken tussen schip en kade", \textit{Belgisch Tijdschrift voor Sociale Zekerheid} 1989, (1065), 1071-1072, para 11.

\textsuperscript{124} See especially Art. 51 of the Codex for the General Register in the port of Antwerp.

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
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 system\textsuperscript{126}.

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 flexibility\textsuperscript{127} 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

\textsuperscript{126} On the latter, see infra, para 460.
\textsuperscript{127} 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.)\(^1\) 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 overtime\(^2\) and the priority of engagement for workers who were employed on a Saturday to continue work on Sunday\(^3\). Workers who have finished their job in one ship cannot be obliged to continue work at another ship\(^4\).

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 law\(^5\), 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

\(^{1}\) 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.

\(^{2}\) Art. 68 of the Codex for the General Register in the Port of Antwerp.

\(^{3}\) Art. 69 of the Codex for the General Register in the Port of Antwerp.

\(^{4}\) See, for example, Van den Bossche, B., "Maritieme expeditie als ambacht", De Lloyd 31 January 2011.

\(^{5}\) 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 shift. 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 employers.

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 supervisor. Moreover, the Codex of Ghent allows for the conclusion of company-based agreements on flexible working hours. At the DFDS Tor Line terminal, for example, work may start at every full hour, day and night. 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 competition. 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

133 See Art. 9 and 20 of the Codex for the General Register in the port of Zeebrugge-Brugge.
134 See Art. 26 of the Codex for the General Register in the port of Zeebrugge-Brugge.
135 See Art. 7.1 of the Codex for the port of Ghent.
136 Art. 6.99 of the Codex for the port of Ghent creates a general legal basis for such company-specific agreements.
137 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.
138 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 Register. 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 explained, 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 gangs 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.

140 See supra, paras 398-399.
141 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 website. 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 mentioned, 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 foremen. Workers can

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143 See supra, para 451.
144 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 timetables.\footnote{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.}

In Gent, where gang composition rules are also less stringent than in Antwerp and where workers may be hired for half shifts, the private sector association VeGHO ('Vereniging van Gentse Havengebonden Ondernemingen' or Association of Port-Related Companies of Gent) 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 port.\footnote{See Art. 6.4 and 6.5 of the Codex for the port of Gent.} 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 Gent, 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 Gent retort that if something has to change, it will first have to be done in Antwerp, because Ghent is already much more flexible today.

\textbf{455.} There exists a ban on self-hunting in Belgian ports.\footnote{U.S. law (22 CFR Ch. 1 § 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.} 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
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 workers. 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.

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 (photos 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) transhipment 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 Act150 or regulations made thereunder151, but its existence is inferred from the Port Labour Act and expressly acknowledged by the unions152.

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

150 See the references supra, para 451, footnote.
151 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.
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 Bureau.\

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, 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 book. 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.

153 Art. 59 of the Codex for the Logistics Register in the port of Antwerp.
154 On this case, see infra, para 466.
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 areas\textsuperscript{156}.

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 work\textsuperscript{157}.

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, \textit{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 Directive\textsuperscript{158}.

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.

\textbf{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 2000\textsuperscript{159}, 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

\textsuperscript{156} 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.


\textsuperscript{158} 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.

\textsuperscript{159} 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 Fund. 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 matter.

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

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160 See supra, para 268.
161 Reference was made to the document ‘Inzetten havenarbeiders andere havens. Voorstel gezamenlijke werkwijze’.
Belgian law on the hiring out of workers. 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 hall.

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 eradicated, 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 constant) 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.

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162 See already *supra*, para 451.
163 See already *supra*, para 450; see also X., "Naar een moderniseri ng van de havenarbeid", *Portaal April-May-June* 2012, (4), 5.
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 notes.\footnote{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.
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 Codex\textsuperscript{167} apparently applies one way only. Yet, the Codex of Zeebrugge-Brugge expressly allows a company-specific ban (\textit{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.

\textbf{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.

\textbf{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.

\textsuperscript{167} Art. 5.3 of the Codex for the General Register in the port of Ghent.
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 Codices.

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), which is composed of representatives of both the employers’ association and the trade unions. The Permanent Bureau may impose serious financial sanctions on employers.

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 themselves; 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 Codices, 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

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168 See, for example, Art. 1.5 of the Codex for the General Register in the port of Ghent.
170 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.
171 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.
172 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 fit\textsuperscript{173}. 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. Zuhal Demir MP concluded that even so the system lacks transparency\textsuperscript{174}.

\textbf{463.} As we have mentioned above\textsuperscript{175}, 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.

\textbf{464.} As a twentieth and last restriction on employment, Belgian legislation still obliges weighers and measurers to take an oath before the Court of Commerce\textsuperscript{176}. 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 regulations\textsuperscript{177}. Some sworn weighers and measurers also act as tallymen in the port. To our knowledge, no one ever complained about these particularities.

\textbf{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 \textit{Becu}; (2), the ensuing

\textsuperscript{173} 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.


\textsuperscript{175} See supra, para 380.

\textsuperscript{176} 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.

\textsuperscript{177} See, \textit{inter alia}, \textit{Pandectes belges}, \textit{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 case\textsuperscript{178}, which was already mentioned in the introductory chapter on EU law above\textsuperscript{179}, 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’ \textit{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


\textsuperscript{179} See, \textit{inter alia}, supra, paras 197, 213 and 215.
In the opinion of Advocate-General Colomer, this wage disparity led to the imposition of unreasonable prices.

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

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181 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 services:\footnote{182}

\footnote{182} See supra, para 197.

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, prevents 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 case\footnote{183}.


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
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.
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)\footnote{See already supra, paras 197, footnote and 213.}

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 TFEU\footnote{On this issue, see especially supra, para 200 et seq., especially para 203.}. 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
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 pending\textsuperscript{186}.

\textbf{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 registration\textsuperscript{187} before the Chamber of Representatives:

\begin{quote}
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.
\end{quote}

\textsuperscript{186} Contra the annotation of the judgment in Chroniques de droit social - Sociaalrechtelijke kronieken 2011, 291.

\textsuperscript{187} Which was ultimately implemented in the Royal Decree of 5 July 2004: see supra, para 376.
Frank Vandenbroucke 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 changed.

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 association.

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 protection.

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

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188 The then Minister for Labour and Pensions.
190 See supra, para 232.
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 report\(^{192}\).

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 respect\(^{193}\).

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 explained\(^{194}\), 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


\(^{194}\) See *supra*, para 447.
the Port Labour Act, Article 1 of which clearly refers to port work performed under a contract of employment\textsuperscript{195}. Long before the adoption of the Port Labour Act, self-employed workers were held to remain outside the scope of collective agreements on port labour\textsuperscript{196}. As we have seen\textsuperscript{197}, 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 barges may perform port labour in a port area\textsuperscript{198}. The representative of the Minister replied that if the barge 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 otherwise\textsuperscript{199}. 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 requirements\textsuperscript{200}, because these workers will still need to be registered first, and registration is only granted following a particularly intransparent procedure\textsuperscript{201}. 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

\textsuperscript{195} Art. 1 of the Port Labour Act provides: *Niemand mag in de havengebieden, havenarbeid laten verrichten door andere werknemers dan erkende havenarbeiders* (emphasis added).


\textsuperscript{197} See supra, para 467.

\textsuperscript{198} See Parliamentary Documents, 2010-11, Chamber of Representatives, Commission for Social Affairs, CRIV 53 COM 154, Question by Zuhal Demir, no. 2212.

\textsuperscript{199} See supra, para 455.

\textsuperscript{200} See supra, para 400.

\textsuperscript{201} 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. 3bis 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 law.

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 1970s. 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 BTB. The Minister succeeded in rushing his draft Port Labour Act through Parliament at unprecedented speed, leaving no archival record of its preparation behind.

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

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202 See supra, para 215.
203 See Parliamentary Documents, Chamber of Representatives 1971-1972, paras 78/1 and 78/2; Parliamentary Documents, Senate 1971-72, no. 364.
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)\textsuperscript{206}. 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 Court\textsuperscript{207} 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 explained\textsuperscript{208}, mismatches of

\textsuperscript{206} Already in 1954, the use of inexperienced occasional workers was considered to result in less
productivity and safety risks (see Helle, H.J., \textit{Die unstetig beschäftigten Hafenarbeiter in den
nordwesteuropäischen Häfen}, Stuttgart, Gustav Fischer Verlag, 1960, 26).

\textsuperscript{207} See \textit{supra}, para 468.

\textsuperscript{208} See \textit{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 below, 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

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209 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)\textsuperscript{210}. Similar concerns over the real objectives of the Act were voiced during the debates in the legislative Chambers\textsuperscript{211}.

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 ports\textsuperscript{212}.

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 system\textsuperscript{213}. 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, Mexicanatie, BNFW and NHS) generate approximately 50 per cent of all labour tasks in the port.

\textsuperscript{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 however\textsuperscript{214}.

\textsuperscript{210} 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).*  
\textsuperscript{211} See *Parliamentary Debates*, Senate 31 May 1972, 930.  
\textsuperscript{213} See *supra*, paras 380 and 448.  
\textsuperscript{214} 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 adopted215.

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 below216.

476. As we have explained above217, 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 Codices218.

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.


216 See infra, para 483.

217 See supra, para 393.

218 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.
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 plants\(^\text{219}\) (for example, the cleanup of the holds of a dry bulk ship berthed at a chemical plant\(^\text{220}\) and of a coal ship at a power station\(^\text{221}\)). 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 only\(^\text{222}\). 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 workers\(^\text{223}\) (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 workers\(^\text{224}\)). 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 factory\(^\text{225}\). 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 labour\(^\text{226}\).

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” (\textit{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

\(^{219}\) 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”, \textit{Belgisch Tijdschrift voor Sociale Zekerheid} 1989, (1065), 1067-1069, paras 6-7. This paper was also published in \textit{Rechtsleer vanuit de rechtzaal}, Paris / Brussels, De Boeck & Larcier, 1998, 193-205.

\(^{220}\) Criminal Court of Ghent, 18 June 1984 (Rhône-Poulenc), unreported; Court of Appeal of Ghent, 20 March 1985 (Rhône-Poulenc), unreported.


\(^{223}\) Court of Appeal of Brussels, 31 October 1979 (Molians), unreported.

\(^{224}\) See supra, para 473.


\(^{226}\) 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 Moerdaart 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-Oostende Ship Canal, where a waterfront concrete factory is located, the Bruges-Gent 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 Act227.

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

227 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 workers228.

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 minutes229. 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

229 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 Decree\(^2\), 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 infringements\(^3\). 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.

\(^2\) Decreet betreffende de organisatie en de werking van de loodsdiens 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. 19bis)].

\(^3\) 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 labour\textsuperscript{232}. 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 workers\textsuperscript{233}.

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 Authority\textsuperscript{234}. 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 workers\textsuperscript{235}.

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 workers\textsuperscript{236}.

An overview by CEPA dated 1 March 2011 inventories no fewer than 38 decisions by the Permanent Bureau\textsuperscript{237} 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

\textsuperscript{232} See Art. 964, 965 and 969 of the Codex for the General Register in the port of Antwerp.

\textsuperscript{233} Art. 48 of the Codex for the Logistics Register in the port of Antwerp.

\textsuperscript{234} 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.

\textsuperscript{235} 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.


\textsuperscript{237} 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 by 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). 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 binding 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).

Apparenty, 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 situations.

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.

238 Compare also more or less similar guidance in Art. 2, 4° of the Codex for the ports of Ostend and Nieuwpoort.
240 Parliamentary Documents, Senate, 19 februari 1998, 4444.
The legal uncertainty over the applicability of the Port Labour Act in cases of self-employment of port workers was already discussed above. 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 respect.

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

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 activities. In addition, nothing in ILO Convention No. 137 or the preparatory studies related thereto – 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 law.

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241 See supra, para 472.
242 See supra, para 410.
243 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).
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 1999\textsuperscript{246}. A similar register was also introduced in the ports of Zeebrugge and Ghent\textsuperscript{247}. 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 test\textsuperscript{248}.

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 ports\textsuperscript{249}. 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 area\textsuperscript{250}. 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

\textsuperscript{246} 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' (\textit{magazijnarbeiders B}) in 1990 (see more in Baete, B., "1973-2004. Een getuigenis", in Vanfraechem, S. and Baete, B., \textit{100 jaar Havenarbeidersbond Antwerpen. Van dokwerker tot havenarbeider}, Ghent, Amsab, 2004, (105), 132 \textit{et seq.}).

\textsuperscript{247} The employment of these workers is governed by a separate collective agreement (Collectieven arbeidsovereenkomst van 8 mei 2000 tot vaststelling van het statuut van havenarbeider van het aanvullend contingent aan de haven van Gent).

\textsuperscript{248} See supra, para 399.

\textsuperscript{249} Two relocation cases where labour conditions were a major factor are Schenker (now at Willebroek: see \url{http://www.imustbe.be/mmm/jq/files/660/pdf_00000474nl.pdf}) and Efico (now Seabridge, in the port of Zeebrugge).

\textsuperscript{250} See \url{http://acvtranskomkusthavens.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 companies.\textsuperscript{251}

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.

\textsuperscript{251} Mintiens, G., “Meer begrip nodig voor logistiek’. Havenarbeid zet rem op groei Maritieme Logistieke Zone in Zeebrugge”, \textit{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 regulations\(^\text{252}\). 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 (\textit{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 value\(^\text{253}\). However, the criteria of ‘transformation’ and ‘added value’ are particularly vague and give rise to substantial legal uncertainty, which in turn deters investment\(^\text{254}\). 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 whatsoever\(^\text{255}\). 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 workers\(^\text{256}\), 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


\(^{253}\) See supra, para 396; see, for example, \url{http://acvtranskomsthavens.blogspot.com/2009_06_01_archive.html}.

\(^{254}\) 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).

\(^{255}\) Such as a distribution centre for Evian mineral water.

\(^{256}\) 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 gangs;
- 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

257 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).²⁵⁸

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 explained²⁵⁹, 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 stations²⁶⁰.

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²⁵⁸ See also supra, para 121.
²⁵⁹ See also supra, para 463.
- 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 fitness\textsuperscript{261}, 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 above\textsuperscript{262}, 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.

\textsuperscript{261} See supra, para 402.
\textsuperscript{262} 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 above 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.

263 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 Terminal. 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 accident.

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 bulldozer. 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 vessel. 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 workers.
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.

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, the past two years 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 drugs. 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.

269 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 labelled\textsuperscript{270}. 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 website\textsuperscript{271}.

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.


\textsuperscript{271} See \url{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 job\textsuperscript{272}.

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.

9.1.7. Appraisals and outlook

504. As we have mentioned before\textsuperscript{275}, 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 call\textsuperscript{274}. 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."\textsuperscript{275}

506. It is also worth recalling the Recommendation on EU Ports Policy which was adopted in 2007 by the Flemish Ports Commission\textsuperscript{276}. This Commission is an official consultative body

\textsuperscript{275} See supra, para 390.


\textsuperscript{276} Aanbeveling van de Vlaamse Havencommissie over het in voorbereiding zijnde Europese havenbeleid, 5 July 2007, \url{http://www.serv.be/vhc/publicatie/advies-van-de-vlaamse-havencommissie-over-het-voorbereiding-zijnde-europese-havenbeleid}. 

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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 job. Antwerp should have a Codex similar to the one in Zeebrugge. 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

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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 practice279.

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

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 schedules. 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,

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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. Earlier and recent 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.

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 operations. 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

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281 On "river and canal labour", see, for example, Christelijke Centrale van Vervoerarbeiders, Samen

282 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.

283 See, for example, http://btb-btbkust.blogspot.be/2009/04/cobelfret-wil-in-oostende-werken-
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
with. The media concluded that the unions can make or break a port traffic. 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 places.

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'.

284 X., "Oostende verliest groenten- en fruittrafiek", De Lloyd 17 December 2010,
http://www.dellloyd.be/Article/tabid/231/ArticleID/15208/ArticleName/Oostendeverliestgroentenfruit
trafiek/Default.aspx.
286 See supra, para 483.
287 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 skills.288

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 navigation.289

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 (Moer vaart 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

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 port. Even if this statement was refuted by employers, 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 transhipment 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 flexibility.

In an attempt to anticipate a possible intervention by the European Commission, 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 insufficient.

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 particularly the breakbulk sector have been going on in Antwerp since 2007 but have been unsuccessful so far.

292 See supra, para 483.
293 See supra, para 469.
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 issues.

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 investigated.

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.

Interestingly, an Antwerp politician advocated the introduction of EU rules on social protection of dockers as long ago as in 1998\textsuperscript{297}.

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 \textit{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

\textsuperscript{297}Tuerlinckx, K., "Veeg wet-Major niet zomaar van tafel'. SP’er Marcel Batholomeeuwsen pleit voor Europese oplossing voor statuut havenarbeider", \textit{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 Antwerp. 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 Belgium.

In 2012, the European Commission launched a Pilot Project on the Belgian port labour system in preparation of a possible infringement procedure.


### SYNOPSIS OF PORT LABOUR IN BELGIUM

#### LABOUR MARKET

<table>
<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 main ports</td>
<td>Lex specialis (Port Labour Act, 1972; Port Labour Regulations)</td>
<td>Exclusive right of registered workers and their employers</td>
</tr>
<tr>
<td>Landlord model</td>
<td>National and port-wide CBAs</td>
<td>Closed shop</td>
</tr>
<tr>
<td>265m tonnes</td>
<td>Important role of local usages</td>
<td>Opacity of registration procedure</td>
</tr>
<tr>
<td>4th in the EU for containers</td>
<td>Exclusive right of employers’ associations</td>
<td>Ban on permanent employment</td>
</tr>
<tr>
<td>13th in the world for containers</td>
<td>Exclusive right of registered port workers</td>
<td>Strict subclassification of workers (ban on multi-tasking)</td>
</tr>
<tr>
<td>Appr. 190 employers (50 regular)</td>
<td>3 categories of port workers: (1) Registered port workers (2) Registered logistics workers (3) Occasional workers</td>
<td>Mandatory manning scales</td>
</tr>
<tr>
<td>Appr. 10,300 port workers</td>
<td>Joint management</td>
<td>Inefficient hiring procedures</td>
</tr>
<tr>
<td>Trade union density: 90-100%</td>
<td>Hiring halls</td>
<td>Ban on self-handling</td>
</tr>
<tr>
<td></td>
<td>Criminal sanctions</td>
<td>Ban on temporary agency work</td>
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</tbody>
</table>

#### QUALIFICATIONS AND TRAINING

<table>
<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
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</thead>
<tbody>
<tr>
<td>Jointly managed port-based training centres</td>
<td>Compulsory training for all candidate port workers</td>
<td>Mixed appraisal of Antwerp training centre</td>
</tr>
<tr>
<td>No national certification system</td>
<td>No Party to ILO C152</td>
<td>No market access for private training providers</td>
</tr>
</tbody>
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#### HEALTH AND SAFETY

<table>
<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detailed statistics available</td>
<td>Specific national Safety Regulations for ports</td>
<td>Extreme accident rates despite strict regulation and improvement in last decades</td>
</tr>
<tr>
<td>Highest accident frequency and severity rates in the economy</td>
<td>No Party to ILO C152</td>
<td>Criticism by Labour Inspectorate</td>
</tr>
<tr>
<td>Jointly managed port-wide safety arrangements</td>
<td>Jointly managed port-wide safety arrangements</td>
<td>Outdated national Safety Regulations</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Still bound by outdated ILO C32</td>
</tr>
</tbody>
</table>

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300 Throughput figures relate to maritime traffic for 2011. Container throughput ranking is for 2010. ‘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 system\textsuperscript{301}

Bulgaria has three major seaports located on the Black Sea: Varna, Burgas and Balchik. The ports of Varna and Burgas are multi-purpose ports that handle all types of cargo, including dry bulk, containers, ro-ro and general cargo.

In 2011, the gross weight of seaborne goods handled in Bulgarian seaports was about 25.7 million tonnes. As regards container throughput, Bulgarian ports ranked 22nd in the EU and 104th in the world in 2010\textsuperscript{302}.

Ruse, Lom and Vidin are Bulgarian ports along the Danube River. At Ruse-East, river-sea vessels can be accommodated.

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, \textit{inter alia}, ports\textsuperscript{303}. 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.

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.


\textsuperscript{303} 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 2000 on Maritime Areas, Inland Waterways and Ports of the Republic of Bulgaria which also contains basic provisions on cargo handling and port labour.

Some aspects of port labour are further regulated by Ordinance No. 9 of 29 July 2005 on the Requirements for Operational Suitability of Ports (hereinafter: ‘Ports Ordinance’). This Ordinance determines the requirements for the operation of ports and port terminals and for the qualifications of workers and organises 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 14 November 2008 devotes specific attention to the enforcement of health and safety rules in ports.

In addition, Ordinance No. 12 of 30 December 2005 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 2006.

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.

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 Lom.

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304 This is the date of adoption by the National Assembly.
305 The Bulgarian Maritime Administration prefers to translate this as ‘Maritime Spaces’.
307 Наредба № 9 от 29.07.2005 г. за изискванията за експлоатационна годност на пристанищата.
308 Закон за инспектиране на труда.
309 See infra, para 560.
310 Наредба № 12 от 30.12.2005 г. за осигуряване на здравословни и безопасни условия на труд при извършване на товарно-разтоварни работи.
311 Разпореждане № 91 от 5.09.2006 г. относно изискванията и процедурите за безопасно товарене и разтоварване на кораби за насипни товари.
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 EAD. 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 developments.

Since 2005, a number of port concessions were effectively granted to port operators. The

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process of privatisation through concessions is still ongoing.\(^{315}\)

- 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 ‘ports’ (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, Burgas-West, Rosenets, Nessebar;
- Port Ruse, which includes Ruse-East, Ruse-Central, Ruse-West, Silistra, Ferryboat Terminal-Silistra, Turtakan, 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) and Annex 1).

The Minister of Transport, Information Technology and Communications regulates by an ordinance the operational requirements for public transport ports (Art. 104(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 Bulgaria\(^{316}\) (Annex No. 2) which specifies that all types of cargo are intended, including liquid bulk. As a rule, cargo and passenger-related port services may only be provided in public transport ports (Art. 116(5) of the Act).


\(^{316}\) 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 provides, inter alia, for the setting of the number of port operators which can be admitted (Art. 117a(4)) 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 or port terminal.

In order to obtain such a certificate, the port or terminal 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).
Figure 72. Model of an Operational Suitability Certificate for ports and terminals in Bulgaria
(source: Annex No. 6 to Regulation No. 9 of 29 July 2005 on the Requirements for Operational
Fitness of Ports)

REPUBLIC OF BULGARIA
MINISTRY OF TRANSPORT

OPERATIONAL SUITABILITY

CERTIFICATE

No ......................

This is issued to certify that:

The port / terminal ..................................(type of the port)..........................
..........................................................(name of the port)............................... is suitable for operation

Purpose
(port services and activities)

..........................................................
..........................................................
..........................................................

Port operator:

city of..................................................Str.
BULSTAT ...........................................
telephone: ...............................................
fax: .....................................................
e-mail: ............................................... 

The certificate is issued on the basis of Article 95, paragraph 2 of the Maritime Space, Inland
Waterways and Ports Act of the Republic of Bulgaria and Statement No ............. of the
committee of the Port Administration Executive Agency (Port Administration Directorate -
......................) on the outcome of the inspection for compliance of the port/terminal
operational suitability with the requirements of Regulation No 9 of 2005 on the requirements for
port operational suitability.

Issued on ...................... Valid until .............

MINISTER OF TRANSPORT ..........................
(signature and stamp)
All port operators are registered in an official register (Art. 14). 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. 12;
- 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. 15(1), 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. 15(4)).

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. 15(a)(3)).

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. 16(1)).

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. 16(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. 16(3)).

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. 16(a)(1)).

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317 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 пристанищите оператори в република България).
318 For a definition of this concept, see § 1, 7, (b) and (c) of the Additional Provisions.
319 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 Act (Art. 16(a)(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. 17).

FTTUB added that for some functions, language skills are required and that workers must have a clean criminal record.

The local directorates of the EAMA 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. 18(1)). A digital copy shall be kept at the EAMA in Sofia as well (Art. 18(2)).

Processing applications for a Certificate, the EAMA must use a pre-established checklist, which contains a separate item on the personnel of the port operator (Annex 4 to the Port Regulations).

Figure 73. Checklist for the granting of an Operational Suitability Certificate to port operators by the Port Administration Executive Agency of Bulgaria (excerpt) (source: Annex No. 4 to Regulation No. 9 of 29 July 2005 on the Requirements for Operational Suitability of Ports)

<table>
<thead>
<tr>
<th>Art</th>
<th>para/it</th>
<th>Elements of the port subject to inspection in compliance with the Regulation referred to in Article 95, paragraph 1 of the MSIWPARB</th>
<th>Findings of the committee as regards the compliance of the inspected site with the requirements of the Regulation</th>
<th>Annexed documents referred to in Article 19 of the Regulation</th>
<th>YES/NO Remarks on the condition of the inspected site</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>para 1</td>
<td>Qualifications of the workforce used</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>para 2</td>
<td>Port services are provided by a registered port operator, employing and/or contracting workforce consisting of managerial and operative personnel</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>para 3</td>
<td>The port employs duly qualified personnel as required for the respective position</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>para 4 and 5</td>
<td>The administrative and operative personnel meet the objectives of the port and the port services provided in terms of members and qualifications</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>The personnel involved in loading and unloading operations has been trained in compliance with labour safety requirements, is equipped with protection equipment and has adequate rest</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

320 See Art. 63 et seq. of the latter Act.
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. 20(3)).

The EAMA carries out scheduled, ongoing and targeted inspections (Art. 24(1)). Scheduled inspections must cover, inter alia, the condition of port personnel and labour conditions (Art. 24(3)). Ongoing inspections focus on, inter alia, health and safety conditions and the use of skilled operative personnel (Art. 24(5)).

In emergency situations which put the port personnel in danger, the Executive Director of PAEA may suspend the operation of a port or terminal (see Art. 26).

The Executive Director of EAMA may also issue binding requirements and recommendations on port operators aimed at bringing the port or terminal in line with the requirements of the Port Regulations (Art. 27(1)).

Violations of the rules on Operational Suitability Certificates or Technical Flowcharts will be sanctioned (see Art. 34 et seq.).

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 workerrs
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 17 operated a terminal on the Black Sea, and 37 one on the Danube.

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 study.

322 On the latter, see supra, para 8 et seq.
Table 16. Total employment and trade union membership in Bulgarian ports, 2009 (source: ILO Report on Social Dialogue in Bulgarian Ports[^22])

<table>
<thead>
<tr>
<th>PORT OPERATOR AT PUBLIC TRANSPORT PORT WITH NATIONAL IMPORTANCE</th>
<th>NUMBER OF EMPLOYED</th>
<th>TOTAL NUMBER OF WORKERS AND MEMBERS OF THE TRADE UNIONS</th>
<th>TRADE UNION ACTIVITIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Port Varna - Single Owner Joint Stock Company</td>
<td>1625</td>
<td>1602</td>
<td>Union of Port Workers CITUB Varna East Union of Port Workers CITUB Varna West Trade Union &quot;Podkrepa&quot; Trade union of Dockers</td>
</tr>
<tr>
<td>Port Burgas Single Owner Joint Stock Company</td>
<td>1400</td>
<td>400</td>
<td>PODKREPA CITUB Sailors Union Trade union of crane operators</td>
</tr>
<tr>
<td>Port Complex Russe Single Owner Joint Stock Company</td>
<td>342</td>
<td>323</td>
<td>Union of transport trade unions – CITUB; CL „Podkrepa“ Russe; “Promiana” Union of Port Workers and Employees</td>
</tr>
<tr>
<td>Port Complex Lom Single Owner Joint Stock Company</td>
<td>308</td>
<td>305</td>
<td>Trade union of port workers CITUB; Transport workers federation &quot;PODKREPA&quot;</td>
</tr>
<tr>
<td>Port Vidin Single Owner Limited Liability Company</td>
<td>37</td>
<td>34</td>
<td>Section affiliated to CL “PODKREPA”</td>
</tr>
<tr>
<td>Danube Industrial Park Ferryboat Terminal Silistra</td>
<td>4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Port Lesport Joint Stock Company Port terminal Lesport</td>
<td>119</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

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.

### 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 Straight oils terminal | 19 | - | -
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 only.\(^{324}\)

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9.2.4. Qualifications and training

- Regulatory set-up

553. As mentioned before, 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. 16(4)).

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).

325 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 (triptite) basis

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,

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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 before\textsuperscript{327}, 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. 16(5)).

The application for an Operational Suitability Certificate must contain, \textit{inter alia}, annexes on the organisation of port work, statements by the district directorate of the Labour Inspection Executive Agency on labour safety conditions and statements by registered labour medical services on labour condition issues (microclimate, dust, noise, vibrations, lighting, physical tension, electromagnetic fields and laser radiation, toxic substances and ionising radiation) and compliance with health and safety conditions at the workplace and during the operation of equipment (Art. 19(4), 6 and 12(c) and (f) 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, \textit{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

\textsuperscript{327} See \textit{supra}, para 545 \textit{et seq.}
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). 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 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 above
\[ \text{See } \text{supra, para 551.} \]

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 unlashing).

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

\[ \text{See } \text{supra, para 551.} \]
implemented in the future. Whatever the case, FTTUB does not consider the supposed restrictions a major competitive disadvantage.

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 unlashing of cargo to the terminal operator’s specialised teams.329

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”;

329 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.
- 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;
- 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 operators.

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 modernised.

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.

- **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 above\textsuperscript{332} 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 equipments\textsuperscript{333}.

EAMA has no information on the outcome of these discussions but supposes that talks are ongoing.

\textsuperscript{332} See supra, para 572.

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 workers and that statistical information on injuries be collected\(^\text{334}\). EAMA confirmed to us that these recommendations have been acted upon.

Finally, Bulgaria is still bound by the outdated ILO Convention No. 32.

9.2.7. Appraisals and outlook

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 creation\(^\text{335}\).

Similarly, the Strategy for the Development of the Transport System of the Republic of Bulgaria until 2020 of 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 ports\(^\text{336}\). 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 certainty. The current relationship between port employers and unions is described as satisfactory.

The Agency regards the port labour regime of Japan as a model\(^{337}\).

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 competencies\(^{338}\).

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).

\(^{337}\) 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.

9.2.8. Synopsis

**SYNOPSIS OF PORT LABOUR IN BULGARIA**

<table>
<thead>
<tr>
<th>FACTS</th>
<th>THE LAW</th>
<th>ISSUES</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 main ports</td>
<td><em>Lex specialis</em> (Waterways &amp; Ports Act, 2000; Port Suitability Ordinance) aligned to EU trends</td>
<td>National figures on port employment not updated</td>
</tr>
<tr>
<td>Landlord model</td>
<td>No Party to ILO C137</td>
<td>Closed shop (?)</td>
</tr>
<tr>
<td>26m tonnes</td>
<td>National and company CBAs</td>
<td>Ban on self-handling</td>
</tr>
<tr>
<td>22nd in the EU for containers</td>
<td>Mandatory certification of all port operators</td>
<td>Ban on temporary agency work</td>
</tr>
<tr>
<td>104th in the world for containers</td>
<td>Port operators must have registered and qualified personnel</td>
<td>Restrictive working practices</td>
</tr>
<tr>
<td>Appr. 54 employers</td>
<td>No pool system</td>
<td>Job insecurity (?)</td>
</tr>
<tr>
<td>Appr. 4,000 port workers (?)</td>
<td>No hiring halls</td>
<td></td>
</tr>
<tr>
<td>Trade union density: 50-99%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Q U A L I F I C A T I O N S A N D T R A I N I N G

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<tr>
<th>FACTS</th>
<th>THE LAW</th>
<th>ISSUES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Port training centres</td>
<td>National certification and qualification requirements for workers and equipment operators</td>
<td>No genuine national training curricula</td>
</tr>
<tr>
<td>Company-based training</td>
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</tr>
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H E A L T H A N D S A F E T Y

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<th>FACTS</th>
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<th>ISSUES</th>
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<tr>
<td>Detailed accident statistics unavailable</td>
<td><em>Specific Ordinance on safety of loading and unloading</em></td>
<td>Lack of statistics</td>
</tr>
<tr>
<td></td>
<td>No Party to ILO C152</td>
<td>Still bound by outdated ILO C32</td>
</tr>
</tbody>
</table>

**Notes**

339 Throughput figures relate to maritime traffic for 2011. Container throughput ranking is for 2010. "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 system

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 2011, the gross weight of seaborne goods handled in Cypriot ports was about 7.15 million tonnes. For containers, Cypriot ports ranked 18th in the EU and 79th in the world in 2010.

The Cypriot seaports are managed by the Cyprus Ports Authority (CPA), a public autonomous organisation under the supervision of the Ministry of Communication and Works. 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.


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 1973 and the regulations made thereunder.

590. Port labour is governed by the Port Workers (Regulation of Employment) Act of 31 December 1952 (hereinafter: ‘Port Labour Act’, which forms Chapter 184 of the Laws of Cyprus) and the annexed Port Workers (Regulation of Employment) Regulations of 1952 (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 1996.

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), the Occupational Safety and Health in Dockwork (Medical Examinations) Order (No. 321/2002), and the Occupational Safety and Health in Dockwork (Identifying Competent International Organisations) Order (No. 55/2008).

Cyprus also issued a Code of Practice for the Training of Mobile Crane Operators and Regulations on the Manual Handling of Loads.

592. Cyprus is not bound by ILO Convention No. 137. It ratified ILO Convention 152 by Act No. 197 of 1987.353

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.

353 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 requires.354

Act No. 70(I) of 2000 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

355 Ω περί Ειδικού Τέλους επί των Απολαβών των Λιμενεργατών και Σημειωτών Νόμος τον 2000 (Ν. 70(Ι)/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 Europe.\footnote{356 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_project_work/2005-017-643_02_01%20Cyprus%20Ports%20Authority.pdf?CFID=530786&CFTOKEN=35420374&jsessionid=060125ef84be6594d6a7, Annex 4.}


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.

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 Larnaca.

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 porters.

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

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359 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/work/2005-017-643_02_01%20Cyprus%20Ports%20Authority.pdf?CFID=530786&CFTOKEN=35420374&jsessionid=060125e84be6594d6a7, Annex 4 and on information obtained from the Cyprus Shipping Association.
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.

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 ports. 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".

360 See [http://www.csa-cy.org/members.htm](http://www.csa-cy.org/members.htm).
An "employer's porter" (αχθοφόρος εργοδότη) is defined as any person who is employed regularly by any employer to handle:

(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 Act.

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)).

361 Ports were actually designated by Order 93/92, which was issued on the basis of the Customs Laws 1967 to 1991.
Regulations made under the Port Labour Act may regulate the permitting, work and employment of licensed porters, establish the annual licence fees and the porterage charged by the porter 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 workers. 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 cargo. A licensed porter is a co-owner of the equipment.

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 seen, 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

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362 See, inter alia, Theodore Kapnisis vs. Cyprus Ports Authority, 15 October 2001, Case 10771.
364 Andreas Avraam vs. The Ports Authority of Cyprus (Case No. 196/79), 9 September 1981.
365 See supra, para 588, footnote.
wages and the conditions of engagement and employment of port workers in that port and for
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)).

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)).

366 Practically, the Boards consist of nine members and include an equal number of Government
representatives, representatives of employers and employees’ organisations (see

367 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 principal. 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—
(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 purpose (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)).

369 Employers and workers must be equally represented in such a Committee (see Reg. 7).
613. Temporarily unemployed port workers receive unemployment benefit from the Government.

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 58 members of whom 48 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.

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 2012.
Table 17. Number of port workers and licensed porters in the ports of Limassol and Larnaca, 2003-2012 (source: Cyprus Port Authority)

**LIMASSOL**

<table>
<thead>
<tr>
<th>Year</th>
<th>Dockers</th>
<th>Tally clerks</th>
<th>Supervisors</th>
<th>Licensed porters</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>106</td>
<td>9</td>
<td>n.a.</td>
<td>73</td>
</tr>
<tr>
<td>2004</td>
<td>104</td>
<td>9</td>
<td>n.a.</td>
<td>68</td>
</tr>
<tr>
<td>2005</td>
<td>103</td>
<td>9</td>
<td>n.a.</td>
<td>63</td>
</tr>
<tr>
<td>2006</td>
<td>90</td>
<td>8</td>
<td>n.a.</td>
<td>63</td>
</tr>
<tr>
<td>2007</td>
<td>77</td>
<td>8</td>
<td>n.a.</td>
<td>63</td>
</tr>
<tr>
<td>2008 (until 31/08)</td>
<td>77</td>
<td>8</td>
<td>n.a.</td>
<td>61</td>
</tr>
<tr>
<td>2008 (as of 01/09)</td>
<td>109</td>
<td>15</td>
<td>10</td>
<td>61</td>
</tr>
<tr>
<td>2009</td>
<td>109</td>
<td>15</td>
<td>10</td>
<td>54</td>
</tr>
<tr>
<td>2010</td>
<td>108</td>
<td>15</td>
<td>10</td>
<td>51</td>
</tr>
<tr>
<td>2011</td>
<td>107</td>
<td>15</td>
<td>11</td>
<td>51</td>
</tr>
<tr>
<td>2012 (May)</td>
<td>107</td>
<td>15</td>
<td>10</td>
<td>46</td>
</tr>
</tbody>
</table>

**LARNACA**

<table>
<thead>
<tr>
<th>Year</th>
<th>Dockers</th>
<th>Tally clerks</th>
<th>Supervisors</th>
<th>Licensed porters</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>50</td>
<td>6</td>
<td>n.a.</td>
<td>41</td>
</tr>
<tr>
<td>2004</td>
<td>50</td>
<td>6</td>
<td>n.a.</td>
<td>42</td>
</tr>
<tr>
<td>2005</td>
<td>50</td>
<td>6</td>
<td>n.a.</td>
<td>42</td>
</tr>
<tr>
<td>2006</td>
<td>50</td>
<td>6</td>
<td>n.a.</td>
<td>42</td>
</tr>
<tr>
<td>2007</td>
<td>47</td>
<td>6</td>
<td>n.a.</td>
<td>38</td>
</tr>
<tr>
<td>2008 (until 31/08)</td>
<td>47</td>
<td>4</td>
<td>n.a.</td>
<td>37</td>
</tr>
<tr>
<td>2008 (as of 01/09)</td>
<td>26</td>
<td>4</td>
<td>3</td>
<td>37</td>
</tr>
<tr>
<td>2009</td>
<td>26</td>
<td>4</td>
<td>3</td>
<td>33</td>
</tr>
<tr>
<td>2010</td>
<td>25</td>
<td>4</td>
<td>3</td>
<td>32</td>
</tr>
<tr>
<td>2011</td>
<td>23</td>
<td>4</td>
<td>3</td>
<td>28</td>
</tr>
<tr>
<td>2012 (May)</td>
<td>23</td>
<td>4</td>
<td>3</td>
<td>29</td>
</tr>
</tbody>
</table>

In addition, the Cyprus Ports Authority employs 37 permanent crane drivers, while the licensed porter 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) 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, PEO) and IDC, and the Federation of Transport Petroleum and Agricultural Workers of Cyprus (FTPAW), which is affiliated to the Cyprus Workers’ Confederation (Συνομοσπονδία Εργαζομένων Κύπρου, SEK) and ETF. There is also a Democratic Labour Federation (Δημοκρατική Εργατική Ομοσπονδία Κύπρου, DEOK).

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 Programme.

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;
- continued or advanced training after a regular educational programme;
- induction courses for new entrants;
- training in safety and first aid;

371 On the latter aspect, see supra, para 94.
- 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 below\textsuperscript{372}.

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. 152\textsuperscript{373}.

625. The Occupational Safety and Health in Dockwork (Medical Examinations) Order 321/2002 regulates a mandatory medical examination of port workers.

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

\textsuperscript{372} See infra, para 630 \textit{et seq.}

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 work.\textsuperscript{374}

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 Inspectorate.\textsuperscript{375}

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 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 2011.
Table 18. Number of accidents in Cypriot ports, 2007-2011 (source: Department of Labour Inspection, Cyprus)

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Accidents</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>6</td>
</tr>
<tr>
<td>2008</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>(1 fatal)</td>
</tr>
<tr>
<td>2009</td>
<td>21</td>
</tr>
<tr>
<td>2010</td>
<td>22</td>
</tr>
<tr>
<td>2011</td>
<td>11</td>
</tr>
<tr>
<td>Total</td>
<td>73</td>
</tr>
</tbody>
</table>

The employed persons in the port sector of Cyprus during 2011 numbered 750.

The Department of Labour Inspection informed us that the frequency index (number of accidents per 100,000 employees, of whom there were 750) of accidents in the port sector was 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 2011 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
(source: Department for Labour Inspection, Cyprus)

<table>
<thead>
<tr>
<th>Economic activity sector</th>
<th>Number of accidents</th>
<th>Number of employed persons</th>
<th>Frequency Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ports</td>
<td>11</td>
<td>750</td>
<td>1,466.66</td>
</tr>
<tr>
<td>Electricity, gas, steam and air conditioning supply</td>
<td>33</td>
<td>1,454</td>
<td>2,269.60</td>
</tr>
<tr>
<td>Construction</td>
<td>418</td>
<td>34,773</td>
<td>1,202.08</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>413</td>
<td>23,781</td>
<td>1,736.68</td>
</tr>
<tr>
<td>Mining and quarrying</td>
<td>11</td>
<td>832</td>
<td>1,322.12</td>
</tr>
<tr>
<td>Total / mean value of all sectors of the economy</td>
<td>2,010</td>
<td>306,715</td>
<td>655.33</td>
</tr>
</tbody>
</table>

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 high.\(^ \text{376} \)

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 level.\(^ \text{377} \) 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.


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 above, 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”.

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 Limassol.

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378 See supra, para 595.
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 cent.\(^{381}\)

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 port.\(^{382}\)

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 whatsoever.\(^{383}\) 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 Commission.\(^{384}\) Reportedly, this case has not yet been resolved.

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382 See supra, para 603.

383 Epiphaniou Scrap Metals Ltd vs. District Labour Officer of Limassol and Cyprus Ports Authority, 2 December 1997, Case No. 857/95.

384 AGS Agrotrading Ltd vs. Port Labour Board of Limassol, 24 November 2008, Case 1/36.604.
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 possess\(^\text{385}\).

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 porters\(^\text{386}\).

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

\(^{385}\) Theodoros Kapnisis vs. Cyprus Ports Authority, 30 June 1995, Case 818/93.

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 workers. 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-handling. As we have explained, 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:

388 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.
389 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 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 perform.\(^{390}\)

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 accidents.\(^{391}\)

\(^{390}\) Philippos Kleanthous Vardas vs. The Police (Case Stated No. 89), 18 March 1954.

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/EC. 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 terms 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 disputes.

646. As we have mentioned, 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 sectors. We could obtain no further details on this issue.

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392 On the Directive, see supra, para 225 et seq.
393 See supra, para 598.
394 Viceroy Shipping Co. Ltd. vs. Andreas Mahattou (Civil Appeal No. 6310), 3 March 1982.
395 See supra, para 601.
- 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 areas.

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 above, 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.

398 See supra, para 633.
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 environment\footnote{See \url{http://hudoc.esc.coe.int/esc2008/document.asp?item=0}}.

### 9.3.7. Appraisals and outlook

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.

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 respectively\footnote{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”, \textit{Cyprus Mail} 13 December 2011, \url{http://www.cyprus-mail.com/cyprus/unannounced-port-workers-strike-costs-taxpayer-4000/20111213}).}. 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.

In 2010, CPA organised a questionnaire on customer satisfaction on services provided by third parties. Port workers achieved a higher score than licensed porters.
The Cyprus Shipping Association responded that, despite the prevailing restrictions resulting from the existing rules and regulations pertaining to the operation of Cyprus 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.

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. Synopsis

SYNOPSIS OF PORT LABOUR IN CYPRUS

LABOUR MARKET

**Facts**
- 3 main ports
- Toolport model with shipping agents acting as master stevedores
- 7m tonnes
- 18th in the EU for containers
- 79th in the world for containers
- Appr. 58 employers
- 342 port workers
- Trade union density: 100%

**The Law**
- *Lex specialis* (Port Workers Act, 1952 and Regulations)
- No Party to ILO C137
- National CBAs per category
- Exclusive right of workers
- 3 categories of workers:
  1. Port workers *sensu stricto* 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

**Issues**
- 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**
- Training by Cyprus Ports Authority and Licensed Porters' Associations

**The Law**
- No legal requirements

**Issues**
- Absence of framework for qualifications and training

HEALTH AND SAFETY

**Facts**
- National accident statistics available
- Frequency index twice as high as national average (2011)
- Recent safety training projects

**The Law**
- Specific Health and Safety Regulations
- Party to ILO C152

**Issues**
- High accident rates

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401 Throughput figures relate to maritime traffic for 2011. Container throughput ranking is for 2010. *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 system\textsuperscript{402}

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 2011, the gross weight of seaborne goods handled in Danish ports amounted to about 92.6 million tonnes. In the container business, Danish ports ranked 15th in the EU and 60th in the world in 2010\textsuperscript{403}.

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 \textit{sui generis}, the Port of Copenhagen. For the greater part, cargo is handled by the private sector. As we shall explain below\textsuperscript{404}, 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.

9.4.2. Sources of law

The management of Danish ports is regulated by the Ports Act (Lov om havne) of 28 May 1999\textsuperscript{405}, which was repeatedly revised (lastly in 2012). The Ports Act mainly describes the legal


\textsuperscript{404} See infra, para 670.

\textsuperscript{405} 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).
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 2004. 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 1960, the Metro Company and City Development Company Act of 6 June 2007 and the Port of Copenhagen Concession of 31 March 1980. 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 Act 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 1965 which is the only port labour-specific legal instrument in the country. In addition, we should mention 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. 413.

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407 Lov om Københavns frihavn (Lov nr 141 af 31/03/1960).
408 Lov om Metroeselskabet I/S og Arealudviklingsselskabet I/S (Lov nr 551 af 06/06/2007).
409 Bekendtgørelse af koncession for Københavns Frihavns- og Stevedoreselskabet A/S til i Københavns Frihavn at udeve frihavnsvirksomhed (BEK nr 144 af 31/03/1980).
410 See the consolidated version in Bekendtgørelse af lov om arbejdsmiljø (LBK nr. 1072 af 7. september 2010).
411 Bekendtgørelse (BEK nr 181 af 18/05/1965) om regulativ for lastning og losning af skibe.
412 See more infra, para 690.
413 Cirkulære om samarbejde mellem arbejdstilsynet og skibstilsynet om gennemførelse af regulativ for lastning og losning af skibe.
Some further provisions on the safety of port labour can be found in the Regulations on Lifting Gear On Board Ships\textsuperscript{414}. For completeness’ sake, we should also mention the general Order on Hoists and Winches\textsuperscript{415}.

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 2002\textsuperscript{416}.

666. Denmark has ratified ILO Convention No.152\textsuperscript{417} 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 legislation\textsuperscript{418}. 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 workers\textsuperscript{419}. 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, \textit{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 Aabenraa\textsuperscript{420}, Aalborg\textsuperscript{421}, Aarhus\textsuperscript{422}, Bornholm\textsuperscript{423}, Copenhagen\textsuperscript{424}, Esbjerg\textsuperscript{425},

\begin{footnotesize}
\begin{enumerate}
\item Teknisk forskrift om hejsemidler og lossegrej m.v. i skibe (BEK nr 11643 af 12/10/2000).
\item Bekendtgørelse om hejseredskaber og spil (BEK nr 1101 af 14/12/1992).
\item Teknisk forskrift nr. 9639 af 09/10/2002 om lastning og løsning af bulkskibe.
\item 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.
\item 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).
\item Overenskomst 2010 - 2012 er indgået mellem DI Overenskomst II (DSA) og 3F Aabenraa.
\item Tillægsoverenskomst 2012-2014 til fællesoverenskomst mellem DI Over-enskomst II (HTS-Arbejdsgiverforeningen Nordjylland) og 3F, Aalborg gældende for havnearbejdere i Aalborg.
\end{enumerate}
\end{footnotesize}
Hirtshals\textsuperscript{426}, Horsens\textsuperscript{427}, Nakskov\textsuperscript{428}, Randers\textsuperscript{429}, Skagen (fishing port)\textsuperscript{430} and Vejle\textsuperscript{431}. 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 Association\textsuperscript{432}. 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 internet\textsuperscript{433}.

668. Some collective agreements expressly refer to local usages as an additional source of the law\textsuperscript{434}. 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.

\textsuperscript{426} Tillægsoverenskomst til Fællesoverenskomsten 2010 – 2012 mellem DI Overenskomst II (Bornholms Havne- og Købmændsforening) og 3F Bornholm vedrørende lastning og løsning.

\textsuperscript{427} 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. Reportedly, the reference in this agreement to crane drivers has only historical importance.

\textsuperscript{428} Tillægsoverenskomst til Fællesoverenskomsten 2012-2014 mellem DI Overenskomst II (Sydvestjysk Arbejdsgiverforening) og 3F Esbjerg Transport for Esbjerg Havn.

\textsuperscript{429} Tillægsoverenskomst til Fællesoverenskomsten 2012-2014 mellem DI Overenskomst II (DSA) og 3F - Skagerak gældende for Claus Sørensen A/S, Hirtshals (frysehus og pakkeri).

\textsuperscript{430} Tillægsoverenskomst til Fællesoverenskomsten 2012-2014 om løn- og arbejdsmæssige forhold ved havnearbejde i Horsens indgået mellem DI Overenskomst II (HTS-A, Horsens) og 3F, Horsens.

\textsuperscript{431} Tillægsoverenskomst (til Fællesoverenskomsten) mellem DI Overenskomst II (Nakskov og Omegns Arbejdsgiverforening) og 3 F, Vestlolland (2010-2012).

\textsuperscript{432} Tillægsoverenskomst til Fællesoverenskomsten 2012 - 2014 mellem DI Overenskomst II (DSA) og Fagligt Fælles Forbund, Randers (Transportarbejdere).

\textsuperscript{433} Overenskomst 2012-2014 mellem DI Overenskomst II (HTS-A Vendsyssel) og 3F, Frederikshavn gældende for arbejdere beskæftiget hos Skagen Lossekompagni ApS.

\textsuperscript{434} Tillægsoverenskomst til Fællesoverenskomsten 2012-2014 Indgået mellem DI Overenskomst II (Vejle Arbejdsgiverforening) og 3 F, Vejle gældende for havnearbejder i Vejle; Tillægsoverenskomst til Fællesoverenskomsten 2012-2014 indgået mellem DI Overenskomst II (Vejle Arbejdsgiverforening/DSA) og 3F Vejle og 3 F Midtjylland gældende for Claus Sørensen A/S, Terminal Vejle Nord og Engesvang.

\textsuperscript{435} Overenskomst mellem Bilfærgernes Rederiforening og 3F Fagligt Fælles Forbund, Transportgruppen Transportgruppen Overenskomst 2010-2012 for trosseførere.

\textsuperscript{436} See \texttt{http://di.dk/Shop/Overenskomster/Pages/overenskomster.aspx}.

\textsuperscript{437} 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.
9.4.3. Labour market

- Historical background

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. 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 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 again. 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 employees.

**- Regulatory set-up**

As we have explained, 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 operatorvirksomhed) 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 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.

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437. See supra, para 663.
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 (havnearbejdere), 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 level.\(^{438}\)

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 hired.\(^{439}\)

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


\(^{439}\) § 5 of the Aabenraa Agreement for 2010-2012.
becoming smaller and smaller because of the transition to permanent employment relationships and also a drop in demand for port labour\textsuperscript{440}.

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 Aarhus\textsuperscript{441}, Horsens\textsuperscript{442}, Nakskov (here, workers can also be hired by telephone)\textsuperscript{443}, Randers\textsuperscript{444}, Vejle\textsuperscript{445}.

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 employed\textsuperscript{446}. 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 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 employed\textsuperscript{447}.

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.


\textsuperscript{441} Item A, § 1 of the Agreement for 2004-2007.

\textsuperscript{442} § 2 of the Agreement for 2012-2014.

\textsuperscript{443} § 3 of the Agreement for 2010-2012.

\textsuperscript{444} § 2 of the Agreement for 2012-2014.

\textsuperscript{445} § 2 of the Agreement for 2012-2014.


\textsuperscript{447} § 2 of the Agreement for Terminal Workers of Danish Car Ferry Operators for 2010-2012.
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 equipment.

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 sector.

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 activities. The Authority also informed us that, according to data maintained

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448 § 8 of the Aabenraa Agreement for 2012-204; compare § 4 of the Esbjerg Agreement; § 5 and 6 of the Horsens Agreement for 2012-2014; § 4 of the Nakskov Agreement for 2010-2012.  
449 For 2011, Statistics Denmark mentions 23,765 workers employed at "Support activities for transportation" (Code 52000).  
450 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).
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 ports. 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)

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers</td>
<td>941</td>
<td>768</td>
<td>805</td>
<td>747</td>
<td>1,053</td>
</tr>
</tbody>
</table>

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.

Table 21. Number of workplaces and employees in NACE Code 'Operation of harbours and piers' in Denmark, 2007-2011 (source: Danish Working Environment Authority)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>522210 Operation of harbours and piers</td>
<td>69</td>
<td>77</td>
<td>74</td>
<td>74</td>
<td>76</td>
<td>77</td>
</tr>
<tr>
<td>Number of workplaces / facilities</td>
<td>1,078</td>
<td>966</td>
<td>974</td>
<td>937</td>
<td>938</td>
<td>n.a.</td>
</tr>
</tbody>
</table>

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.


In addition, the Working Environment Authority confirmed the absence of an ISCO-88 code for port workers.
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

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 respect\textsuperscript{452}.

Some local collective agreements contain further provisions on payment of workers attending training courses\textsuperscript{453}. 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 worker\textsuperscript{454}. The Copenhagen City & Port Development Company (as far as still relevant here) must develop training plans and programmes for its workers\textsuperscript{455}. At some individual companies, a truck driver’s certificate is needed for certain jobs\textsuperscript{456}.

\textsuperscript{452} § 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.
\textsuperscript{453} See, for example, § 18 of the Horsens Agreement for 2012-2014; see also the Aalborg Agreement for 2012-2014.
\textsuperscript{454} § 18 of the Agreement for Terminal Workers of Danish Car Ferry Operators for 2010-2012.
\textsuperscript{455} See § 15 et seq. of the Copenhagen City & Port Development Company Agreement for 2012-2014.
\textsuperscript{456} 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.
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 required\textsuperscript{457}. The relevant regulations are not specific to the port sector.

\textit{- Facts and figures}

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).

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 Region\textsuperscript{458}. Copenhagen Malmö Ports informed us that, today, common training activities are only organised occasionally.

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

\textsuperscript{457} 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, \url{http://www.fic.dk/dan/Materieler/Publikationer_30-31}.

\textsuperscript{458} 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, \url{http://www.fic.dk/dan/Materieler/Publikationer}. 

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(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 increase. 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.

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 practice\(^{460}\).

9.4.5. Health and safety

- Regulatory set-up

689. As we have mentioned\(^{461}\), 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


\(^{461}\) 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 employer.\[462\]

\[690\] 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 equipment\[463\] or on the responsibility of
workers to unconditionally comply with applicable safety standards and regulations\[464\].


\[463\] 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 workers.\footnote{Aalborg Agreement for 2012-2014.}

\textbf{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 subcontractors.\footnote{See Annexes 8 and 9 to the Common Agreement for the Transport and Logistics Sector for 2012-2014.}

\textit{- Facts and figures}

\textbf{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 study\footnote{See \url{http://www.aarhushavn.dk/en/regulations_and_security/security_for_external_workers/}.} 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.

\begin{table}[h]
\centering
\begin{tabular}{|l|cccc|}
\hline
\textbf{Type of injury} & \textbf{2007} & \textbf{2008} & \textbf{2009} & \textbf{2010} & \textbf{2011} \\
\hline
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 \\
\hline
\end{tabular}
\caption{Type of injuries at work in NACE Code 522210 *Operation of harbours and piers* in Denmark, 2007-2011 (source: Danish Working Environment Authority)}
\end{table}

\footnote{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)

<table>
<thead>
<tr>
<th>Mode of injury</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 Horizontal or vertical impact with or against a stationary object (the victim is in motion) - falls</td>
<td>11</td>
<td>11</td>
<td>11</td>
<td>15</td>
<td>14</td>
</tr>
<tr>
<td>40 Struck by object in motion, collision with</td>
<td>5</td>
<td>7</td>
<td>2</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>50 Contact with sharp, pointed, rough, coarse Material Agent</td>
<td>6</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>60 Trapped, crushed, etc.</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>70 Physical or mental stress</td>
<td>9</td>
<td>14</td>
<td>11</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>80 Bite, kick, etc. (animal or human)</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>99 Other Contacts – Modes of Injury not listed in above</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>37</td>
<td>34</td>
<td>28</td>
<td>37</td>
<td>30</td>
</tr>
</tbody>
</table>

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 Authority)

<table>
<thead>
<tr>
<th>Category of disease</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Muscular skeletal diseases</td>
<td>5</td>
<td>6</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Hearing impairment</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Psychosocial diseases</td>
<td></td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Airway diseases</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nervous system diseases</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other diagnoses</td>
<td></td>
<td></td>
<td>2</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong>: 522210 Operation of harbours and piers</td>
<td>9</td>
<td>12</td>
<td>5</td>
<td>5</td>
</tr>
</tbody>
</table>

468 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.

469 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 explained⁴⁷⁰, 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)

<table>
<thead>
<tr>
<th>Type of injury</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traumatic amputations</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bone fractures</td>
<td>5</td>
<td>8</td>
<td>6</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Dislocations, sprains and strains</td>
<td>25</td>
<td>20</td>
<td>26</td>
<td>24</td>
<td>28</td>
</tr>
<tr>
<td>Wounds</td>
<td>8</td>
<td>4</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Superficial injuries</td>
<td>3</td>
<td>4</td>
<td>2</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Poisonings and infections</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other specified injuries not included above</td>
<td>10</td>
<td>9</td>
<td>5</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>52</td>
<td>45</td>
<td>43</td>
<td>35</td>
<td>57</td>
</tr>
</tbody>
</table>

Table 26. Mode of injuries at work in NACE Code 522400 ‘Cargo handling’ in Denmark, 2007-2011 (source: Danish Working Environment Authority)

<table>
<thead>
<tr>
<th>Mode of injury</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Contact with electrical voltage, temperature,</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>hazardous substances</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30 Horizontal or vertical impact with or against a</td>
<td>11</td>
<td>19</td>
<td>10</td>
<td>10</td>
<td>17</td>
</tr>
<tr>
<td>stationary object (the victim is in motion) - falls</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>40 Struck by object in motion, collision with</td>
<td>17</td>
<td>14</td>
<td>7</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td>50 Contact with sharp, pointed, rough, coarse Material</td>
<td>1</td>
<td>3</td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Agent</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>60 Trapped, crushed, etc.</td>
<td>7</td>
<td>3</td>
<td>7</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>70 Physical or mental stress</td>
<td>14</td>
<td>9</td>
<td>14</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>99 Other Contacts – Modes of Injury not listed in</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>above</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>52</td>
<td>45</td>
<td>43</td>
<td>35</td>
<td>57</td>
</tr>
</tbody>
</table>

There were no reported fatalities in ‘Cargo handling’ in the reference period.

⁴⁷⁰ See supra, para 235.
⁴⁷¹ 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 rate\textsuperscript{472} 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)

<table>
<thead>
<tr>
<th>Incidence rates</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>522210 Operation of harbours and piers</td>
<td>343</td>
<td>352</td>
<td>287</td>
<td>395</td>
<td>320</td>
</tr>
<tr>
<td>522400 Cargo handling</td>
<td>553</td>
<td>586</td>
<td>534</td>
<td>469</td>
<td>541</td>
</tr>
<tr>
<td>All trades</td>
<td>173</td>
<td>173</td>
<td>152</td>
<td>165</td>
<td>160</td>
</tr>
</tbody>
</table>

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 2012\textsuperscript{473}, 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

\textbf{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.).

\textsuperscript{472} The incidence rate is calculated as the number of reported accidents per 10,000 employed.

\textsuperscript{473} 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.
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 Port\(^{474}\). 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 Act\(^{475}\).

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-handling\(^{476}\).

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 be in a position to hinder market access for competitors anyway. However, CMP also referred to an old agreement with the union

\(^{474}\) See *supra*, paras 663 and 670.


\(^{476}\) See *infra*, para 713.
which reserves all work for union members, in a way similar to the Swedish Stevedoring 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 70 per cent.⁴⁷⁷

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’ association.\footnote{\textit{\textsuperscript{479}}}.

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’ association\footnote{\textit{\textsuperscript{479}}} 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 work\footnote{\textit{\textsuperscript{480}}} (§ 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).

\footnote{\textsuperscript{479}} § 4(4) of the Special Provisions for Port Workers annexed to the Common National Agreement for the Transport and Logistics Sector for 2012-2014.

\footnote{\textsuperscript{478}} Trade union 3F has no knowledge of the actual existence of non-members.

\footnote{\textsuperscript{480}} In the Danish original, the latter rule reads:

\begin{quote}
Til havne-, lager- og pakhusarbejde antages fortrinsvis medlemmer af 3F Aabenraa, der forpligter sig til, i det omfang tilstrækkeligt mange medlemmer er disponible, at særge for, at disse også påtager sig lagerarbejde.
\end{quote}
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 problem481.

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 competition482.

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 hired483.

482 U.S. law (22 CFR Ch. 1 § 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.
483 § 7 of the Special Provisions for Port Workers annexed to the Common National Agreement for the Transport and Logistics Sector for 2012-2014.
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 apply.

Some local agreements contain specific provisions imposing the use of port workers for the loading and unloading of ro-ro ships. 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 proportionally. 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 strikes. 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 crews.

In 2005, the Danish Competition Council stated that the cargo handling monopoly of CMP, which is enshrined in the Copenhagen Freeport Act, 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

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484 See § 8 of the Special Provisions for Port Workers annexed to the Common National Agreement for the Transport and Logistics Sector for 2012-2014.
485 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.
486 § 4 of the Nakskov Agreement for 2010-2014.
487 § 14 of the Agreement for Terminal Workers of Danish Car Ferry Operators for 2010-2012.
488 Item 3(1) of the Protocol for Scandlines Denmark.
489 See supra, paras 670 and 697.
overall use of resources. 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 illegal. 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 work and that exemptions are only possible on the basis of local usages or customs.

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492 § 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 rates493. Danish Port Operators

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493 § 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 it.\(^{494}\)

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/EC.\(^{495}\) 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.

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\(^{494}\) See already *supra*, para 678.
\(^{495}\) 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 hatch. It also stresses the sole authority of the employer to decide on interruptions of the work due to weather conditions.

The National Agreement obliges the parties to negotiate on new conditions of work if new cargo types or mechanical equipment are introduced.

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 cargoes. In such a case, the Agreement for warehousing in Aarhus obliges the employer to negotiate on an adaptation of pay rates. In Skagen, the introduction of new working methods must be the subject of consultations. 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 negotiations.

The Aarhus Agreement for 2004-2007 insisted that working times must be complied with and that additional breaks beyond its provisions cannot be tolerated. Also, work commenced must be finished.

In Horsens, employers have expressly reserved the right to move workers to another job once their initial task is completed, and workers hired at an hourly rate or for piece work may not leave work until they have finished their job.

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 understanding. Some agreements also insist that workers may not be employed on conditions that differ from those set out in its provisions.

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496 § 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.
497 § 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.
498 § 10 of the Special Provisions for Port Workers annexed to the Common National Agreement for the Transport and Logistics Sector for 2012-2014.
499 See, for example, § 8 of the Aabenraa Agreement for 2010-2012.
500 § 4 of the Aarhus Warehousing Agreement for 2012-2014.
502 § 11 of the Bornholm Agreement for 2010-2012.
503 See § 3 of the Horsens Agreement for 2012-2014.
504 § 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.
505 See, for example, § 11 of the Aabenraa Agreement for 2012-2014; § 8 of the Vejle Agreement for 2012-2014.
- 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 widen. 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.

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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 records 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 seen\(^{508}\), 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.

\(^{508}\) 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. Synopsis

**SYNOPSIS OF PORT LABOUR IN DENMARK**

<table>
<thead>
<tr>
<th><strong>Labour Market</strong></th>
<th><strong>The Law</strong></th>
<th><strong>Issues</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Facts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>120 seaports, 2 main ports</td>
<td>No <em>lex specialis</em></td>
<td>Exclusive right of operator CMP / trade union in Copenhagen</td>
</tr>
<tr>
<td>Mixed management model</td>
<td>No Party to ILO C137</td>
<td>Exclusive right of pool workers</td>
</tr>
<tr>
<td>92m tonnes</td>
<td>National CBA for Transport and Logistics; local CBAs for pools; 1 CBA for ferry terminal workers</td>
<td>Overt closed or preferential shop</td>
</tr>
<tr>
<td>15th in the EU for containers</td>
<td>Important role of local usages</td>
<td>Mandatory manning scales</td>
</tr>
<tr>
<td>60th in the world for containers</td>
<td>2 categories of workers: (1) Permanently employed terminal workers</td>
<td>Ban on self-handling, but arbitrary exceptions in some ferry ports</td>
</tr>
<tr>
<td>More than 100 employers</td>
<td>(2) In 12 ports: casual pool workers hired per day or shift in hiring halls</td>
<td>Ban on temporary agency work unless local usages permit it</td>
</tr>
<tr>
<td>500-600 casual port workers</td>
<td></td>
<td>Restrictive working practices</td>
</tr>
<tr>
<td>1,500-5,000 permanent port workers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trade union density: 95-100%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Qualifications and Training**

<table>
<thead>
<tr>
<th><strong>Facts</strong></th>
<th><strong>The Law</strong></th>
<th><strong>Issues</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>National training and certification standards</td>
<td>Mandatory certification of equipment operators</td>
<td>Success of new training scheme remains to be evaluated</td>
</tr>
<tr>
<td>Jointly managed training since 2011</td>
<td>Right to training guaranteed in CBAs</td>
<td></td>
</tr>
<tr>
<td>Company-based training</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Health and Safety**

<table>
<thead>
<tr>
<th><strong>Facts</strong></th>
<th><strong>The Law</strong></th>
<th><strong>Issues</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>No specific statistics available</td>
<td>Specific Order on Loading and Unloading of Ships</td>
<td>No specific issues but still room for improvement</td>
</tr>
<tr>
<td>Higher accident rate than national average</td>
<td>Party to ILO C152</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Safety rules in CBAs</td>
<td></td>
</tr>
</tbody>
</table>

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509 Throughput figures relate to maritime traffic for 2011. Container throughput ranking is for 2010. ‘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 system

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 2011, Estonian ports handled about 47.08 million tonnes of cargo. As for container throughput, Estonian ports ranked 21st in the EU and 102nd in the world in 2010.

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.

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

The management of Estonian ports is governed by the Ports Act of 22 October 1997 which mainly describes the classification of ports and the exercise of public authority functions. For example, it provides that ports must have a port certificate confirming that they meet the

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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 Transhipment 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 2000, 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 2008.

739. The Occupational Health and Safety Act of 16 June 1999 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) 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).

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 instrument.

514 Töölepingu seadus.
515 Töötervishoiu ja tööohutuse seadus.
516 Raskuste käsitsi teisaldamise töötervishoiu ja tööohutuse nõuded.
517 Ohtlike kemikaalide ja neid sisaldavate materjalide kasutamise töötervishoiu ja tööohutuse nõuded.
518 Puistlastilaevade lisahutusnõuded, 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)\textsuperscript{519}, 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 registered\textsuperscript{520} and this still applies today.

\textsuperscript{519} The agreement was concluded on 18 June 1998 and amended several times, lastly on 20 February 2004.

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 workers\(^{521}\). Factory workers who also perform loading and unloading work are not included.

\(^{521}\) 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):
In 2012, an ITF coordinator stated that 7 per cent of Estonian dockers are members of professional unions. This figure would appear to roughly correspond with the unionisation degree in the Estonian economy as a whole. 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 Amebu, 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

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.


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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cargo handling</td>
<td>2,000</td>
<td>3,000</td>
<td>4,600</td>
<td>4,200</td>
<td>4,500</td>
<td>3,300</td>
<td>4,100</td>
<td>3,400</td>
<td>3,900</td>
</tr>
<tr>
<td>Shipping related activity</td>
<td>3,300</td>
<td>5,000</td>
<td>7,600</td>
<td>7,000</td>
<td>7,500</td>
<td>5,400</td>
<td>5,600</td>
<td>7,700</td>
<td>5,600</td>
</tr>
<tr>
<td>(storage, agency, maritime</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>900</td>
<td>800</td>
<td>800</td>
<td>800</td>
</tr>
<tr>
<td>logistics and expedition)</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Management and administration</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>900</td>
<td>800</td>
<td>800</td>
<td>800</td>
</tr>
<tr>
<td>of ports</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>5,300</td>
<td>8,000</td>
<td>12,200</td>
<td>11,200</td>
<td>12,000</td>
<td>9,600</td>
<td>10,500</td>
<td>11,900</td>
<td>10,300</td>
</tr>
</tbody>
</table>

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 above, 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 materials.

- 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:

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524 See supra, para 739.
Table 29. Number of occupational accidents involving port workers in Estonia, 2004-2012 (source: Ministry of Social Affairs)

<table>
<thead>
<tr>
<th>Severity rate</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>4</td>
<td>5</td>
<td>3</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>37</td>
</tr>
<tr>
<td>Major</td>
<td>4</td>
<td>2</td>
<td>5</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>29</td>
</tr>
<tr>
<td>Fatal</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>8</td>
<td>8</td>
<td>9</td>
<td>6</td>
<td>9</td>
<td>5</td>
<td>7</td>
<td>7</td>
<td>6</td>
<td>66</td>
</tr>
</tbody>
</table>

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 labour.527

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 contracts.528

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 Estonia.529 The Competition Authority informed us that none of these cases related to port labour issues.

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526 Data received on 12 October 2012.
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 low.

We have no indication that self-handling is prohibited in Estonian ports.

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 policy. We were unable to obtain comments from the Labour Inspectorate.

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. [...]
“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 spa.

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

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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.
### SYNOPSIS OF PORT LABOUR IN ESTONIA

#### LABOUR MARKET

<table>
<thead>
<tr>
<th><strong>Facts</strong></th>
<th><strong>The Law</strong></th>
<th><strong>Issues</strong></th>
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</thead>
<tbody>
<tr>
<td>• 4 seaports, 1 main port</td>
<td>• No <em>lex specialis</em></td>
<td>• Rare cases of employment of uncertified workers by 'black' stevedores</td>
</tr>
<tr>
<td>• Landlord model</td>
<td>• No Party to ILO C137</td>
<td>• Union advocates ratification of ILO C137</td>
</tr>
<tr>
<td>• 47m tonnes</td>
<td>• Only employment contracts under general labour law</td>
<td></td>
</tr>
<tr>
<td>• 21st in the EU for containers</td>
<td>• No registration of port workers</td>
<td></td>
</tr>
<tr>
<td>• 102nd in the world for containers</td>
<td>• No hiring halls</td>
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</tr>
<tr>
<td>• Unknown number of employers</td>
<td>• No mandatory manning scales</td>
<td></td>
</tr>
<tr>
<td>• 950 port workers</td>
<td>• No ban on self-handling</td>
<td></td>
</tr>
<tr>
<td>• Trade union density: 13%</td>
<td>• No ban on temporary agency work</td>
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#### QUALIFICATIONS AND TRAINING

<table>
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<th><strong>Issues</strong></th>
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</thead>
<tbody>
<tr>
<td>• 4 training centres 3 of which run by port operators</td>
<td>• No specific laws and regulations</td>
<td>• Raising qualification level</td>
</tr>
<tr>
<td></td>
<td>• Voluntary national qualifications standards</td>
<td>• Use of unqualified workers</td>
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#### HEALTH AND SAFETY

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<th><strong>Facts</strong></th>
<th><strong>The Law</strong></th>
<th><strong>Issues</strong></th>
</tr>
</thead>
<tbody>
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<td>• Elementary statistics available</td>
<td>• No specific rules on port labour</td>
<td>• Frequency of accidents</td>
</tr>
<tr>
<td></td>
<td>• No Party to ILO C152</td>
<td>• Raising of safety awareness</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Union advocates ratification of ILO C152</td>
</tr>
</tbody>
</table>

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534 Throughput figures relate to maritime traffic for 2011. Container throughput ranking is for 2010. '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 system

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 2011, the gross weight of seaborne goods handled in Finnish ports was about 109.8 million tonnes. 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 11th in the EU and 49th in the world in 2010.

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 models.

However, more than half of the ports are owned by private companies; as a rule, most of these are connected to the owner’s industrial plant.

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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 Dues and Act No. 1156/1994 on Private Public Ports. 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 Contracts.

768. With regard to health and safety in port labour, the general Occupational Safety and Health Act contains a special provision on work in ports. Further detailed rules are laid down in Government Decree No. 633/2004 on Occupational Safety in Loading and Unloading of Ships. 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 Area.

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 2004.

769. Finland has ratified both ILO Convention No. 137 and ILO Convention No. 152. Previously, it was bound by ILO Convention No. 32.
Collective agreements are an important source of port labour law.\textsuperscript{548}

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’),\textsuperscript{549} one for the technical personnel (i.e. supervisors or foremen) (hereinafter: ‘Foremen Agreement’),\textsuperscript{550} and one for the administrative staff of stevedoring companies.\textsuperscript{551} 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 matters.\textsuperscript{552} 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.

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

\textsuperscript{547} Asetus (381/1982) työturvallisuutta ja terveyttä satamatyössä koskevan yleissopimuksen voimaan­saattamisesta.
\textsuperscript{548} On collective bargaining in Finland, see http://www.worker-participation.eu/National-Industrial-Relations/Countries/Finland/Collective-Bargaining.
\textsuperscript{549} 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.
\textsuperscript{550} Collective Agreement for supervisors working in stevedoring (Ahtausalan työ­johtajien 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.
\textsuperscript{551} 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.
\textsuperscript{552} 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.
transportation and that are members of the Employers' Association of Special Services\textsuperscript{553}. 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)\textsuperscript{554}.

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 Teras and Tapio Bergholm\textsuperscript{555}.

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

\textsuperscript{553} Collective Agreement for Harbour and Warehouse Terminal Employees in the Forwarding Industry (Huolinta-alan varastotermiaali- 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.

\textsuperscript{554} See, for example, § 2 of Chapter I.1 of the Port Workers Agreement for 2010-2012.

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 south. 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-operatives. 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 way.

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

557 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).
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 1949\textsuperscript{559}.

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 agreement\textsuperscript{560}.

\textit{- Regulatory set-up}

\textbf{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 authorisation\textsuperscript{561}, and are not obliged to join a professional organisation. The latter rule is expressly confirmed in the Port Workers Agreement\textsuperscript{562}.

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 provider\textsuperscript{563}.

As we have mentioned, several municipal port authorities rent out cranes to terminal operators. These cranes are manned by staff belonging to the port authority\textsuperscript{564}.

\footnotesize
\begin{itemize}
  \item \textsuperscript{562} Port Workers Agreement for 2010-2012, Chapter I.1, § 3(1) and Chapter II.1, § 3(1); Foremen Agreement for 2010-2012, § 2.
  \item \textsuperscript{563} See infra, para 798.
  \item \textsuperscript{564} See supra, para 765 and further infra, para 799.
\end{itemize}
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 importance.

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 part-time or 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 time.

In this respect, one also has to take into account that a number of Finnish 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 engagement.

566 See infra, para 799.
567 § 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 workers\textsuperscript{568}. It also regulates the termination of the employment relationship (§ 6 of Chapter II.1).

\textsuperscript{568} See § 5(6) of Chapter II.1 of the Port Workers Agreement for 2010-2012.
TEMPORARY STEVEDORE’S APPLICATION

PERSONAL DATA
Last name *
First names *
Date of birth (dd.mm.yyyy)*
Street address *
Post code and post office *
Country
Suomi

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
Primary or comprehensive school

Other education
(school/college, year of graduation, completed courses/examinations/degrees)

Figure 76. Online Temporary Stevedore’s Application Form of Rauma Stevedoring (source: Rauma Stevedoring)


568
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 drivers and in connection with the handling of dangerous goods. Moreover, all workers are also expected to join the trade union. 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 concerned.

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.

As we have mentioned, 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 basis.

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-self.

Port workers must carry out their tasks with due care.

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 work.

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570 See infra, para 785.
571 See infra, para 786.
572 See infra, para 801.
573 § 1(3) of Chapter II.1 of the Port Workers Agreement for 2010-2012.
574 See supra, para 765.
575 § 5 of Chapter I.2 of the Port Workers Agreement for 2010-2012.
576 § 1 of the Foremen Agreement for 2010-2012.
577 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 40 member companies operating in 25 different ports which are said to handle over 90 per cent of all 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. Today, it estimates 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 that, today, their member companies employ about 300 port foremen, 2,200 full-time stevedores, 150 temporary workers (on average) and 300 office staff (2,950 employees in total, 2,650 without office staff). In the port of Rauma, for example, there are about 600 port workers. Non-members of the Finnish Port Operators employ less than 100 workers.

578 § 3 of the Foremen Agreement for 2010-2012.
580 See also http://www.satamaoperaattorit.fi/pages/en/about-us.php, where mention is made of 2,100 stevedores.
581 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 (Terås, 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 2011, Finnish port authorities employed 161 workers at port operations. According to the Finnish Port Operators Association, this figure does not concern port workers as defined for the purposes of our study.

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 ports.

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.

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</table>

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).

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)).
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

In practice, port training in Finland is mainly organised by official education institutions as well as at company level. The Etelä-Kymenlaakso Vocational College (Ekami), a multi-disciplinary education institution with over 6,000 students based in Kotka, offers port-related training.

Port training is furthermore organised by Winnova, a vocational education and training institute in Rauma. The South Karelia Vocational College also offers port training courses. This college is a secondary vocational educational institution. The College has a crane simulator.

Reportedly, all major stevedoring companies have developed a training system of their own.

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.

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).

See www.ekami.fi.

See www.winnova.fi.

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 wages\(^588\). 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).

\(^{588}\) 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 regulations. They also regulate the provision of protective clothing and safety footwear by the employer.

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.

589 See § 23 of Chapter I.1 and § 23 of Chapter II.1 of the Port Workers Agreement for 2010-2012.
590 § 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 Oy Rauma Stevedoring Ltd, Rauma, 2003 (source: Rauma Stevedoring\textsuperscript{591})

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{certificate.jpg}
\caption{OHSAS 18001 certificate of Oy Rauma Stevedoring Ltd, Rauma, 2003.}
\end{figure}

\begin{itemize}
\item \textbf{CERTIFICATE}
\item No. 2319-01
\item SFS-Certification has granted this certificate as proof that the occupational health and safety management system of
\item Oy Rauma Stevedoring Ltd
\item Rauma
\item complies with the requirements of standard
\item OHSAS 18001
\item Certification covers
\item Stevedoring, Forwarding, Ship Agency Services and Warehousing.
\item Certification is based on the following audit report
\item SFSLR2319-01
\item Helsinki 2003 01 23
\item Harry Lindstrom, Managing Director
\end{itemize}

\textsuperscript{591} \url{http://www.raumastevedoring.fi/en/2319eng.pdf}.
- Facts and figures

796. In 2009, port workers were involved in 243 occupational accidents (350 in 2008; the fall in 2009 was due to impact of the economic crisis on port traffic).

The Federation of Accident Insurance Institutions (FAII) maintains very detailed statistics on occupational accidents, from which the below are only a selection. 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 sectors.

The statistics were kindly forwarded to us by Statistics Finland.

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. Workplace accidents among wage earners in Finland, by occupation, 2008 (source: Ministry of Social Affairs and Health)

Table 31. Number of accidents involving stevedores (dock workers) in Finland by main branch of business, 1999-2011 (source: Federation of Accident Insurance Institutions (FAII))

<table>
<thead>
<tr>
<th>Main branch of business</th>
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<th>TOTAL</th>
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</tr>
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</tbody>
</table>

594 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.

595 The table shows figures for 'stevedores' which were filtered by the occupation code of the injured worker (i.e., the occupation offering the highest insurance compensation). 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 accidents involving stevedores (dock workers) in Finland by branch of business, 1999-2011 (source: Federation of Accident Insurance Institutions (FAII))

<table>
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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.
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Table 33. Number of accidents involving stevedores (dock workers) in Finland by cause of accident, 1999-2011 (source: Federation of Accident Insurance Institutions (FAII))

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<thead>
<tr>
<th>Cause of accident</th>
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<th>2009</th>
<th>2010</th>
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597 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.
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<td>0</td>
<td>5</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>7</td>
<td>3</td>
<td>4</td>
<td>4</td>
<td>31</td>
</tr>
<tr>
<td>Living organisms and human-beings</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>5</td>
<td>2</td>
<td>31</td>
</tr>
<tr>
<td>Bulk waste</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Physical phenomena, natural elements</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>7</td>
<td>2</td>
<td>6</td>
<td>4</td>
<td>31</td>
</tr>
<tr>
<td>Other material agents not listed</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>24</td>
<td>32</td>
<td>26</td>
<td>23</td>
<td>28</td>
<td>27</td>
<td>12</td>
<td>11</td>
<td>13</td>
<td>197</td>
</tr>
<tr>
<td>TOTAL</td>
<td>563</td>
<td>514</td>
<td>448</td>
<td>422</td>
<td>422</td>
<td>446</td>
<td>371</td>
<td>430</td>
<td>361</td>
<td>330</td>
<td>248</td>
<td>277</td>
<td>257</td>
<td>5,089</td>
</tr>
</tbody>
</table>
### Table 34. Number of accidents involving stevedores (dock workers) in Finland by type of injury, 1999-2011 (source: Federation of Accident Insurance Institutions (FAII))

<table>
<thead>
<tr>
<th>Type of injury</th>
<th>Year of accident</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unknown or unspecified</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Wounds and superficial injuries</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Bone fractures</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Dislocations, sprains and strains</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Traumatic amputations (loss of body parts)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Concussion and internal injuries</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Burns, scalds and frostbites</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Poisonings and infections</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Effects of temperature, light, radiation</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Multiple injuries</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other injuries</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Unknown</td>
<td>563</td>
<td>514</td>
</tr>
<tr>
<td>TOTAL</td>
<td>563</td>
<td>514</td>
</tr>
</tbody>
</table>

### Table 35. Number of accidents involving stevedores (dock workers) in Finland by sex, 1999-2011 (source: Federation of Accident Insurance Institutions (FAII))

<table>
<thead>
<tr>
<th>Sex</th>
<th>Year of accident</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>male</td>
<td>545</td>
<td>505</td>
</tr>
<tr>
<td>female</td>
<td>18</td>
<td>9</td>
</tr>
<tr>
<td>TOTAL</td>
<td>563</td>
<td>514</td>
</tr>
</tbody>
</table>

---

598 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.

599 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 36. Number of accidents involving stevedores (dock workers) in Finland by age group, 1999-2011 (source: Federation of Accident Insurance Institutions (FAII))

<table>
<thead>
<tr>
<th>Age group</th>
<th>Year of accident</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>15-24</td>
<td>63</td>
<td>60</td>
</tr>
<tr>
<td>25-44</td>
<td>321</td>
<td>295</td>
</tr>
<tr>
<td>45-64</td>
<td>179</td>
<td>159</td>
</tr>
<tr>
<td>YLI 64</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>563</td>
<td>514</td>
</tr>
</tbody>
</table>

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, 2005-2011 (source: Federation of Accident Insurance Institutions (FAII))

<table>
<thead>
<tr>
<th>Year</th>
<th>Branch of business</th>
<th>Number of accidents</th>
<th>Hours actually worked (1000 h)</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>49 Land transport and transport via pipelines</td>
<td>3,655</td>
<td>96,264</td>
<td>38</td>
</tr>
<tr>
<td>2005</td>
<td>50 Water transport</td>
<td>361</td>
<td>17,106</td>
<td>21.1</td>
</tr>
<tr>
<td>2005</td>
<td>51 Air transport</td>
<td>163</td>
<td>11,501</td>
<td>14.2</td>
</tr>
<tr>
<td>2005</td>
<td>52 Warehousing and support activities for transportation</td>
<td>930</td>
<td>42,283</td>
<td>22</td>
</tr>
<tr>
<td>2005</td>
<td>53 Postal and courier activities</td>
<td>1,108</td>
<td>36,804</td>
<td>30.3</td>
</tr>
<tr>
<td>2006</td>
<td>49 Land transport and transport via pipelines</td>
<td>3,711</td>
<td>109,287</td>
<td>34</td>
</tr>
<tr>
<td>2006</td>
<td>50 Water transport</td>
<td>333</td>
<td>16,801</td>
<td>19.8</td>
</tr>
<tr>
<td>2006</td>
<td>51 Air transport</td>
<td>154</td>
<td>11,098</td>
<td>13.9</td>
</tr>
<tr>
<td>2006</td>
<td>52 Warehousing and support activities for transportation</td>
<td>1,007</td>
<td>43,451</td>
<td>23.2</td>
</tr>
<tr>
<td>2006</td>
<td>53 Postal and courier activities</td>
<td>1,206</td>
<td>39,087</td>
<td>30.9</td>
</tr>
<tr>
<td>2007</td>
<td>49 Land transport and transport via pipelines</td>
<td>3,627</td>
<td>106,489</td>
<td>34.1</td>
</tr>
<tr>
<td>2007</td>
<td>50 Water transport</td>
<td>280</td>
<td>16,725</td>
<td>16.7</td>
</tr>
<tr>
<td>2007</td>
<td>51 Air transport</td>
<td>136</td>
<td>11,004</td>
<td>12.4</td>
</tr>
<tr>
<td>2007</td>
<td>52 Warehousing and support activities for transportation</td>
<td>1,112</td>
<td>44,924</td>
<td>24.8</td>
</tr>
<tr>
<td>2007</td>
<td>53 Postal and courier activities</td>
<td>1,154</td>
<td>37,180</td>
<td>31</td>
</tr>
<tr>
<td>2008</td>
<td>49 Land transport and transport via pipelines</td>
<td>3,454</td>
<td>105,494</td>
<td>32.7</td>
</tr>
<tr>
<td>2008</td>
<td>50 Water transport</td>
<td>299</td>
<td>15,798</td>
<td>18.9</td>
</tr>
<tr>
<td>2008</td>
<td>51 Air transport</td>
<td>124</td>
<td>12,966</td>
<td>9.6</td>
</tr>
<tr>
<td>2008</td>
<td>52 Warehousing and support activities for transportation</td>
<td>995</td>
<td>42,748</td>
<td>23.3</td>
</tr>
<tr>
<td>2008</td>
<td>53 Postal and courier activities</td>
<td>1,185</td>
<td>36,034</td>
<td>32.9</td>
</tr>
<tr>
<td>2009</td>
<td>49 Land transport and transport via pipelines</td>
<td>2,754</td>
<td>102,878</td>
<td>26.8</td>
</tr>
<tr>
<td>2009</td>
<td>50 Water transport</td>
<td>229</td>
<td>15,688</td>
<td>14.6</td>
</tr>
<tr>
<td>2009</td>
<td>51 Air transport</td>
<td>119</td>
<td>10,836</td>
<td>11</td>
</tr>
<tr>
<td>2009</td>
<td>52 Warehousing and support activities for transportation</td>
<td>718</td>
<td>37,344</td>
<td>19.2</td>
</tr>
<tr>
<td>2009</td>
<td>53 Postal and courier activities</td>
<td>948</td>
<td>33,879</td>
<td>28.1</td>
</tr>
<tr>
<td>2010</td>
<td>49 Land transport and transport via pipelines</td>
<td>2,945</td>
<td>105,289</td>
<td>28</td>
</tr>
<tr>
<td>2010</td>
<td>50 Water transport</td>
<td>223</td>
<td>16,950</td>
<td>13.2</td>
</tr>
<tr>
<td>2010</td>
<td>51 Air transport</td>
<td>57</td>
<td>8,025</td>
<td>7.1</td>
</tr>
<tr>
<td>2010</td>
<td>52 Warehousing and support activities for transportation</td>
<td>762</td>
<td>40,710</td>
<td>18.7</td>
</tr>
<tr>
<td>2010</td>
<td>53 Postal and courier activities</td>
<td>1,082</td>
<td>33,825</td>
<td>32</td>
</tr>
<tr>
<td>2011*</td>
<td>49 Land transport and transport via pipelines</td>
<td>2,974.65</td>
<td>99,534</td>
<td>29.9</td>
</tr>
<tr>
<td>2011*</td>
<td>50 Water transport</td>
<td>221.55</td>
<td>15,255</td>
<td>14.5</td>
</tr>
<tr>
<td>2011*</td>
<td>51 Air transport</td>
<td>45.15</td>
<td>6,951</td>
<td>6.5</td>
</tr>
<tr>
<td>2011*</td>
<td>52 Warehousing and support activities for transportation</td>
<td>810.6</td>
<td>41,309</td>
<td>19.6</td>
</tr>
<tr>
<td>2011*</td>
<td>53 Postal and courier activities</td>
<td>1,051.05</td>
<td>30,858</td>
<td>34.1</td>
</tr>
</tbody>
</table>
We also received the following data on occupational diseases.\footnote{All tables cover the following professions according to Statistics Finland’s Classification of Occupations 2001):}

\footnotetext{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 38. Recognised occupational diseases involving port workers in Finland, 2005-2010

(source: Finnish Registry of Occupational Diseases, Finnish Institute of Occupational Health)

<table>
<thead>
<tr>
<th>Main disease group</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asbestos-induced diseases</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Allergic respiratory diseases</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Skin diseases</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td></td>
<td></td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Hearing loss</td>
<td>1</td>
<td>5</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>13</td>
</tr>
<tr>
<td>Repetitive strain injuries</td>
<td>1</td>
<td>5</td>
<td>1</td>
<td>2</td>
<td></td>
<td></td>
<td>9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3</td>
<td>13</td>
<td>3</td>
<td>3</td>
<td>5</td>
<td>5</td>
<td><strong>32</strong></td>
</tr>
</tbody>
</table>

### Table 39. Suspected occupational diseases involving port workers in Finland, 2005-2010

(source: Finnish Registry of Occupational Diseases, Finnish Institute of Occupational Health)

<table>
<thead>
<tr>
<th>Main disease group</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asbestos induced diseases</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Skin diseases</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Hearing loss</td>
<td>3</td>
<td>5</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td></td>
<td>15</td>
</tr>
<tr>
<td>Repetitive strain injuries</td>
<td>5</td>
<td>3</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td>11</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>10</td>
<td>11</td>
<td>6</td>
<td>3</td>
<td>2</td>
<td>3</td>
<td><strong>35</strong></td>
</tr>
</tbody>
</table>
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)

<table>
<thead>
<tr>
<th>Main disease group</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asbestos induced diseases</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>Allergic respiratory diseases</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Skin diseases</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td></td>
<td>1</td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Hearing loss</td>
<td>4</td>
<td>10</td>
<td>5</td>
<td>2</td>
<td>4</td>
<td>3</td>
<td>28</td>
</tr>
<tr>
<td>Repetitive strain injuries</td>
<td>6</td>
<td>8</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td></td>
<td>20</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>13</td>
<td>24</td>
<td>9</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>67</td>
</tr>
</tbody>
</table>

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 workers602 and guarantees freedom of association for both employers and employees603.

Yet, it would appear that a number of restrictions prevail in the Finnish port labour market.

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

602 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.
603 See infra, para 801.
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 members.604

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. With a few exceptions, the present stevedoring firms in Finland are owned by the forest and steel industry, and shipping companies.605 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 has a monopoly or 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 units.606 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 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 operate.607

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 cargo.608

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605 See also Naski, K., Eigentums- und organisationssstrukturen von Ostseehäfen, Turku / Åbo, University of Åbo / University of Turku, 2004, 105-106 and also 108 on industrial ports.
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 practice. 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 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 employment.

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

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610 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.
Convention No. 137. They suggest that AKT interprets the reservation of port work for registered port workers as a monopoly for its own members.

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 explained, 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 Union.

The current Port Workers Agreement expressly states that workers and foremen are free to decide whether they will join the union or not. The Agreement also authorises 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 account. The union membership fees of foremen are borne by the employer.

Responses to our questionnaire indicate that, to this day, almost all port workers are unionised. The Ministry of Transport and Communication and the Port Authority of Rauma 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 costs.

612 See supra, para 776.
614 Port Workers Agreement for 2010-2012, Chapter I.1, § 3(2) and Chapter II.1, § 3(2); Foremen Agreement for 2010-2012, § 2.
615 § 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.
616 § 19 of the Foremen Agreement for 2010-2012.
617 See supra, para 776.
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.

Karvonen and Tikkala also received complaints about a ban on self-handling in Finnish ports, more particular in connection with on-board lashing and unlashin operations. Reportedly, the unions tolerate loading and unloading of coal by ship's crews as an exception.

The unions opposed the proposed EU Port Services Directive because it would introduce unskilled labour performed by untrained ships' crews.

The Finnish Port Operators confirmed that lashing and unlashin 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 unlashin work but that the "enormously jealous" unions veto this in order to 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

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619 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.

620 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).

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.

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 tasks\textsuperscript{622}.

804. As in other countries, cargo handling companies need a base of experienced temporary workers to meet peak demands\textsuperscript{623}. In this respect, the Finnish Port Operators complains that the 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 authorities\textsuperscript{624}. 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.

\textsuperscript{622} § 5(2) of Chapter I.1 and § 5(3) of Chapter II.1 of the Port Workers Agreement for 2010-2012.


\textit{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 Finnssteve’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.” Finnssteve’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.}

\textsuperscript{624} On the latter issue, see Naski, K., Eigentums- und organisationsstrukturen von Ostseehäfen, Turku / Åbo, University of Åbo / University of Turku, 2004, 115.
The Port Workers Agreement obliges employers in Chapter I-ports to employ at least 90 per cent of workers on a permanent basis. The number of temporary employees must not exceed 10 per cent of the total workforce. 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 work. In Chapter II-ports, 90 per cent of the workers must be professional port workers. Here, temporary agency workers may be relied upon, for whom Chapter II sets out specific working time arrangements.

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 Directive.

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. 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 excessive.

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 workloads.

Since 1 February 2012, port operators are allowed to hire out workers among themselves, but the prohibition on agency work remains in place.

625 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).
626 Port Workers Agreement for 2010-2012, Chapter I.1, § 1(3).
627 See Jokivuori, P., "Finland: Temporary agency work and collective bargaining in the EU", 19 December 2008, http://www.eurofound.europa.eu/efo/studies/tn0807019s/fi0807019q.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).
628 § 1(2) of Chapter II.1 of the Port Workers Agreement for 2010-2012.
629 § 7(C) of Chapter II.1 of the Port Workers Agreement for 2010-2012.
630 Item 6 of the Protocol of Signature to the Foremen Agreement for 2010-2012.
631 See § 19(3) of the Port Workers Agreement for 2010-2012.
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 low\textsuperscript{633}. 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 opportunity\textsuperscript{634}. However, the authors do not mention port labour-specific issues in relation to the other governance models.

- Restrictive working practices

808. According to the Finnish Port Operators Association, limited working hours are a major problem in the Finnish ports\textsuperscript{635}. 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 workers\textsuperscript{636}. They also insist that the workers

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\textsuperscript{636} § 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.
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 with.\(^\text{637}\)

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 bonus of 8.25 per cent. As a result, only one port operator relies on non-stop shift work. 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 nationwide 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’ strikes.\(^\text{638}\) The strike frequency was also identified as a problem in the 2004 report on port law reform.\(^\text{639}\) The Finnish Port Operators say that sudden illegal strikes affect the reliability of Finnish ports.

In 2010, the Finnish Labour Court imposed fines on AKT for illegal industrial action.\(^\text{640}\) In 2012, AKT was fined for failure to give advance notice of a strike at the ports of Helsinki and Kotka.\(^\text{641}\) 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 sectors.\(^\text{642}\)

\(^{637}\) See § 19 of Chapter I.1 and § 19 of Chapter II.1 of the Port Workers Agreement for 2010-2012).


\(^{640}\) Labour Court of Finland, 29 June 2010, TT: 2010-64, R 62/10, Satamaoperaatitorit ry vs. Auto- ja Kuljetusalan Työntekijäliitto AKT ry.


\(^{642}\) See, for example, X., "Stevedoring strike ends – society must safeguard its functioning in the future", 19 March 2010.
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 themselves\(^\text{643}\). A 2006 report for the European Commission mentions, however, that according to industry representatives, the cargo handling sector is not facing any particular skill shortages\(^\text{644}\). Since 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 workers\(^\text{645}\).

- 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 enforced\(^\text{646}\).


\(^{645}\) See item 10 of the Protocol of Signature to the Foremen Agreement for 2010-2012.

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 employers.\textsuperscript{647}

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 occur.\textsuperscript{648}

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 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, transhipment, 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 chain.\textsuperscript{649}

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


\textsuperscript{648} See, for example, FNB, "Hamnarbetare dog i arbetssolycka i Hangö", \textit{HBL.fi} 18 July 2010, \url{https://hbl.fi/nyheter/2010-07-18/hamnarbetare-dog-i-arbetssolycka-i-hango}.

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.

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.
### SYNOPSIS OF PORT LABOUR IN FINLAND

**Labour Market**

<table>
<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Over 50 seaports, 3 main ports</td>
<td>• No lex specialis</td>
<td>• Dominant position of stevedoring companies and difficulties for outsiders to gain market access</td>
</tr>
<tr>
<td>• Mixed landlord / tollport model</td>
<td>• Party to ILO C137</td>
<td>• Doubts over implementation of ILO C137</td>
</tr>
<tr>
<td>• 110m tonnes</td>
<td>• 2 national CBAs, for port workers and foremen</td>
<td>• Closed shop and excessive union power</td>
</tr>
<tr>
<td>• 11th in the EU for containers</td>
<td>• Few company CBAs</td>
<td>• Ban on self-handling</td>
</tr>
<tr>
<td>• 49th in the world for containers</td>
<td>• One port operator in smaller ports</td>
<td>• Ban on temporary agency work</td>
</tr>
<tr>
<td>• Over 40 employers</td>
<td>• Terminals employ permanent and temporary workers, a small percentage are ‘professional temporary workers’</td>
<td>• Mismatch between supply and demand of workers</td>
</tr>
<tr>
<td>• Appr. 2,750 port workers</td>
<td>• Crane drivers employed by port authorities or terminals</td>
<td>• Limited working hours and lack of flexibility</td>
</tr>
<tr>
<td>• Trade union density: 95-100%</td>
<td>• No pools or hiring halls</td>
<td>• High strike propensity</td>
</tr>
<tr>
<td>• Terminals run job centres to allocate work</td>
<td>• Workers are registered by their individual employer</td>
<td></td>
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</tbody>
</table>

**Qualifications and Training**

<table>
<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Training by several official training institutions</td>
<td>• National law only requires training for crane drivers and handling of dangerous goods</td>
<td>• No specific issues</td>
</tr>
<tr>
<td>• Training by all major terminals</td>
<td>• CBAs regulate continued training</td>
<td></td>
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</tbody>
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**Health and Safety**

<table>
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<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Detailed accident statistics available but comparison with other sectors impossible</td>
<td>• Specific Regulations on Loading and Unloading and on Handling of Dangerous Goods in Ports</td>
<td>No specific issues</td>
</tr>
</tbody>
</table>

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650 Throughput figures relate to maritime traffic for 2011. Container throughput ranking is for 2010. ‘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 system

822. Metropolitan 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 Rouen.

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 2011, the gross weight of seaborne goods handled in French ports was about 354 million tonnes. The total throughput in the Grands Ports Maritimes in the same year amounted to 276 million tonnes, about 78 per cent of the annual traffic. In the container market, French ports ranked 7th in the EU and 25th in the world in 2010.

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652 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-outr-mer/3.6.3.-Applicabilite-Outre-mer-du-droit-de-l-Union-europeenne.

653 Recently, the three Seine ports of Le Havre, Rouen and Paris established an Economic Interest Group (Groupement d'intérêt économique).

823. The Grands Ports Maritimes are landlord ports. As we will explain below, 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);

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 matters.

825. The Legislative Section of the Transport Code was promulgated on 28 October 2010 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 1956 and brought together all legislative and regulatory provisions on the management of French sea ports, including, as from 1958, on port labour. It was amended by, inter alia, the 1992 and 2008 Acts on the reform of port labour which we will analyse below. The legislative provisions on port labour of the Maritime Ports Code which were

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655 See infra, paras 842 and 853.
656 See especially Bonassies, P., "La loi maritime du doyen Rodière doit-elle être réformée ?", Droit maritime français 2009, (809), 810, para 2.
658 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 révision du code des ports maritimes.
660 See infra, para 839 et seq.
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 not yet been adopted. 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 stage. 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 law. 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 study.

827. Safety in port labour in France is mainly regulated by the Labour Code and the Ship Safety Regulations. 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 operations.

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 2005.

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662 See *infra* para 839.
663 See *supra*, para 25.
664 Arrêté du 23 novembre 1987 relatif à la sécurité des navires; see especially Division 214 of the Règlement.
828. France has ratified ILO Conventions No. 137 and No. 152. Previously, it was also bound by ILO Convention No. 32.

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’) of 10 March 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 CCNU).

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 2012.

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dispositions d’adaptation au droit communautaire dans le domaine portuaire et modifiant le code des ports maritimes.

667 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 a sa cinquante-huitième session, à Genève, le 25 juin 1973. It appears that in respect of this Convention, no approving Act was adopted.


671 See also the Accord du 30 juin 2009 relatif au champ d’application et aux bénéficiaires.

672 Arrêté du 6 août 2012 portant extension de la convention collective nationale unifiée "ports et manutention” et d’accords et d’un avenant conclu dans le cadre de ladite convention collective (n° 3017).
The Agreement contains provisions on *inter alia* minimum guaranteed wages, working time, employment contracts and vocational education and training. 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.* 673. Most of these agreements were not officially publicised. Exceptions are the agreements for the ports of Bordeaux674, Dunkirk675 and Montoir - Saint-Nazaire676, 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 ports677.

**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 countries678. What is more, the urge to liberalise port labour during the

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674 See, for example, Emploi, RTT et salaires des dockers (Bordeaux) - Accord du 11 juillet 2000.
675 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).
676 Accord du 30 octobre 2006 relatif à l'organisation du travail sur le port de Montoir - Saint-Nazaire.
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 basis.\(^{679}\)

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 brotherhood.\(^{680}\) The Grands Corps des Brocettiers du Havre, which united the barrowmen, was founded in 1635.\(^{681}\) 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 job.\(^{682}\)

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.

\(^{679}\) See already supra, para 385.


\(^{681}\) See already supra, para 385.

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 well.683

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 perspective.684 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 authority.685 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 work.686 Also, some work was performed by robairols, labourers who waited around on street corners, ready to undertake assorted carrying tasks.687 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.688 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 members.689 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 hiring\textsuperscript{690}.

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 ship\textsuperscript{691}.

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 cards\textsuperscript{692}.

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 workers\textsuperscript{693}.

\textbf{834.} An Act of 28 June 1941\textsuperscript{694}, 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


\textsuperscript{692} 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”, \texttt{http://bacalanstory.blogs.sudouest.fr/media/02/01/160491036.pdf}, 2).


\textsuperscript{694} Loi du 28 juin 1941 relative à l’organisation du travail de manutention dans les ports maritimes de commerce.
ensured priority of engagement for registered port workers but also recognised classified occasional or supplementary workers.\textsuperscript{695}

\textbf{835.} After WW 2, the Act of 6 September 1947\textsuperscript{696} repealed the 1941 Act but essentially confirmed the substance of the Vichy arrangements.\textsuperscript{697} Under the new Act, all French port workers belonged to a pool and were classified either as (1) \textit{professionnel} (regular) or (2) \textit{occasionnel} (occasional) workers. All the workers had to be hired on a daily basis, either for a shift (French \textit{un shift}), which corresponded to an entire day, or for a half-day shift (French \textit{une vacation}).

The \textit{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 \textit{professionnel} dockworker reported for employment but found none, he was eligible for a payment for reporting, called \textit{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 \textit{professionnels} were given a worker’s card named \textit{Carte G} (with the G referring to \textit{garantie}). Following submission of recommendations from the BCMO, the Minister of Labour fixed by decree the maximum number who might be classified as \textit{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.

\begin{itemize}
  \item \textsuperscript{696}Loi n° 47-1746 du 6 septembre 1947 sur l’organisation du travail de manutention dans les ports.
\end{itemize}
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 (permanentisation) 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 failed. 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 necessity.

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.

In December 1986, a first Report to the Government on French ports policy by Jacques Dupuydauby 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" 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 system 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.

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700 Dupuydauby, J., La filière portuaire française. Mission de réflexion et de propositions, 1 December 1986 (to our knowledge unpublished).
702 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 bonuses. 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). 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 CAINAGOD.

839. Spurred by a major strike in Dunkirk in 1990 and pressured by employers' association UNIM 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’œuvre incontrôlable), the Government pushed through Act n° 92-496 of 9 June 1992 which aligned the rules governing port labour with general labour law as governed by the Labour Code. 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.

703 See further infra, para 890.
704 A first version of this Agreement was signed in 1947; it was updated in 1975 and 1989.
705 Dupuydauby, J., La filière portuaire française. Mission de réflexion et de propositions, 1 December 1986, 35-50 and 68-76.
708 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.
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 nature\textsuperscript{710}, as casual employment of registered worker is set to disappear not earlier than the year 2020\textsuperscript{711}. As a result, the current regime of port labour in France is a mix of general labour law principles and a specific regime\textsuperscript{712} and is considered to "straddle two epochs"\textsuperscript{713}. 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 employment\textsuperscript{714}. In 2007, \textit{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.

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 websites).

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). As many of its provisions were inspired by the provisions of Labour Code, it brought port labour further into line with general labour law.

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 Marseilles and might have raised state aid issues. Yet, in many ports, cargo handlers paid significant gratuities to the individual crane drivers. 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 strikes. 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 Hamburg. 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 ports.


719 On the latter issue, see also infra, para 909.

720 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).

721 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.

For these reasons, a second port labour reform scheme was laid down in Act No. 2008-660 of 4 July 2008\(^{723}\). 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 Autonomes\(^{724}\) 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 ports\(^{725}\).

Regulatory set-up

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)\(^{726}\).

The list of ports was laid down in a Decree of 25 September 1992\(^{727}\) 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).

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 intermittents).

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\(^{724}\) The Act did not apply to other ports.


\(^{726}\) On the current interpretation of this particularly confusing provision, see infra, para 896.

\(^{727}\) Arrêté du 25 septembre 1992 désignant les ports maritimes de commerce de la métropole comportant la présence d’une main-d’œuvre d’ouvriers dockers professionnels intermittents et portant constitution de bureaux centraux de la main-d’œuvre.
occasional). 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 regularly 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 employment. 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).

Permanently employed dockers work under the full authority of their employer who may give directions and impose sanctions.

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).

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728 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).
730 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).
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 vacations 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 criteria 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 employment.

Since 1992 no new professional cards have been issued and the last card holders are expected to have disappeared from the scene by 2020.

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 Code. But where an occasional worker is obliged, contrary to the law, to report

732 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.
733 See inter alia Le Garrec, M.-Y., "La reconnaissance du statut d'ouvrier docker professionnel intermittent", Droit maritime français 2000, (849), 851.
735 See supra, para 839.
twice a day for employment, law courts may conclude that he is bound by a contract of employment for an indefinite term.\textsuperscript{737}

\textbf{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 above\textsuperscript{738}, 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).

\textbf{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 1992\textsuperscript{739}).

\textsuperscript{737} 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".

\textsuperscript{738} See supra, para 843.

\textsuperscript{739} 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 and Saint-Viaud), Nantes (installations portuaires du Port autonome de Nantes - Saint-Nazaire situées sur le territoire des communes de Nantes, Rezé and 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 Châteauneuf-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 and 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 workers;\(^{740}\)
- an equal number of representatives of the cargo handling companies;\(^{741}\)
- 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 employers.\(^{742}\)

850. The National Dock Workers Guarantee Fund (French La Caisse Nationale de Garantie des Ouvriers Dockers, CAINAGOD)\(^{743}\) 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).\(^{744}\)

\(^{740}\) See also Art. R511-3-1 of the Maritime Ports Code.
\(^{741}\) See also Art. R511-3 of the Maritime Ports Code.
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). 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*) 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 purposes.

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).

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744. See also Art. R521-3 of the Maritime Ports Code.
746. 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.
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 2008 and declared binding on all port authorities, cargo handling companies and port workers by a Decree of 28 November 2008. 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 aid.

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- 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 states that approximately 5,000 people are employed in cargo handling activities, 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 2011.\(^751\)

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Table 41. Number of port workers in France, 2001-2002 (source: ECOTEC Research & Consulting based on Ifremer)

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th></th>
<th>2002</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Autonomous Ports</td>
<td>Ports of National Interest</td>
<td>Total</td>
<td>Autonomous Ports</td>
</tr>
<tr>
<td></td>
<td>3,417</td>
<td>997</td>
<td>4,414</td>
<td>3,401</td>
</tr>
</tbody>
</table>

Table 42. Total number of professional port workers holding a 'Carte G' in French ports, 1950-2011 (source: CAINAGOD)

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>BCNO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ajaccio</td>
<td>61</td>
<td>67</td>
<td>58</td>
<td>18</td>
<td>19</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Bastia</td>
<td>68</td>
<td>70</td>
<td>52</td>
<td>30</td>
<td>34</td>
<td>16</td>
<td>5</td>
</tr>
<tr>
<td>Bayonne</td>
<td>50</td>
<td>52</td>
<td>50</td>
<td>58</td>
<td>38</td>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>Bordeaux</td>
<td>1,894</td>
<td>1,443</td>
<td>900</td>
<td>580</td>
<td>230</td>
<td>76</td>
<td>76</td>
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<tr>
<td>Boulogne-sur-Mer</td>
<td>536</td>
<td>452</td>
<td>390</td>
<td>412</td>
<td>252</td>
<td>10</td>
<td>91</td>
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<tr>
<td>Brest</td>
<td>175</td>
<td>56</td>
<td>48</td>
<td>97</td>
<td>83</td>
<td>29</td>
<td>14</td>
</tr>
<tr>
<td>Caen</td>
<td>22</td>
<td>13</td>
<td>25</td>
<td>45</td>
<td>41</td>
<td>24</td>
<td>24</td>
</tr>
</tbody>
</table>

Table 43. Number of professional dockers (permanent and casual) in the 7 metropolitan Ports Autonomes of France, 2007 (source: UNIM and Canaigod)

<table>
<thead>
<tr>
<th>Port</th>
<th>Casual port workers holding a G card prior to the 1992 reform</th>
<th>Situation on 1 January 2007</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Permanent workers</td>
<td>Casual workers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>G card</td>
<td>No G card</td>
</tr>
<tr>
<td>Marsailles East / Fos</td>
<td>2,017</td>
<td>328</td>
<td>466</td>
</tr>
<tr>
<td>Le Havre</td>
<td>2,108</td>
<td>530</td>
<td>1,191</td>
</tr>
<tr>
<td>Dunkirk</td>
<td>1,072</td>
<td>146</td>
<td>189</td>
</tr>
<tr>
<td>Nantes Saint-Nazaire</td>
<td>320</td>
<td>40</td>
<td>115</td>
</tr>
<tr>
<td>Rouen</td>
<td>787</td>
<td>96</td>
<td>40(752)</td>
</tr>
<tr>
<td>Bordeaux</td>
<td>290</td>
<td>16</td>
<td>39</td>
</tr>
<tr>
<td>La Rochelle</td>
<td>148</td>
<td>30</td>
<td>43</td>
</tr>
<tr>
<td>Total for autonomous ports</td>
<td>6,742</td>
<td>1,186</td>
<td>2,083</td>
</tr>
<tr>
<td>All ports</td>
<td>8,293</td>
<td>1,566</td>
<td>2,200</td>
</tr>
</tbody>
</table>

752 Among whom 86 inactive workers.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Calais</td>
<td>259</td>
<td>249</td>
<td>159</td>
<td>110</td>
<td>80</td>
<td>1</td>
<td>37</td>
<td>24</td>
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<tr>
<td>Cherbourg</td>
<td>333</td>
<td>120</td>
<td>47</td>
<td>53</td>
<td>50</td>
<td>16</td>
<td>16</td>
<td>1</td>
</tr>
<tr>
<td>Concarneau</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dieppe</td>
<td>413</td>
<td>539</td>
<td>544</td>
<td>481</td>
<td>168</td>
<td>10</td>
<td>57</td>
<td>4</td>
</tr>
<tr>
<td>Douarnenez</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dunkirk</td>
<td>1,684</td>
<td>1,900</td>
<td>1,646</td>
<td>1,774</td>
<td>1,004</td>
<td>19</td>
<td>487</td>
<td>15</td>
</tr>
<tr>
<td>Fécamp</td>
<td>34</td>
<td>31</td>
<td>26</td>
<td>17</td>
<td>12</td>
<td>1</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Le Havre</td>
<td>4,282</td>
<td>3,400</td>
<td>3,487</td>
<td>3,510</td>
<td>2,124</td>
<td>7</td>
<td>1,041</td>
<td>6</td>
</tr>
<tr>
<td>Honfleur</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lorient</td>
<td>121</td>
<td>101</td>
<td>106</td>
<td>189</td>
<td>234</td>
<td>4</td>
<td>56</td>
<td>3</td>
</tr>
<tr>
<td>Marseilles - Fos</td>
<td>4,477</td>
<td>3,526</td>
<td>2,834</td>
<td>3,266</td>
<td>2,055</td>
<td>500</td>
<td>565</td>
<td>130</td>
</tr>
<tr>
<td>Nantes - Saint Nazaire</td>
<td>629</td>
<td>585</td>
<td>464</td>
<td>463</td>
<td>323</td>
<td>5</td>
<td>125</td>
<td>5</td>
</tr>
<tr>
<td>Nice</td>
<td>83</td>
<td>66</td>
<td>70</td>
<td>87</td>
<td>62</td>
<td>4</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Paris</td>
<td>540</td>
<td>460</td>
<td>177</td>
<td>65</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Port-la-Nouvelle</td>
<td>8</td>
<td>9</td>
<td>30</td>
<td>40</td>
<td>33</td>
<td>3</td>
<td>6</td>
<td>9</td>
</tr>
<tr>
<td>Port-Vendres</td>
<td>83</td>
<td>83</td>
<td>51</td>
<td>50</td>
<td>48</td>
<td>22</td>
<td>22</td>
<td>2</td>
</tr>
<tr>
<td>La Rochelle</td>
<td>334</td>
<td>302</td>
<td>282</td>
<td>242</td>
<td>174</td>
<td>4</td>
<td>49</td>
<td>2</td>
</tr>
<tr>
<td>Roscoff</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rouen</td>
<td>1,834</td>
<td>1,775</td>
<td>2,064</td>
<td>918</td>
<td>51</td>
<td>192</td>
<td>243</td>
<td>7</td>
</tr>
<tr>
<td>Saint-Malo</td>
<td>26</td>
<td>7</td>
<td>51</td>
<td>90</td>
<td>85</td>
<td>5</td>
<td>32</td>
<td>1</td>
</tr>
<tr>
<td>Sète</td>
<td>654</td>
<td>484</td>
<td>349</td>
<td>284</td>
<td>204</td>
<td>63</td>
<td>63</td>
<td>7</td>
</tr>
<tr>
<td>Toulon</td>
<td>48</td>
<td>42</td>
<td>36</td>
<td>25</td>
<td>13</td>
<td>4</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Le Tréport</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Le verdon</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>16,814</td>
<td>15,891</td>
<td>13,657</td>
<td>14,229</td>
<td>8,482</td>
<td>678</td>
<td>3,064</td>
<td>222</td>
</tr>
</tbody>
</table>

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 2003⁷⁵³.

⁷⁵³ 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).
The main port workers’ union is Confédération Générale du Travail (CGT) which, however, preferred not to cooperate on 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. CGT mentioned that it represents more than 95 per cent of French port workers.

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 members.

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 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 established.

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 trained.

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754 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).


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 Prospective 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 sector.758

Training in the cargo handling sector is structured around three elements:
- accession to a sectoral Joint Collecting Entity (Organisme Paritaire Collecteur Agréé, OPCA759);
- 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 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 2011.760

862. The CQPs were created under national collective agreements of 6 July 2005761 and 19 December 2006.762 The former expressly acknowledged, inter alia, the individual right to training of every worker (Art. 8).

758 On the background, see infra, para 891.
759 An OPCA is a means of collecting contributions made by the employers for the financing of training.
760 Accord du 17 mars 2011 relatif à la formation professionnelle.
761 Accord du 6 juillet 2005 relatif à la formation professionnelle.
Currently, the training scheme is governed by Annex No. 2 to the CCNU\textsuperscript{763} 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)\textsuperscript{764}.

Training courses may be organised either within the company or by a training provider (Art. 5 of Annex No. 2).

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);

\textsuperscript{762} Accord du 19 décembre 2006 relatif à la création de certificats de qualification professionnelle dans la manutention portuaire (filière exploitation portuaire).
\textsuperscript{763} Avenant N° 2 du 17 mars 2011 relatif à la création des CQP.
\textsuperscript{764} See detailed descriptions of the certificates on \url{http://www.rncp.cnrc.gouv.fr/}.
- the employers’ association UNIM is responsible for logistics and the secretariat.

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). These certificates supplement certificates required under other laws and regulations.

- 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.

866. Training of port workers takes place in the Port and Logistics Training Centre (Centre de Formation Portuaire et Logistique, CEFPOL) 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’).


766 The CACES were introduced through Décret n°98-1084 du 2 décembre 1998 relatif aux mesures d’organisation, aux conditions de mise en œuvre 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.


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.

As we have mentioned above, 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 ports.

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).
The establishment of these Committees is further regulated in the CCNU (Art. 8.D) and in local agreements.

869. Some local collective agreements contain specific safety rules.

870. Given the high accident rate, UNIM and the National Insurance Fund for Occupational Diseases of Workers in 2000 signed an agreement on prevention measures. 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 labour.

872. Following long and difficult negotiations, the social partners agreed in 2011 on a special scheme on Strenuousness (pénibilité). Under this scheme, a number of port workers' jobs were identified as particularly strenuous, entitling the workers who had been engaged in these activities for 18 years or more to retire 2 years earlier 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). The right to early retirement is thus based on an assumed exposure to certain occupational risks, not on an individual medical opinion.

See, for example, Art. 8 of the Agreement for Bordeaux of 11 July 2000.

See, for example, Art. 7 of the Agreement for Montoir - Saint-Nazaire of 30 October 2006 on the wearing of personal protective equipment.


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 drivers. Before 1977, asbestos was indeed handled in most French ports.

Early retirement rights under the Strenuousity Scheme, ACAATA and other applicable regimes may be combined up to a maximum of 5 years (see again Annex 3 to the CCNU).

On 1 January 2007, 1,263 workers had retired on the basis of the Asbestos Scheme. Several dockers pursued court cases against employers in order to obtain financial compensation. Such compensation is also available from the National Fund for the Compensation of Asbestos Victims (Fonds d’Indemnisation des Victimes de l’Amiante, FIVA).

- Facts and figures

The table below shows the number and frequency of occupational accidents in maritime ports.

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779 Asbestos Schemes were also concluded at local level (see, for example, the Agreement for Bordeaux of 12 December 2001).


Table 44. Occupational accidents in loading, unloading and handling of cargo in French seaports involving permanent and casual workers\(^{784}\) (Risk code 631AA), 2007-2010 (source: L’Assurance Maladie - Risques Professionnels\(^{785}\))

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of workers</td>
<td>5,864</td>
<td>6,450</td>
<td>5,660</td>
<td>6,250</td>
</tr>
<tr>
<td>Number of accidents</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>resulting in interruption</td>
<td>741</td>
<td>709</td>
<td>662</td>
<td>654</td>
</tr>
<tr>
<td>Number of accidents</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>resulting in incapacity</td>
<td>89</td>
<td>85</td>
<td>75</td>
<td>83</td>
</tr>
<tr>
<td>Number of fatal</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>accidents</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of lost days</td>
<td>74,750</td>
<td>83,032</td>
<td>78,591</td>
<td>69,091</td>
</tr>
<tr>
<td>Incidence rate</td>
<td>126.36</td>
<td>109.92</td>
<td>116.96</td>
<td>104.6</td>
</tr>
<tr>
<td>Frequency rate</td>
<td>111.47</td>
<td>104.11</td>
<td>114.63</td>
<td>108.2</td>
</tr>
<tr>
<td>Severity rate</td>
<td>11.24</td>
<td>12.19</td>
<td>13.61</td>
<td>11.43</td>
</tr>
<tr>
<td>Severity index</td>
<td>186.68</td>
<td>116.59</td>
<td>111.34</td>
<td>106.7</td>
</tr>
</tbody>
</table>

Detailed statistics are maintained on the number and types of occupational diseases as well. In 2010, for example, 1,984 working days were lost due to occupational diseases\(^{786}\).

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.

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\(^{784}\) The code covers “personnel mensualisé ou occasionnel”.

\(^{785}\) See [www.risquesprofessionnels.ameli.fr](http://www.risquesprofessionnels.ameli.fr).

Table 45. Incidence, frequency and severity rates of occupational accidents in loading, unloading and handling of cargo in French seaports involving permanent and casual workers\textsuperscript{787} (Risk code 631AA) and other comparable sectors, 2008-2010 (source: L’Assurance Maladie - Risques Professionnels\textsuperscript{788})

<table>
<thead>
<tr>
<th>Risk code</th>
<th>Incidence rate</th>
<th>Frequency rate</th>
<th>Severity rate</th>
<th>Severity index</th>
</tr>
</thead>
<tbody>
<tr>
<td>631AA</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loading, unloading and handling of cargo in French seaports involving permanent and casual workers</td>
<td>109.92</td>
<td>116.96</td>
<td>104.6</td>
<td>104.11</td>
</tr>
<tr>
<td>271ZE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manufacturing of cast iron and steel</td>
<td>13.81</td>
<td>10.97</td>
<td>10.7</td>
<td>9.03</td>
</tr>
<tr>
<td>452BC</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General contractors and construction of buildings (with the exception of individual houses)</td>
<td>96.97</td>
<td>91.94</td>
<td>89.0</td>
<td>61.85</td>
</tr>
<tr>
<td>611AB</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maritime and coastal transport of persons and goods</td>
<td>10.44</td>
<td>8.17</td>
<td>11.5</td>
<td>6.63</td>
</tr>
<tr>
<td>612ZB</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inland water transport of goods</td>
<td>48.44</td>
<td>27.33</td>
<td>29.9</td>
<td>29.00</td>
</tr>
</tbody>
</table>

\textsuperscript{787} The code covers “personnel mensualisé ou occasionnel”.
\textsuperscript{788} See www.risquesprofessionnels.ameli.fr.
<table>
<thead>
<tr>
<th>Risk code</th>
<th>Incidence rate</th>
<th>Frequency rate</th>
<th>Severity rate</th>
<th>Severity index</th>
</tr>
</thead>
<tbody>
<tr>
<td>745BD</td>
<td>69.61</td>
<td>55.31</td>
<td>55.4</td>
<td>52.82</td>
</tr>
<tr>
<td>All categories of temporary employed personnel</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>926CH</td>
<td>269.65</td>
<td>337.60</td>
<td>340.9</td>
<td>233.12</td>
</tr>
<tr>
<td>Professional athletes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All activities</td>
<td>38.0</td>
<td>36.0</td>
<td>36.6</td>
<td>24.7</td>
</tr>
</tbody>
</table>

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 seat. 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 information.

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.

- 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 Code and were reiterated in the CCNU, where they are overtly presented as a restriction on the freedom of employment.

Furthermore, the normal power to dismiss employees is restricted by the obligatory reintegration of workers still holding a G card as casual BCMO workers which has, for that matter, also caused practical difficulties.

792 See supra, para 845.
793 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).

Numerous occasional workers attempted to obtain reclassification as a professional casual worker through court proceedings, in most cases in vain. 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 more.

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 law – is normal practice. Yet, the law provides, 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 2001 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 COP 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).

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798 See Art. L1242-1 et seq. of the Labour Code.

799 See already supra, para 847.

800 Accord du 25 octobre 2011 relatif aux conditions d’emploi et à la revalorisation des salaires (Bordeaux).
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 1995. 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 Nice. 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 workers.

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 elaborates inter alia on wages, sanctions and the integration of temporary agency workers freely chosen by the employer in his permanent staff.

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803 Art. 8.1 of the Special Conditions for Dunkirk.
804 Title IX, Art. 9.1 et seq. of the Special Conditions for Dunkirk.
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 agencies.\footnote{Art. 4 of the Agreement for Bordeaux of 11 July 2000.}

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).


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 sector. 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 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 considerable.\footnote{310}

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.

\footnote{310} 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 \textit{ibidem}, 28-29, para 134).

Next, port labour in France – where, generally, trade union density seems to be one of the
lowest of the European Union\footnote{808} – 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 ship\footnote{809}. 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 members\footnote{810}.

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 representatives\footnote{811}.

\footnote{808} 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).

\footnote{809} Le Du, E. and Galbrun, X., 100 ans d'Union au service des ports français 1907-2007,

\footnote{810} 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.htm).

\footnote{811} 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 nation.\footnote{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.}

In 1999, the Court of Auditors denounced the union monopoly (monopole syndical) and the discriminatory nature of the closed shop system.\footnote{Cour des comptes, La politique portuaire française, October 1999, http://www.lexeek.com/document/598-politique-portuaire-francaise-rapport-cou/ (unpaged).} In 2011, it added that the position of the almighty CGT in Marseilles had been reinforced by an Act of 20 August 2008 which enabled a union to veto collective agreements signed by other unions.\footnote{Loi n° 2008-789 du 20 août 2008 portant rénovation de la démocratie sociale et réforme du temps de travail.}

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 too and that other trade unions regularly expose CGT’s monopoly. This is all the more remarkable since, generally, trade union density is not very high in France.


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 situation. 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 stipulated that in order to be employed, dockers had to hold the appropriate licence.


("carte professionnelle"), 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 professionnelle" 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 professionnelle" 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 professionnelle".

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’œuvre, 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 professionnelle" 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 professionnelle", 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 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 firms.821

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. 2.822

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, i.e. recruited as full-time employees with a permanent contract, or periodically
hired.

On the de facto situation, the Committee noted:

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

European Committee of Social Rights, France, Conclusions XIII-3,
http://hudoc.esc.coe.int/esc1/doc/escsesec/doc/200838/133_conclusions_xiii3_english/00000079.doc
European Committee of Social Rights, France, Conclusions XIII-3,
http://hudoc.esc.coe.int/esc1/doc/escsesec/doc/200838/133_conclusions_xiii3_english/00000105.doc

821 European Committee of Social Rights, France, Conclusions XIII-3,
http://hudoc.esc.coe.int/esc1/doc/escsesec/doc/200838/133_conclusions_xiii3_english/00000079.doc
822 European Committee of Social Rights, France, Conclusions XIII-3,
http://hudoc.esc.coe.int/esc1/doc/escsesec/doc/200838/133_conclusions_xiii3_english/00000105.doc
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 situation.

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. 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 sector.


824 The Confédération générale des cadres (CGC), la 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).

relating to employment, professional training, promotion, performance and distribution of work, wages, disciplinary measures or dismissal. The effectiveness of such provisions was put in doubt by Professor Laurent Bordereaux. 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, too, giving the workforce the appearance of a ‘tribe’ or a ‘sect’. 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 agreements. 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 void and the public prosecutor added that the signing of the agreement was a criminal offence. Similar arrangements were formalised in

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826 Art. 8.A of the CCNU; comp., for example, Art. 12.1.5 of the Special Conditions for Dunkirk.
a local agreement in Bordeaux. In 1999, the Court of Auditors denounced these discriminatory practices as a case of ‘family tropism’ (un tropisme familial). 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 workers.

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 disappeared.

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 limits in relation to overtime. Some rules appear to ensure flexibility while others seem rather restrictive.

834 UNIM, Livre Blanc de la Manutention Portuaire, s.l., 2005, 23.
835 See www.docksete.fr.
836 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.
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 experts\textsuperscript{837} and legal doctrine\textsuperscript{838} alike. Since the reform, the number of required gang members is reportedly more reasonable\textsuperscript{839}.

Some local agreements now insist that the composition of gangs (following joint consultation however) and the regulation of work are prerogatives of the employer\textsuperscript{840}. 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 cranes\textsuperscript{841}. Here again, the responsibility primarily rests with the individual employer.

\textbf{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 goods\textsuperscript{842}.


\textsuperscript{840} See Art. 5.1 of the Agreement for Montoir - Saint-Nazaire of 30 October 2006.

\textsuperscript{841} X., “Fos : Les dockers deviennent portiqueurs”, \textit{Mer et marine} 27 June 2011, \url{http://www.meretmarine.com/article.cfm?id=116663}.

\textsuperscript{842} Bonassies, P. and Scapel, C., \textit{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:

\begin{itemize}
  \item [(a)] All longshore activities.
  \item [(b)] Exceptions:
    \begin{itemize}
      \item [(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,
      \item [(2)] Opening and closing of hatches,
      \item [(3)] Rigging of ship’s gear,
      \item [(4)] Operation of cargo-related equipment to shift cargo internally,
      \item [(5)] Handling operations connected with shipbuilding and refitting, and
      \item [(6)] Offloading fish by the crew or personnel for the shipowner.
    \end{itemize}
\end{itemize}
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 cases.\footnote{De Richemont, H., *Un pavillon attractif, un cabotage crédible. Deux atouts pour la France*, October 2002 - March 2003, \url{http://www.ldapocumentationfrancaise.fr/rapports-publics/034000144/index.shtml}, 93 and 122.}

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 troops.\footnote{European Sea Ports Organisation, *Factual Report on the European Port Sector*, Brussels, 2004-2005, 133.}

Remarkably, the Professional Training Certificates (CQP) for port workers\footnote{See supra, para 861.} were introduced in 2005 in an 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 ports.\footnote{First of all, this objective is overtly stated in each of the CQP descriptions in the national register RNCP (see \url{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, \url{http://www.ldapocumentationfrancaise.fr/rapports-publics/064000535/index.shtml}, 45-46; see also Barzman, J., "Conflicts and negotiations at the Havre before and after the major port reforms", *L'Espace Politique*, 16 | 2012-1, \url{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, \url{http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---reiconf/documents/meetingdocument/wcms_151556.pdf}, 780).} 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 agreements.\footnote{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, \url{http://www.ldapocumentationfrancaise.fr/rapports-publics/054000111/index.shtml}, 71 and 79-80.}

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 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;

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- 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 disputes. The legal uncertainty surrounding the interpretation of this provision was already highlighted in the first Dupuydauby Report of 1986 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 claim\textsuperscript{850}. 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 workers\textsuperscript{851}. 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 significantly\textsuperscript{852}.

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 operations\textsuperscript{853}.

A further contribution towards clarification was made in a long series of – sometimes strikingly inconsistent\textsuperscript{854} – court judgments\textsuperscript{855}, 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 dockers\textsuperscript{856}. Neither must 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 stevedore\textsuperscript{857}. Tallying, weighing, sampling, sorting and checking goods cannot be claimed exclusively by dockers either, because these activities must be distinguished from actual


\textsuperscript{856} Supreme Court (Cour de cassation) 18 March 1964, \textit{Droit maritime français} 1964, 458, with annot. by Tricaud, M. and Contentieux de la Cie Générale Transatlantique.

\textsuperscript{857} Supreme Court (Cour de cassation) 22 February 1983, \textit{Bulletin des transports} 1983, 564, annot. X.
loading and unloading operations. 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 usage. 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 work. One Court also doubted whether a company must hire a trimmer where the grain is actually trimmed in the holds by mechanical means.

Next, the geographical scope of the legislative provisions on port labour is defined with reference to the vague concept of the domaine public maritime (maritime public domain). 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 users. 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 workforce. Although this has long been a particularly contentious issue, giving rise to considerable and again not very consistent case law, transporting goods between quay areas and storage areas in the port (known as brouettage) apparently remains outside the scope of the priority rights of the dockers as well.

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856 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.
857 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.
858 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".
859 Court of Appeal of Bordeaux 6 January 1997, Droit maritime français 1997, 432, with annot. by Le Garrec, M.-Y.
860 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.
The Association of Freight Transport Users (Association des Utilisateurs de Transport de Fret, AUTF) informed us that at Le Havre, contrary to the law, broutage within 25 kilometres from the port is still reserved for port workers.

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). Some authors argued that the latter activity is beyond the reach of the port worker’s priority of engagement.

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 law. Similar difficulties arose at Boulogne-sur-mer, La Rochelle-Pallice and Marseilles. 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 reasons.

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.

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868 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.


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 facilities\(^{873}\). 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 operations\(^{874}\).

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 priority 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 labour\(^{875}\).

\(^{897}\) 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 commerce\(^{876}\), Robert

\(^{873}\) 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”.

\(^{874}\) Court of Appeal of Poitiers 3 February 2004, Droit maritime français 2004, 396, with annot. by X.


\(^{876}\) 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
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 1947. Laurent Bordereaux confirms that in many ports trade unions indeed impose a broader interpretation of the monopoly of port workers than the law actually provides.

In 2003, UNIM noted that the legal principles adopted in 1992 and daily practice continued to diverge widely.

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 unions.

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 ports.

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877 Rézenthel, R., annot. of Court of Appeal of Rouen, 7 June 1990, Droit maritime français 1992, (373), 373-374.


- 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 dormant, and casual labour performed by registered workers has disappeared from the scene.

Today, casual labour performed by professional registered port workers is essentially a local phenomenon, typical at Marseilles.

The Court of Auditors highlighted the relatively high cost of maintaining CANAIGOD, compared to its limited activities.

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 Code can only be understood as either a symbolic or a transitional rule.

901. Thirdly, the 1992 provisions are unclear on the priority of employment of occasional workers.

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896 See supra, paras 845 and 848.

workers over the "tout-venant", i.e. anybody who would present himself. This problem is to an extent solved by provisions in local collective agreements.

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 workers. In Saint-Nazaire, a new company was established with a 58 per cent shareholdership for the dockers which was run as a private BCMO. Similar entities were set up in Caen, Lorient and Saint-Malo. In Brest the dockers set up a cooperative company which would compete with the stevedores who were obliged, however, to rely on its workforce themselves. In Marseilles, the cargo handlers created consortia (GEMOS 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 legislator. 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 employer.

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 maintenance department within the port authority. In Marseilles, more than half of the

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888 See already supra, paras 848 and 879.
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 law.

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.

- Restrictive working practices

French ports have a tradition of restrictive working practices, based on local us et coutumes.

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 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.

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896 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 Giullo, 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).
the possibility of remaining absent during working hours, and the volée (flight), i.e. working alternately within the same gang\textsuperscript{897}. The first Dupuydauby Report of 1986 mentions the practice of se pêter en 2, a code for working by half teams or, put simply, being absent from work. As we have mentioned before\textsuperscript{898}, the Report also reported on various other “malthusian” practices to increase the workload\textsuperscript{899}. A 2001 agreement for Marseilles allowed workers a "right of withdrawal" (droit de retrait) if it starts raining, on condition that this will not used as a pretext to terminate the work without justification (ce ne soit pas un prétexte pour l'arrêt de travail injustifié)\textsuperscript{900}. 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 finished\textsuperscript{901}.

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 duration\textsuperscript{902}.

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.

Reportedly, shift times in Marseilles leave a one-hour gap between each ship, paralysing activities for three hours a day, much to the dismay of ship owners.


\textsuperscript{898} See supra, para 838.

\textsuperscript{899} 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.


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.

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 ports. 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 drivers. But as regards Marseilles, the Court of Auditors reported in 2011 that this system of bakchichs was still in full swing.

Although this aspect is as such beyond the scope of the present study, we cannot avoid mentioning the particularly high strike propensity among French port workers, especially in Marseilles, which was highlighted in several official reports and in legal literature as a priority concern. This issue is not only illustrative of the strong bargaining position of the 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.

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904 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).
906 See supra, para 25.
907 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).
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 working. The Court of Auditors mentions that in recent years, strikes were more frequent among the employees of the port authorities than among the dockers. 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 pf 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 rigidities.

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 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 handlers.

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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 employment\textsuperscript{913}.

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 needed\textsuperscript{914}.

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 solution\textsuperscript{915}.

In 2006, the Court of Auditors reiterated concerns over the inadequate organisation of port labour to serve the needs of inland shipping\textsuperscript{916}.

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.

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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 prevail. 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 groups. In this respect, the Maritime Ports

917 See supra, para 878 et seq.
918 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 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 terminal handling companies be interested in changing a system that permitted them to profit without making investments? As for the...
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 services919. Already in 1992, he expressed doubts on the compatibility of the regime of BCMOs with Community law920. 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 capital921.

In 1997, Le Garrec stated that the Merci judgment imposed a narrow interpretation of the scope of the priority of employment of French port workers922. In 2000, he expected that corporatistic systems on privileges would not be able to withstand European legal developments much longer923.

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 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 Marseille 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://193.146.160.29/gtb/sod/usu/$UBUG/repositorio/10264938_Slack.pdf, (117), 125-126).


920 See Rézenthel, R., annot. of Court of Appeal of Rouen, 7 June 1990, Droit maritime français 1992, (373), 376.


law relating to abuses of a dominant position as well as free movement of goods. The Court referred to Höfner and Eiser and Merci.

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 law.

In 2010, relying on the Becu judgment of the European Court of Justice, 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, 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 possibility.

- Qualification and training issues

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.

925 See supra, para 218, footnote.
926 See infra, para 1171.
928 See supra, para 466.
929 See supra, para 1171.
- Health and safety issues

915. Statistics on occupational accidents suggest that port labour is one of the most dangerous professions in the French economy. Unsurprisingly, fatal and other serious accidents in French ports hit the headlines.

The French Strenuousity Scheme is based on the considerably shorter life expectancy of port workers, which is believed to be 8 to 10 years below the national average.

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 unemployment. 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 labour. Recently, it emerged that workers in Marseilles often take sick leave during strikes.

917. In 1990, the European Committee of Social Rights inquired about the existence of medical examinations of French dockers. We have no information on further steps in this respect.

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931 See supra, para 874.
933 See supra, para 872.
934 Dupuydauby, J., La filière portuaire française. Mission de réflexion et de propositions, 1 December 1986, 40.
936 See supra, para 910.
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.

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 later.

9.7.7. Appraisals and outlook

The effects of the 1992 and 2008 port labour reform schemes were assessed in several official reports and also in other publications, in the media and in public fora.

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 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


939 A highly critical official Report by Brossier of February 1995 was apparently never published and could not be consulted by us.
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 employment.\footnote{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.}

\subsection*{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 law.\footnote{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.}

\subsection*{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 practices, 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 accelerated.\footnote{On the latter, see supra, para 884 et seq.}

\subsection*{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 level\textsuperscript{944}.

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 overstaffing\textsuperscript{945}.

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 law\textsuperscript{946}.

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
which is partly based on nostalgia for the 1947 Port Labour Act and which denies its members

\textsuperscript{944} See UNIM, Livre Blanc de la Manutention Portuaire, s.l., 2005.
\textsuperscript{945} Cour des comptes, Rapport public thématique sur Les ports français face aux mutations du
and 85.
\textsuperscript{946} 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.developpement-durable.gouv.fr/IMG/pdf/la_modernisation_des_ports_autonomes_cle1d7e3a-1.pdf, 3-7, 25-31 and
Annex IV, 3-4.
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 disappeared.

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".

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 gratuities, 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 custom. 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 behaviour.

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 implemented within the deadlines imposed by the law and that all cargo handling equipment

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950 See supra, para 906.

and, since May 2011, all staff (some 650 employees in total\textsuperscript{952}) 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 updated\textsuperscript{953}.

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 position\textsuperscript{954}.

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 value\textsuperscript{955}. 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 Bordeaux\textsuperscript{956} 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” (\textit{transfert}) of the port authorities’ employees to the handlers, as initially envisaged by the legislator, but on a mere “leasing out” (\textit{détachement})\textsuperscript{957}, with the workers continuing their existing employment contracts and

\textsuperscript{952} 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.


\textsuperscript{955} 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”, \textit{De Lloyd} 21 February 2012).

\textsuperscript{956} See supra, para 903.

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 lawmaker. 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 details.

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

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 stop.

958 See details supra, para 903.
961 To give readers a taste of the intensity of popular anger, postings include:

• un régime anachronique, socialement dérogatoire et économiquement suicidaire, en vertu duquel tout le pouvoir est entre les mains d’une seule communauté soudée, les dockers, et d’un seul syndicat accroché à sa forteresse chancelante, la CGT. Tout a été dit sur la perte de substance économique des grands ports français, les détournements de trafics, le surcoût exorbitant du passage des marchandises par Marseille, Dunkerque ou Nantes.
• Implosion d’un organisme stalinien dinosaure. Appelé à disparaître tout comme son partituténaire, en dépit de la résistance à Méluich qui tente de récupérer ce qui en reste pour son usage propre et exclusif. Bon débarras. Les ports français ont été torpillés par ses dockers au profit
La CGT est le plus rétrograde et le plus ringard des syndicats. Dans tous les secteurs où la CGT grouille, tel un bouillon de "culture", les affaires vont mal.; les clients s'enfuient..... mais on y touche pas ! et on se plaint !! À chaque fois c'est pareil, les problèmes sont dénoncés et puis,.... c'est tout.... à la française.. du bla bla mais pas d'action.. positive, seule réponse : il faut augmenter les impôts. Messieurs les dockers mettez tous vos avantages et vos "pénibilités" sur la table, ainsi nous verrons si les salaires exorbitants sont justifiés en comparaison de vos diplômes pour conduire une grue : il faut au moins BAC+5 (merci la CGT de protéger les nantis)

Bakchich, c'est l'Afrique patron (on gratuites pai d to port workers)

Vivement que les Chinois achètent le port de Marseille pour mettre fin à toutes ces pratiques scandaleuses, et que le port devienne ce qu'il devrait être, productif, compétitif, et parmi les grands ports européens ! Et tant pis pour nous si on n'en récolte aucun bénéfice (du fait de la main d'?uvre chinoise importée, richesse créée renvoyé en chine...) Que va-t-on faire de tous ces dockers quand le port de Marseille n'existera plus faute de clients ? [...] - ils seront en grève et payés !!!!!

Si notre République BANANIÈRE est dans l'impossibilité alors fermont [sic] les PORTS nous gagnerons de l'argent en passant par BARCELONE GENES AMSTERDAM etc. les dockers et leur syndicat CGT vont faire CREVER le port de MARSEILLE, puis les raffineries car il n'y aura plus de pétrole à décharger, puis tous les autres qui vivent du PORT. DANS 10 ANS PLUS RIEN. MERCI

Une ramassis improbable de corporations qui se tirent dans les pattes pour finalement s'auto-détruire

moi je pense qu'il faut fermer ce port et donc mettre à la porte tous ces bons à rien !!!!!

ils ne sont toujours pas rentré dans la compétition européenne ou internationale des ports de commerce... plus dure sera la chute... hélas !

On est la risée de tous les pays de l'union européenne et tout le monde se marre

Cette organisation corporatiste et mafiause

Pourquoi les dockers bénéficient-ils d'un statut de fonctionnaire ? qu'on privatiser tout ça et que ceux qui ne veulent pas bosser dégagent le plan cher

les dockers, cette Mafia qui se transmet les emplois de père en fils

T'as pas tout compris: docker à Marseille, c'est faire partie d'un monde à part, où les régles élémentaires normales du monde que s'appliquent partout ailleurs n'ont pas court ici. On s'occupe de soi, de sa petite vie dans sa bulle du "toujours plus, jamais assez", et de la CGT qui décide de tout et a droit de vie et de mort sur tout. [...] Les mots concurrence internationale, trafic qui s'échappe pour Barcelone, Anvers, Le Pirée, Gènes depuis des années, clients qui en ont ras le bol des conflits permanents, du manque de fiabilité du port, des grèves incessantes, des pouvoirs publics semi-complices qui ne font rien depuis des décennies, et chargeurs qui prennent leurs dispositions pour envoyer leur fret via d'autres ports pour le même prix sans jamais revenir...)

leur corporatisme suicidaire

Les dockers qui ont fini par détruire les ports français au profit des ports d'Italie et de Hollande - une certaine manière de scier la branche sur laquelle ils sont assis

Oui enfin docker à 40 ans tu as le dos explosé... Ben voyons...! Ca, c'était en 1900... [...] Enfin, si pas de carte CGT avec paiement de cotisations, accès à la profession impossible...!

pour être docker il faut avoir un parent docker, c'est un peu comme la mafia ce truc

Vieille règle : Plus c'est gros , plus ça passe ( Hauts salaires + Horaires très faibles + pénibilité reconnue= retraite anticipée ) Chapeau ! Mais tout a toujours un début et tout a toujours une fin

Des dockers ultra-privilégiés qui s'ajouteront un privilège de plus en partant à la retraite avant les autres... Vive l'égalité!

dockers cégétiste la honte du monde du travail !

CGT;;;Confederation Gangrénant le Travail...et a quoi sert le rapport de la Cour des Comptes ??....et a quoi sert la Direction des ports si c'est pour baisser la c....??

La pénibilité du travail de grutiers qui travaillent assis dans de bons fauteuils, douze heures par semaine, pour le modeste salaire de 4000 euros par mois, c'est une plaisanterie

Pour relancer le port de Marseille il faut en laver la gestion aux Chinois

Vive la CGT fossoyeuse de notre économie!!

J'appelle cela une justification de la DICTATURE de la Confédération Générale des Troubadours
• Cette population de salariés fait partie des privilégiés de notre société civile (salaire, horaires, sécurité emploi, niveau de retraite) il est indécent de leur octroyer un avantage de plus, surtout concernant la pénibilité
• Quelle mirobolante évolution. Les dockers de la CGT pourront se rouler les pouces tranquillement avec un salaire de PDG pendant que les navires amènent leurs cargaisons à Gènes, Barcelone, Antwerpen ou Rotterdam et en plus ils prétendent à la retraite anticipée car ils seront exténués par autant de labeur
• Honteux, tout simplement honteux par rapport aux autres travailleurs de France. Il ne faut plus discuter avec ces gens, les licencier et en embaucher d’autres non inféodés à la CGT
• Elle est ou la pénibilité ? dans le fait de tourner la clef pour demarer les diverses machines ? ou alors de rester debout a regarder descendre les containers !
• FERMONS CE PORT QUI COUTENT PLUS QU’IL NE RAPPORTE. Ces gens gangrènent le pays , ce port doit disparaître. TROP c’est TROP
• Que tous les entrepreneurs de ce pays qui le peuvent BOYCOTTENT le port de Marseille
• Les impôts et autres taxes outils portuaires du monde, au profit exclusif de ses adhérents, avec nos
• Qui ose nous parler de “pénébilité” pour les grutiers , alors que leurs engins se pilotent au modernes engins. Ce qui se passe c’est que la CGT est entrain de casser un des plus beaux moyen d’un petit levier qui actionne toutes les manoeuvres totalement assistées des ces modernes engins. Ce qui se passe c’est que la CGT est entrain de casser un des plus beaux outils portuaire du monde, au profit exclusif de ses adhérents, avec nos impôts et autres taxes
• Piloter une grue avec un joystick? c’est pénible, hein? Enfoirés
• La pénibil ité dans les ports français??? Je commence à croire qu’elle est pour ceux qui les utilisent, pas pour ceux qui y travaillent...

Une reculade de plus devant le chantage honteux de la CGT
• Qui ose nous parler de “pénébilité” pour les grutiers , alors que leurs engins se pilotent au moyen d’un petit levier qui actionne toutes les manoeuvres totalement assistées des ces modernes engins. Ce qui se passe c’est que la CGT est entrain de casser un des plus beaux outils portuaire du monde, au profit exclusif de ses adhérents, avec nos impôts et autres taxes
• "Détourner, souffrir, impunité" Le rapport de la cours des comptes qui vient de sortir ressemble de plus en plus au livre de bord d’un bateau pirate. Consolation: pour le prix (nos impôts) on a encore le droit d’en rire
• Qu’est-ce qui est plus pénible ? Etre docker ou pompier ou encore policier? Ces corps de métier travaillent tous 365 jours par an, 7 jours sur 7 et 24 heures sur 24. Pendant que les uns sont assis dans leurs grues et manipulent des boutons, les autres sont exposés au stress de leur métier et, selon le cas, à de très fortes chaleurs ou à des courses-poursuites à pied ou en voiture ou à des filatures. Il ne faut pas oublier également le personnel hospitalier
• C’est un scandale !!!! il fallait en profiter pour enlever a la CGT son exclusivité dans les ports et faire renter enfin les autres syndicats chez les docker et les portiqueurs. Que les greves ne puisse être declenchées qu’apres de vraies negociations afin de ne pas perturber a tout moment le trafic maritime.Qui aura le courage de mettre la CGT face a ses responsabilités devant le peuple français
• ne rien faire est vraiment un grande pénibilité
• C’est sûr que faire le piquet de grève, manifester, porter les banderoles et hurler par tous les temps, c’est très pénible. Et de plus se nourrir de saucisses trop grasses cuites au barbecue, c’est très nocif pour la santé. --Et puis, si ce travail est si pénible, pourquoi est-on docker de père en fils ? Par tradition familiale ?
• La pénibilité dans les ports français??? Je commence à croire qu’elle est pour ceux qui les utilisent, pas pour ceux qui y travaillent...
• Puisque ce travail est pénible, il y a qu’une solution, il faut arrêter de subventionner les ports. C’est une gabegie sans fonds. Laissons les tomber en faillite, puis licenciement de tous les salariés pour qu’ils puissent s’échapper à leurs conditions de travail très difficiles et ventes des concessions d’exploitation aux chinois. Et grâce à eux, on obtiendra les premiers ports d’Europe en France
• le syndicat CGT appartiendra à la Mafia (comme maintenant quoi ?)
• Interview de La Provence en 2015 :
  "Il n'y a plus de conflits, et la pénibilité des métiers portuaires n'existe plus ? Pour quelles raisons ?"
  Docker en Chef : "c'est simple, ya plus de conteneurs, donc on ne fatigue plus, et il n'y a plus de revendications aussi, parce qu'on a un boulot tranquille et on n'est plus que 20 personnes ici."
  "Mais que faites vous au juste?"
  Docker en Chef : "ben vous voyez, on charge sur ces camionnettes ces petites caisses contenant des brochures de la ville de Marseille. Eh oui, c'est pour l'office du tourisme de Marseille toutes ces caisses! Avec tous ces touristes qui arrivent ici, il en faut bien!"
• Dans tous les pays d'Europe la pénibilité est reconnue pour les portuaires 
• Dans tous les pays d'Europe la pénibilité est reconnue pour les portuaires ...
• ...y'a une raison
• ...y'a une raison ...
• ...on vit moins longtemps ...
• ...et cela est censé un peu compenser !
• Réponse : oui mais dans tous les autres ports d'Europe le trafic s'intensifie par le rendement de leur ouvriers, à Marseille il est stable depuis 30 ans voire en chute libre, donc il y a bien une raison, ce sont les manutentionnaires et dockers qui imposent leurs règles, leur horaires (soir et week-end, pour les primes) et leurs tarifs, on a beau crier tout ce qu'on veut, tant que leur mafia est là ......
• Le privé est invité à reprendre les investissements et quelque part à se substituer à l'Etat. 
• Problème: la CGT ne souhaite pas mettre fin à ces "habitudes et petits arrangements" qui plombent la rentabilité économique du port (cf. cout du travail et productivité des agents mandré par rapport à nos concurrents européens). Du coup, n'importe quel investisseur privé sensé qui n'a pas la maîtrise sur sa main d'œuvre et n'a pas l'assurance de pouvoir livrer ses clients en temps et en heure (à cause du fléau des grèves) ne viendra pas investir un centime ici
• Je sais malheureusement de quoi je parle et ici et effectivement il serait bon pour certain de voir ce qui se fait ailleurs car il risque un beau matin de se réveiller avec non pas un train de retard mais tout le réseau ferré. Ce ne sont plus des grutiers que vont recruter les filiales, mais des ingénieurs capables de gérer via un bureau un complexe réseau de machines dites intelligentes. Dommage que la CGT marseillaise entretienne les fables et ne cherche pas justement à axer son discours de « protestation » sur la reconversion des futurs agents du port. Car oui, il y a un savoir-faire et des humains ici qui par le biais de la formation pourraient parfaitement continuer à travailler sur site et participer aux futurs emplois. Nous sommes loin de ce type de démarche ! Pas grave, on ira recruter des ingénieurs à Shanghai et ici les dockers et autres iront pointer à pôle emplois pendant que leurs « guides spirituels » seront tranquillement reclasser EUX... Pfffff...Donc oui, pour comprendre le port et l'évolution de cette activité, il faut peut-être ouvrir son regard sur l'extérieur et sortir du discours de la CGT ...
• Si le port de Marseille ne mute pas, il continuera de mourir à petit feu. La mutation semble pouvoir se faire sur deux axes. Celui de la compétitivité (donc une modification des pratiques via la technologie) et une mutation des activités (celles visant notamment à augmenter la part de la partie plaisance et tourisme). On voit bien que la CGT et autres ne veule ni de l'un, ni de l'autre...donc ils valident la mort du port et la destruction des emplois
• De nos jours et pour le futur les ports seront tous équipés en AGV et autres systèmes entièrement automatisés. Le port de Shanghai représente par exemple l'amarre du futur des ports à container. L'AGV si on schématise c'est un peu comme les caisses électroniques dans les hypers marchés ou les banques qui suppriment l'action humaine. Désormais un portique, un GMP, un PQR, un cavalier Gerbeur, un RTG, un tractor, Etc...fonctionne sans la présence de l'homme aux commandes. Tout ce fait par ordinateur. Les ports du futur seront automatisés intégralement dès l'accostage du navire jusqu'à la sortie du poids lourd de l'enceinte (ou de la mise sur wagon des containers).
• Je ne dis pas que c'est la bonne solution, je dis simplement que l'on voit bien que les discours ne sont pas en adéquation avec ce qui se fait et qu'ici, une fois de plus la CGT et certains partenaires mentent ouvertement et trompe leur monde en réclamant notamment de l'instabilité et une mise à niveau du port. Car si investissement il y à, ce serra la fin d'un mode de travail ne correspondant déjà plus en terme de compétitivité à ce qui se fait et que l'on veut absolument préservé ici alors que l'on voit bien que les pratiques font que le port est déserté
• Dommage que ce port que j'aime tant et qui devait être l'un des poumons de Marseille ne soit plus qu'aujourd'hui... un quasi tas de ruine... Tout a été fait malheureusement pour le detruire a petit feu....
• Tant va la cruche à l'eau qu'elle se casse ! Les dockers font la loi dans le port depuis toujours et maintenant ils se plaignent que l'activité commerciale baisse ? Combien de
les petits entrepreneurs ont été ruinés par leur faute ? Pour ma part je n'oublierai jamais les grèves de 1965 et de 1968...

- Les dockers ? Ils se trompent d'époque et de toute façon la roue tournera de toute manière, que ça leur plaise ou pas !
  Ce n'est pas une bande de privilégiés qui vont dicter leur loi au reste de la ville.
  Il y a un temps pour tout.
  A une époque ils ont été les rois (Vive le Roi) ; désormais ils doivent apprendre à vivre avec la république.

- patrons voyous, politiciens corrompus, syndicats maîtres... c'est effectivement compliqué pour que le port de marseille prospère
  qui aura le courage de nous debarrasser de cette maffia qui mine et detruit l'activité du port depuis trop longtemps !

- Vendre des smarts phones ou autres objets 'tombés' des conteneurs.
  Commerce ancestral de toute une fédération qui pour rien au monde voudrait se séparer de cet avantage en 'nature'.

- CGT, encore CGT, toujours CGT
  Rien d'étonnant de cette mafia savamment orchestrée par le plus gros syndicat fossoyeur d'entreprise que le pays n'ait jamais connu

- Quant à la réforme portuaire et à la volonté supposée de l'état d'améliorer la compétitivité des ports français... laissez moi rire!

- oui oui ... sortez les drapeaux, mettez vous en greve, bloquez l'activité d'une ville, cassez du matériel, cassez du crs (ça fera un peu de sport)... oui oui oui ... camarades, ils vous laissent faire...

messieurs les syndicalistes, la tromperie se trouve de chaque côté : du gouvernement mais aussi du votre.
- etes vous prêts à rembourser les secus/mutuelles pour vos arrêts de travail non justifiés ?
- etes vous prêts à rendre les marchandises volées dans les conteneurs étonnement tombés ?
- etes vous prêts à rendre l'argent de vos petits trafics ?
  tant que vous n'auriez pas compris que votre travail s'enfuit à Rotterdam ou dans d'autres ports européens à cause de vos agissements qui datent depuis des décénies... et bien vous n'auriez rien compris ...

- Bien triste de voir le travail partir dans d'autres ports étrangers et ce PRINCIPALEMENT en raison du pouvoir néfaste de la CGT.
  Les salaires des dockers sont les plus hauts d'Europe et ne correspondent en rien à leur faible temps de travail.
  Mais cela commence à se savoir et les autres travailleurs ne sont pas dupes de vos méthodes de recrutement et vos pressions permanentes.

- travailler 3 heures par jour pendant 40 ans doit etre terriblement eprouvant et comme ils detestent les gens de leur famille, ils les embauchent pour qu'ils subissent le même sort qu'eux

- quand le port sera cuit pensez a envoyer tout ces cgtistes casseur d'entreprise faire 1 stage en chine ............

- La CGT a méticuleusement coulé le port de Dunkerque dans les années 80 (d'où notamment le renforcement de Anvers et Rotterdam) . Maintenant c'est le tour de Marseille (en attendant Le Havre, La Rochelle...). Pour un pays qui a la plus grande façade maritime d'Europe c'est le top !

- Depuis le début de la semaine, nous mettons en évidence tous les privilèges de cette caste "Dockers" (salaire, horaire, bakchich, emploi a vie et générationnel,...). J'ai l'impression que la mayonnaise a bien prise depuis lundi donc il faut continuer à alerter l'opinion et à diffuser les informations sur cette corporation. De notre coté, nous envoyons à toutes les compagnies maritimes étrangères (excepté CGM-CMA) un Appel au boycott des ports français pour qu'ils déchargent sur les autres ports méditerranéens et autres ports européens (cela ne prend que 4/5 jours supplémentaires pour monter à Rotterdam ou Anvers, c'est tout à fait gérable). Nous leur demandons également de "PUNIR' les ports français pour une période de 6 mois et de se diriger vers les ports européens

- Bravo la CGT ! Vous êtes responsable de tous ces dégâts. Tout ça pour favoriser des nantis qui travaillent peu et gagnent beaucoup. Les dockers sont maintenant des conducteurs d'engins

- L'activité du port est comme le reste de la ville, syndicat caca, copinage et paresse légendaire du marseillais, plus à l'aise devant son pastis qu'au travail. Les dockers sont en train de couler leur activité et ils peuvent que s'en prendre à eux

- Tout Marseillais qui se respectent connait les statuts "pharaoniques" des dockers du PAM, horaires, salaires, retraites, absentéisme outrancier,...etc. La direction du PAM, la chambre
de commerce, la mairie le savent, et cautionnent ce statut, mais ne font absolument rien, sinon, ils ont...... une grève ! Seule condition pour être docker à Marseille, c'est "uniquement" de père en fils, ou par piston, et adhérer à la CGT !

- Il faut arrêter de pleurer sur la situation du port. Marseille n’a que ce qu’il mérite du fait de l’incompétence totale de ses “élites” quasi mafiauses"
- Ce qui se passe au port de Marseille est proprement scandaleux
- Le port c’est la honte de Marseille , et grâce a la CGT la plus part d’armateurs font travailler les ports de Gènes et Barcelone au détriment de Marseille
- Ji j’étais doker [sic], je serais mort de honte tellement ils sont planqués et avec les oeillères aux yeux

J’importe deux conteneurs par an, ce n’est pas grand chose, c’est toute ma vie, celle de ma famille de mes enfants, sans ça je ne peux pas travailler, je l’attend depuis le 8 janvier. Ces pratiques mafiauses sont insupportables [sic] nous sommes la honte de l’Europe, mes concurrents allemands et hollandais se frottent les mains.

- Il faut que ça bouge

- J’ai commencé ma carrière en 1972, soit voici près de 40 ans, dans un grand port autonome (pas Marseille) : j’avais alors pu constater le corporatisme suicidaire des dockers, la fuite des chargeurs vers les ports étrangers, la main mise de la CGT (fédération des ports et docks) sur les grutiers également. Tout ça au plus grand mépris des entreprises, du développement et des contribuables, au seul service d’une classe honteusement privilégiée qui se tague de pénibilité d’un emploi largement mécanisé et modernisé depuis un demi siècle !!
- Les "cégetistes fossoyeurs" de la France sont en action sur le port de Marseille (pénibilité) !!!comme dans beaucoup d’endroits dans notre beau pays.

Ah les avantages acquis quelle merveilleuse invention ! en tous les cas les Espagnols et Italiens doivent bien se frotter los mains !

- lamentable de bloquer les ports c’est "destructeur" pour le peu d’exportation qu’il nous reste Cela ne bloque même pas les importations car les Chinois Indiens etc...utilisent depuis longtemps d’autres ports européens qui ne sont jamais en grève,plus efficace & moins cher
- Si les commentaires ci-annexés à ce site vous font rire, je tiens à mettre à disposition le rapport de la cour des comptes ...qui donne plutôt .... la nausée !
- Il faut arrêter le massacre.
- Le port ne leur appartient pas !

Qu’attends [sic] donc l’état pour virer tous ces parasites qui détruisent l’économie française ?
Syndicalistes staliens, prenez garde [sic] ! Si l’état ne fait rien, le peuple va finir par se soulever contre vous !

- Vérités bonnes à dire
  *La CGT dit que cette grève est salutaire pour les autres travailleurs
  Faux, les dockers sont les seuls à profiter d’un régime spécial, ils se fichent royalement des autres.
  [...] *La pénibilité, c’est l’enjeu majeur
  Faux ,la feignantise oui
  [...] *Les mots tabous sur le port
  TRANSPARENCE, TRAVAIL ET INTELLIGENCE

- Comment nos gauchos, qui en temps normal, s’offusquent que les embauches ne doivent pas être discriminatoire, tolèrent ils [sic] que le port n’embauche que les "copains" CGT ???
- Une poignée de privilégiés qui bloquent toute une économie. honte à eux
- Métiers tellement pénibles que les pères y font rentrer leurs fils...
- À quoi sert de négocier avec ces gens qui ne manqueront pas prochainement de bloquer le port avec d’autres revendications injustifiables ? La solution, c’est le Président Reagan qui l’avait trouvée avec ses contrôleurs aériens. Tout le monde dehors, puis on ré-embauche selon des règles normales. Les privilèges de la CGT, ça suffit.

- La CGT
  La machine à ruiner la France... Mais oui ! Dans le contexte actuel, tout faux la CGT. Que l’on affiche le classement des ports commerciaux européens, ça sera suffisamment édifiant.

- Trouillards
  Le patronat a une fois de plus cédé face à la CGT. Il fallait plutôt virer tous ces [...] privilégiés, et recruter de vrais volontaires. Au bout du compte c’est encore nous qui allons payer les pots cassés.
• C’est drôle, enfin façon de parler, que certains ne voient pas combien les syndicats (oui je sais surtout la CGT) détruisent les ports Français, sont-ils payés par l’étranger ?

• Dans les faits la CGT est copropriétaire du port puisqu’elle le termé à la moindre contrariété, contrôle l’embauche les horaires et les salaires. Objectivement, si on regarde les choses froidement, on voit des liquidateurs se procurer à coup de grèves des salaires mirobolants, uniques dans le monde, à titre d’indemnité en quelque sorte, en provoquant la fermeture définitive.

• Je pense qu’il y a deux façon de régler le problème des ports:
  1°= Licencier l’ensemble des dockers actuels, trop syndiqués/politisés et reconstituer les effectifs avec des éléments “sains”.
  2°=Fermer nos ports, car le problème des intervenants "dits" manuels ne se réglera jamais. Le toujours plus pour nous, étant le leitmotiv du cégétiste de base.
Car avoir un potentiel de par la situation géographique ne suffit pas !

• Le port de Marseille a de la chance. Gênes est à 300 km. Imaginez qu’à la place de Gênes, on trouve Anvers et Rotterdam à 150 km (distance qui les sépare de Dunkerque) : le port de Marseille n’existerait plus !

• Cette grève est honteuse, les personnels des ports sont surprotégés. Ils bénéficient d’avantages considérables.
Où est la pénibilité de leur travail, leur outil de travail performant est automatisé, ils ne portent pas sur le dos les conteneurs, que je sache !

• Ces combats honteux sont du chantage et seul e la France les autorise.

• Le déclin est bien avancé. Il faudra qu’on descend encore plus bas pour accepter, enfin, de casser ces monopoles syndicaux et leurs privilèges au profit d’une économie réellement libre.

• C’est dommage que l’on ne nous descende pas notre AAA car il n’y a que ça qui fera peur et enclenchera les vraies réformes.

• Voici des décennies que la situation dure, que l’économie maritime décroît, avec des positions corporatistes avant d’être syndicales, et des gouvernements qui n’ont aucun courage, préférant, in fine, acheter la paix sociale de quelques-uns pour mieux laisser sombrer l’ensemble de l’activité.

• Y a des castes de travailleurs qui ont droit à beaucoup mieux que les autres ! Vive les régimes spéciaux ! Un scandale qui nous éloigne tous les jours de l’essence même de la protection sociale...

• Laissons courir : ils coupent la branche sur laquelle ils sont assis. Dans ma boîte il y a longtemps que nous avons laissé tomber Marseille. Un peu plus cher par Anvers mais efficacité, sécurité et assurance de satisfaire nos clients n’ont pas de prix.

• Les navires perdus par les ports français ne se comptent plus. Qui parmi nous peut se vanter d’un tel jackpot salarial avec si peu d’heures travaillées ?
Qui ?

• Dans certains pays les choses se seraient certainement passées différemment : on vire tout le monde et on réembauche des gens qui ont envie de travailler et qui ne frottront pas le bazar en permanence. Ces soi-disant “travailleurs” sont des criminels économiques, il faudrait peut-être que ce soit pénalisé par la loi car on ne peut plus continuer comme cela.

• Pourquoi ne pas les laisser manifester et préparer un autre port de notre côté méditerranéenne à prendre le relai de Marseille et émabucher cette fois des dockers motivés, travailleurs et honnêtes, oui honnêtes car on ne les force pas à prendre ce boulot, ils postulent, acceptent l’embauche et ensuite contestent les conditions de travail qu’ils connaissaient avant de signer : cela c’est malhonnête.

• Continuez camarades de mettre à sac la France qui est déjà dans de sales draps.

• Oui je trouve scandaleux de céder au chantage de ces lascars, car leur travail est certainement moins pénible que d’autres.

• C’est toujours les mêmes qui bossent, toujours les mêmes qui paient et toujours d’autres qui profitent.
A quand notre révolution ? A bas tous ces privilégiés, la liberté de travail reconnaîtra les siens !

• Je ne vois qu'une façon de faire à Marseille (si elle est encore possible) : suivre les conseils de "lagrue", licencier l'ensemble des dockers actuels trop syndiqués et politisés et reconstituer les effectifs avec des éléments sains ! Les dockers font honte à la France qui "travaille".

• Le port de Marseille et la SNCM sont des repaires de bandits et on doit aller jusqu'au bout pour les faire rentrer dans le rang ou trouver une solution pour les dégager.

• Sachez une chose messieurs les dockers, portiqueurs et autres grutiers : vous faites honte à votre profession, car vous faites tout pour la couler.

• Qu'est ce que l'on attend pour vider ces gens de la CGT, principaux destructeurs d'emploi depuis 1945. Ils ont tué la marine marchande, on serait dans d'autres pays on les aurait licenciés et remplacé par du personnel qui désire travailler. Messieurs les politiques ayez plus de courage...

• Et après ? Que toutes les entreprises qui ont été ennuyées (je reste poli) boycottent Marseille.

• De toutes façons ils reviendront avec autre chose. Les ports français sont morts depuis longtemps.

• CGT = fossoyeur D’"accords" en "accords" le port de Marseille qui est déjà le moins rentable d'Europe s'enfonce...

• Finalement les cégétistes ne sont efficaces que dans cette négociation pénible nous dit - on : c'est bien là la seule pénibilité que je vois.

• Que de servilités face à ces destructeurs de l'économie.

• Ce sont sûrs, travaillant 15 heures par semaine pour 4500 euro par mois plus primes (voir Rapport de la Cour des Comptes), c'est très pénible, et ça mérite une prime de pénibilité évidemment : c'est un véritable racket de la CGT, aux dépens du peuple français, des emplois détruits par ce syndicat, de façon systématique et méthodique, à tel point qu'on se demande pour qui il travaille et à qui profitent ces formes d'action qui s'apparentent à un terrorisme économique : pas à la France ou aux travailleurs français sans doute, mais certainement aux ports étrangers qui rigolent et applaudissent des deux mains, car, quand le trafic portuaire français s'en va, il se retrouve dans les autres ports européens. Nous ne gagnons plus guère que le trafic pétrolier, qui fabrique une apparence de tonnages statistiques, mais fait surtout travailler des pompes chinoises.

• Ils ont amplement mérité leur retraite à 57 ans, parce que défendre à longueur de journée ces privilèges est vraiment pénible.

• Les jeunes, dont je ne suis pas, devraient s'insurger contre la CGT représentant un si faible nombre de personnes qui ont en plus un double emploi, ou un triple si on compte ce qui tombe du camion... Honte à vous MM les politiques qui pour des motifs électoraux supportez celle situation.

• Ne mélangons pas tout : ce qui se passe au port de Marseille est une catastrophe, à cause d'une poignée d'égocentriques cachées derrière des raisons sociales utopistes [...] Arrêtez de vous prendre pour des héros, je suis marseillais et vous dégoutez tout le monde depuis des années avec vos revendications et vos grèves. Au moins ça montre une chose : quand la CGT prend trop de place elle fait fi du bon sens en ne voyant pas plus loin que le bout de son syndiqué.

• Ceux qui disent que la "pénibilité" du travail de docker de nos jours est une énorme fumisterie parlabeur !

• Seul subsiste leur pouvoir de nuisance. Grâce aux victoires à la Pyhrrus répétées des syndicats, il y a longtemps que la France n'a plus de marine marchande et seulement des embryons de port. Bravo à la redoutable efficacité du corporatisme bien de chez nous ! Salueons.

• Merci à toi, camarade syndiqué. Mais moi, je continue à faire venir mon matériel depuis Anvers. C'est plus rapide, et c'est moins cher. Marseille est condamné depuis longtemps.

• Moi, je n'ai pas d'idées toutes faites, mais je constate que nos ports sont exsangues, et que nos industriels passent par les ports italiens ou d'Europe du Nord. Pas fous...

• Deux années de la réforme, le reste aux frais de leurs patrons (aconi) qui augmenteront leurs tarifs sur le dos des clients, qui eux même les répercutteront sur la marchandise et en bout de chaîne, nous ! et maintenant si nous parlons des lois contre le monopole du travail (fils ou gendres) et sur la parité ? C'est bien beau de ce servir du drapeau rouge pour la liberté et légalité mais oui, comme d'hab : à eux le steak à nous la salade !

• Il est grand temps de privatiser les services des dockers sur les ports avant que toute ailleurs ; incroyable gâchis que ces jours de grève à répétition

• République bananière...
Voilà ce à quoi me fait penser cet accord. On paie pour stopper un conflit basé sur des revendications inadmissibles et on paiera encore à n'en pas douter. Alors que la majorité des français, dont certains on réellement des conditions de travail pénibles, va devoir faire du rab au nom du financement des retraites, nous devrons tous payer pour que ces messieurs de la CGT puissent partir à la pêche deux ans avant tout le monde.

- Attendre de la CGT quelle se réforme est une utopie, ce syndicat est soutenu par tous les partis politiques de droite comme de gauche, pour cacher quoi. Il est temps d’interdire le monopole de l'embauche par la seule CGT. Je pense que les entrepreneurs seraient mieux à même de virer tous ces barons inutiles et d'embaucher des chômeurs en quête d'un emploi, comme fit Reaga [sic] à son arrivée au pouvoir.

- J'effectue un travail pénible depuis que je lis les commentaires sur Le Point et pourtant cet hebdomadaire ne me règle pas des indemnités de pénibilité. Les Français marchent à côté de leurs pompes : nous allons devenir une société comme au Moyen Âge, les Seigneurs et les autres, mais qui sont les seigneurs : le monde des ports surtout ceux de Marseille-Fos.

- C'est quand même incroyable que lorsque l'on vous parle d'une anomalie vous n'ayez qu'une seule réponse à la bouche : libéralisme ! Le problème lorsque l'on vous dit que la CGT casse l'emploi, c'est qu'elle le casse. Et ensuite on demande aux contribuables de payer. Et cela n'a rien avoir avec le salaire des patrons. [...] Pourquoi les ports Français sont - il désertés : parce que toujours en grève et plus chers que les autres. A quoi est - ce du ? A la CGT. Point barre.

- Vous avez dit pénible ? Un conducteur de grue sur un chantier du bâtiment a lui aussi un travail pénible et il gagne moins qu'un docker pour 35 heures au lieu de douze. La CGT tient des raisonnements qui étaient peut être bons au temps où on déchargeait les bateaux à dos d'homme et où on était docker parce qu'on ne savait pas faire autre chose, aujourd'hui on se bat pour décrocher une place. Pénibilité, c'est le mot à la mode qui comme par hasard est mis en avant par ceux qui forcent le moins. Un travail qui n'est pas pénible je n'en connais pas beaucoup ou alors ça s'appelle les congés payés.

- Ça suffit ! Ras le bol de la dictature de ce syndicat mafieux !

- Pour sortir [sic] de cette spirale des grévistes professionnels il n'y a que la méthode "MAGIE" qui a fait ses preuves ! licencier ce petit monde et basta.

- les dokers de havre [sic] peuvent faire grève, car ils sont [sic] remplis leur cave avec les alcools volés sur le port ou avec l'habillements volés dans les conteners [sic]

- Les dockers de la CGT = des mafieux

- OUi la CGT dockers este [sic] une mafia et leurs pratiques sont connues de tous. Pourquoi ne met-on pas ce genre de délinquants hors d' état de nuire et ne dissout-on pas ce soit-disant syndicat ????

- pourvu qu'ils ne reprenent [sic] leur pratique de l'automutilation pour percevoir des pensions d'invalidité

- Qu'ils continuent leurs grèves débiles, comme ça les ports d’Anvers et de Rotterdam [sic] continueront d’avoir du travail. Ils ne font pas grève eux !

- Que cette profession soit ouverte à tout le monde, qu’il ne faille pas avoir la carte CGT, qu’il n’y ait pas de cooptation, qu’ils travaillent 35h et non 17h et qu’ils bossent ! Leur système est une véritable dictature prolétarienne avec des goûts de capitalisme : se faire un maximum d’argent par tous les moyens. Voilà des mots qui blessent mais c’est la vérité.

- Faut être allé un jour charger dans des docks français pour comprendre ! Une honte, tout simplement une honte !

- N’est docker que si la personne est cooptée, qu’elle adhère à la CGT ! Mafia : les dockers "volent" dans les containers, allez voir au moment de Noel les voitures qui viennent charger des marchandises... tombées d'un container ! Exemple : un docker laisse "par accident" tomber un container, l'assurance rembourse, les dockers récupèrent les matériaux non brisés et ils revendent ! Si ça n’est pas mafieux qu’est ce que c'est donc ?

- La CGT a condamné à mort le port de Marseille. Ces "pauvres" dockers sont en train de scier la branche dorée sur laquelle ils sont assis. Ils veulent la retraite à 58 ans ? Qu'ils ne s'inquiètent pas, ils l'auront bien avant puisqu'il n'y aura bientôt plus de port

- Soutien aux autorités qui ont osé s'attaquer aux privilèges du syndicat destructeur, véritable gangrène de notre tissu industriel local et national. Que les décisions de virer les délégués qui ont commis une faute professionnelle grave l'agitation perdue pour mettre fin à l’égémonie [sic] du syndicat historique.
sector, are in most cases aimed at situations in Marseilles, and appear, in some cases, politically or ideologically motivated, or perhaps inspired by jealousy, and they are often objected to by individual union members, and also more or less deliberately disregard 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.

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.

- il faut binterdire [sic] la cgt dans les ports c'est pas normal qu'elle s'occupe [sic] de l'embauche et il faut etre [sic] cgt de pere en fils pour travailler au port c'est de la dictature. il faut que ca cesse les marseillais en ont marre de la mafia cgt.
- 99% de syndiqués, il y a une anomalie.
- Car ce sont les syndicats qui embauchent .... des syndiqués et uniquement des syndiqués.
- Yaurait-il 1% d'embauches normales sur les ports ??
- C'est clair qu'en faisant grève une nouvelle dois, ça donne envie de les faire travailler ! Mais ils ont le temps de reprendre le travail entre 2 grèves ?
- Ils creusent eux mêmes leur tombe!
- "J'ai 28 ans et comme tous les autres, j'ai les vertèbres lombaires foutues" "Le jeune docker semble très énervé, contre son métier"
- Mais jeune homme, tirez les conclusions de votre "triste vie" et changez vite de job, vous en trouverez plein, peut être aussi pénibles mais certainement moins juteux pour votre porte monnaie...


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 lax.

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 Marseilles. It succeeded in attracting considerable media attention. 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 port.

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).
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 customers.\textsuperscript{967}

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 projects.\textsuperscript{968}

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 cent.\textsuperscript{969} 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.

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.

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

\textsuperscript{967} Migraine, M., "Où en sont nos ports. Où en est-Le Havre ?", www.auhavre.com (site currently unavailable).
\textsuperscript{968} See Van Dooren, P., "Marseille-Fos toont herwonnen eendracht", De Lloyd 23 October 2012, 6-7.
\textsuperscript{969} E.B., "UNIM: gérer l'après-réforme", Navigation Ports & Intermodalité 2012, No. 07/08, 32.
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 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 avoided.

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 convenience.

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.

970 See also Mintiens, G., "Franse goederenbehandelaars vragen aandacht voor knelpunten", De Lloyd 24 April 2012.
971 See UNIM, "The French approach of CQP", February 2009, 6 and supra, para 891.
Another shipping line complaining about 'Mafia' practices in French ports cynically wished the EU 'good luck' with no further comment.
## 9.7.8. Synopsis

### SYNOPSIS OF PORT LABOUR IN FRANCE

#### LABOUR MARKET

**Facts**
- 50 commercial seaports, 7 main ports
- Landlord model, some smaller tool ports
- 354m tonnes
- 7th in the EU for containers
- 25th in the world for containers
- Appr. 100 employers
- 4,370 port workers
- Trade union density: 95-100%

**The Law**
- Lex specialis (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:
  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

**Issues**
- Transition from lex specialis 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**
- Training provided by institutes and individual companies

**The Law**
- National system of sectoral professional qualifications (CQP)
- Specific national certificate for equipment operators (CACES)
- Right to training for every worker

**Issues**
- Union control of training arrangements (locally)

#### HEALTH AND SAFETY

**Facts**
- Detailed accident statistics available
- Extremely high incidence, frequency and severity rates

**The Law**
- Rules on safety of equipment and cooperation between employers
- Party to ILO C152
- Provisions in CBAs
- National early retirement schemes (‘strenuosity’ and asbestos)

**Issues**
- Accident rates highest of the national economy
- Hidden unemployment and abuses
- Diseases of retired workers

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*Throughput figures relate to maritime traffic for 2011. Container throughput ranking is for 2010. ‘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 system

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 2011, the gross weight of seaborne goods handled in German ports was about 296 million tonnes. As for container throughput, German ports ranked 1st in the EU and 9th in the world in 2009.

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 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 website\(^975\), 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’\(^976\)), the local agreements (\textit{Ver einbarungen}) under which labour pools (\textit{Gesamthafenbetriebe}) were established, and the statutes (\textit{Satzungen} or \textit{Verwaltungsordnungen}) of these pools.

The main local instruments are:
- the Agreement (\textit{Ver einbarung}) on the Establishment of a Special Employer of Port Workers in Hamburg (Gesamthafenbetrieb) of 9 February 1951\(^977\);
- the Statute (\textit{Satzung}) of the Gesamthafenbetrieb Hamburg of 30 April 1969\(^978\);
- the Agreement (\textit{Ver einbarung}) on the Establishment of a Gesamthafenbetrieb for the Ports in the Region of Bremen (City of Bremen and Bremerhaven) of 1 March 1980\(^979\);
- the Statute (\textit{Verwaltungsordnung}) of the Gesamthafenbetrieb in the Region of Bremen of 5 September 1989\(^980\).

\(^976\) \textit{Gesetz über die Schaffung eines besonderen Arbeitgebers für Hafenarbeiter}, 3. August 1950.
\(^977\) \textit{Vereinbarung über die Schaffung eines besonderen Arbeitgebers für Hafenarbeiter in Hamburg (Gesamthafenbetrieb)}, 9 Februar 1951.
\(^979\) \textit{Vereinbarung über die Schaffung eines Gesamthafenbetriebes für die Häfen im Lande Bremen (Bremen-Stadt und Bremerhaven)}, 01. März 1982.
- the Agreement (Vereinbarung) on the Establishment of a Special Employer of Port Workers in Rostock (Gesamthafenbetrieb) of 16 January 1992;\(^{981}\)
- the Statute (Verwaltungsordnung) of the Gesamthafenbetrieb Rostock of 14 March 1994.\(^{982}\)

General labour law is only applicable to the extent that no special laws and regulations on port labour apply.\(^{983}\)

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 Work, the Labour Law Code\(^{984}\) and the safety regulations made thereunder, and the Civil Code.\(^{985}\)

Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers was already transposed in 2002.\(^{987}\)

947. It is a well-established opinion that the German Temporary Agency Work Act\(^{988}\) is of no relevance to the Gesamthafenbetriebe, because the Port Labour Act, as a lex specialis, takes priority over it.\(^{989}\) In 2011, however, the scope of the Temporary Agency Work Act was extended to non-profit temporary work agencies.\(^{990}\) As a result, the Gesamthafenbetriebe are now governed by that Act and need official permission to supply temporary workers. In the absence of express legislative provisions, the inter-relation between the Temporary Agency Work Act and the Port Labour Act remains an obscure area however.\(^{991}\)

\(^{981}\) Vereinbarung über die Schaffung eines besonderen Arbeitgebers für Hafenarbeiter in Rostock (Gesamthafenbetrieb), 16 Januar 1992.
\(^{983}\) See further infra, paras 947 and 988.
\(^{985}\) Sozialgesetzbuch, SGB.
\(^{986}\) Bürgerliches Gesetzbuch, BGB.
\(^{988}\) Gesetz zur Regelung der Arbeitnehmerüberlassung (Arbeitnehmerüberlassungsgesetz - AÜG).
\(^{991}\) See infra, para 988.
Germany has ratified ILO Convention No. 152 but not ILO Convention No. 137. In 2002, the ILO noted that Germany was not considering ratification of the latter convention. 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.

As we will explain further below, 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 1996.

National collective agreements for all German ports are negotiated between the Central Association of German Seaport Companies (Zentralverband der deutschen Seehafenbetriebe, ZDS) and the trade union ver.di. These national agreements lay down rates of pay, working times and various social benefits. The central framework agreement is the Framework Agreement for the Port Workers of the German Seaport Companies (Rahmenarbeitsvertrag für die Hafenarbeiter 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 Unternehmensverband Hafen Hamburg (UVHH) and the local department of the trade union ver.di.

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950 See infra, para 977 et seq.

951 Gesetz über die Durchführung von Maßnahmen des Arbeitsschutzes zur Verbesserung der Sicherheit und des Gesundheitsschutzes der Beschäftigten bei der Arbeit (Arbeitsschutzgesetz, ArbSchG).

At a large number of firms, including HHLA and Eurogate, company agreements are concluded, 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 situations.

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 agreements and the Rules of Procedure of the Port Operator's Association of Lübeck.

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 EU.
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 Cologne.

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 century. 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 Weinhauser discerns five phases.

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 market, but also encouraged alcoholism, corruption and bribery.

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. 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-America Line.
(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 companies 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 dismissal. Under these arrangements, the port labour market and its control
mechanisms were regulated at national level. Contrary to the previous voluntary membership
of the HBV, all port companies were now obliged to join the Gesamthafenbetrieb, 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 whole. 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
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 ports.

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

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1008 Deiss, M., Arbeitsrechtliche Spielräume für den zwischenbetrieblichen Personalauาstausch im
Unternehmensverbund einer Wertschöpfungskette. Eine Expertise, Munich, Institut für
Sozialwissenschaftliche Forschung e.V., 2001, http://www.isf-muenchen.de/pdf/perflexpertise.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.
1009 Assmann, J., Rechtsfragen zum Gesamthafenbetrieb, doctoral thesis, University of Cologne,
1965, 8.
1010 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.
1011 Weinkopf, C., Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen
1012 Assmann, J., Rechtsfragen zum Gesamthafenbetrieb, doctoral thesis, University of Cologne,
1965, 7; Weinkopf, C., Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen
1013 See full lists in Assmann, J., Rechtsfragen zum Gesamthafenbetrieb, doctoral thesis, University
of Cologne, 1965, 8.
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 Gesamthafenbetriebe1014. 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)1015 for a port called Gesamthafenbetrieb may be established by the port companies where port labour is carried out, by means of a written agreement concluded either by employers' associations and trade unions or by individual employers and unions. These Gesamthafenbetriebe are not allowed to carry out any commercial activity (§ 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

1015 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 Ga 9382/09), http://www.kanzleibeier.de/Urteil_beierbeier_LAG-Bremer_2_Sa_121_10_9_ga_9382_09.php).
1016 See, for example, Bundesarbeitsgericht 16 December 2009, 5 AZR 125/09.
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)1016.

Neither the Port Labour Act, nor any other regulation or practice provides a national definition of port labour1017. 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 ports1018. These definitions gave rise to legal disputes, following which the local definitions had to be adapted1019. 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 must be observed by the social partners1020. 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 cases1021.
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 activity.\textsuperscript{1022}

The Port Labour Act applies to maritime ports as well as inland ports.\textsuperscript{1023}

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 life.\textsuperscript{1024} In 1992, Gesamthafenbetriebe existed only in Hamburg and Bremen.\textsuperscript{1025} Currently, Gesamthafenbetriebe exist in Hamburg, Bremen/Bremerhaven and Rostock.\textsuperscript{1026} 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.

955. The Gesamthafenbetriebe are jointly managed by the port employers and the trade union ver.di. The Gesamthafenbetriebe do not have members or associates.\textsuperscript{1027} 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 own\textsuperscript{1028} including the

\textsuperscript{1024} See Weinkopf, C., Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools, Gelsenkirchen, Institut Arbeit und Technik, 1992, 24.
\textsuperscript{1025} Weinkopf, C., Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools, Gelsenkirchen, Institut Arbeit und Technik, 1992, 24 and fn. 39.
\textsuperscript{1026} On the Gesamthafenbetriebsgesellschaft Rostock mbH (GHBG), see http://www.portofrostock.de/deutsch/sites/arbeitskrafte.html.
\textsuperscript{1028} 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
conclusion of collective agreements. As all the Gesamthafenbetriebe have meanwhile established a separate legal person in the form of a commercial company (Hamburg) or a registered association (Bremen), 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 regulations. 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 Authority. 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 freedoms. Also, the Statute may never go against the Vereinbarung under which the Gesamthafenbetrieb was established. 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, and penalties imposed on member companies rest on a purely contractual basis. After all, a Gesamthafenbetrieb is not a public authority. 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.


See Landesarbeitsgericht Bremen, 23 March 2011, 2 Sa 121/10 (9 Ca 9382/09), http://www.kanzlei-beier.de/Urteil_beierbeierLAG-Bremen2Sa121109Ca938209.php. The Court ruled that, as the Port Labour Act only prohibits Gesamthafenbetriebe to pursue profit-making activities, they may undertake all other transactions.

See, for example, Bundesarbeitsgericht 16 December 2009, 5 AZR 125/09.

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).


Martens, K.-P., "Hafenbetrieb und Hafenarbeit nach dem Gesamthafenbetriebsgesetz", Neue Zeitschrift für Arbeitsrecht 2000, (449), item II.


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 established.\(^{1037}\)

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*)\(^{1038}\), as it were, but this employment relationship fades into the background while the worker is performing a task for an individual cargo

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The role of the Gesamthafenbetrieb as an employer has also been termed “subordinate” (subsidiär).

In relation to the auxiliary workers (Aushilfsarbeiter), the Gesamthafenbetrieb is not considered their legal employer, but merely acts as an intermediary employment officer. However, in a case where a Gesamthafenbetrieb had used a auxiliary worker for 8 years who on average performed 100 shifts per year and who had concluded an agreement with the Gesamthafenbetrieb under which he agreed (1) to attend a training course while the Gesamthafenbetrieb continued to pay his wages and (2) to remain available to the Gesamthafenbetrieb for three additional years), the Labour Court of Hamburg concluded that a long-term employment relationship had come into being, and reclassified the worker as a pool worker (Gesamthafenarbeiter).

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)).

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1040 See, for example, 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.

1041 See, for example, Bundesarbeitsgericht 16 December 2009, 5 AZR 125/09.

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 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\textsuperscript{1043}), 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).

\textsuperscript{1043} On this delimitation, see Schulz-Schaeffer, H., Das hamburgische Hafenentwicklungsgesetz. Kommentar, Kehl am Rhein / Strasbourg / Arlington, N.PM. Engel Verlag, 1991, 25 et seq.
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 transhipment 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 Seeschiffsassistance), 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 transhipment 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 Satzung104).

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)

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104 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)\textsuperscript{1045}. 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

\textsuperscript{1045} 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 Act. 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 work. Today, most of the port work is planned beforehand and usually the port workers receive their instructions by telephone. Currently, there is no computerised hiring.

Pursuant to individual agreements with the GHBG, which must be renewed annually, some companies rely on fixed Quota (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). The latter workers are sent out to the same company as often as possible. Today, some 60 to 70 per cent of pool workers are members of such a Company Group. As a result, a large majority of the Gesamthafenbetrieb's own pool workers always work at the same terminal.

Only in case of a temporary shortage of pool workers (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).

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1049 See also Weinkopf, C., Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools, Gelsenkirchen, Institut Arbeit und Technik, 1992, 27 and 39-41.
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 workers. Not all port undertakings use the pool however. 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 use. Companies using Quota enjoy a discount.

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 transhipment which is normally carried out by port workers at individual port enterprises and all usual ancillary services. The concept of direct port transhipment 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 transhipment 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).

1051 See already supra, para 955.
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 Gesamthafenbetroebisverein referred to the port maps annexed to the Port Area Regulations of Bremen (Bremische Hafengebietverordnung).

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) (§ 1 of the Verwaltungsordnung).

The definition of port labour is similar to the one in Hamburg; mooring and unmooring of vessels in 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

(Gesamthafenarbeiter) who were engaged prior to the reform, and (2) transhipment workers (Umschlagarbeiter), including transhipment 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 transhipment workers, who perform exactly the same tasks, are approximately 30 per cent cheaper than the port workers.

The Framework Collective Agreement for the Transhipment 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 transhipment 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 transhipment and port pool workers (§ 4 of the Agreement).

Transhipment 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 transhipment 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 way.

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 all. The

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1056 See infra, para 969.
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 Bremen. Today, such agreements regulate, for example, working time, overtime and flexibility. Reportedly, a similar evolution took place in Hamburg, also through company-specific bargaining.

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

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.

In Rostock, port labour is used by 38 registered companies; 14 companies use pool workers regularly and a further 3 only occasionally.

In Lübeck, the Port Operator’s Association which runs the local pool has 11 members, only 3 of which regularly perform port transhipment activities.

As a result, the number of employers of port workers in these ports can be estimated at 270, 132 of which regularly rely on the Gesamthafenbetrieb. 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 5,700\(^{1059}\). Until the early 1960s, around 30 per cent of the port workers worked for the Gesamthafenbetrieb\(^{1060}\); in 2004, only 17 per cent continued to do so\(^{1061}\), 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)\(^{1062}\) and (3) 427 older workers of formerly 100 per 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.

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\(^{1062}\) 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).
Table 46. Number of pool workers in the port of Hamburg, 2007-2012 (source: Gesamthafenbetrieb Hamburg)

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Container workers</td>
<td>762</td>
<td>874</td>
<td>768</td>
<td>800</td>
<td>847(^{1063})</td>
<td>852(^{1064})</td>
</tr>
<tr>
<td>Non-containerised general cargo</td>
<td>107</td>
<td>115</td>
<td>98</td>
<td>110</td>
<td>143</td>
<td>162</td>
</tr>
<tr>
<td>Bulk</td>
<td>44</td>
<td>45</td>
<td>43</td>
<td>44</td>
<td>52</td>
<td>52</td>
</tr>
<tr>
<td>Warehouse logistics</td>
<td>61</td>
<td>96</td>
<td>80</td>
<td>89</td>
<td>119</td>
<td>116</td>
</tr>
<tr>
<td>Total</td>
<td>974</td>
<td>1,130</td>
<td>989</td>
<td>1,043</td>
<td>1,161</td>
<td>1,182</td>
</tr>
</tbody>
</table>

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)\(^{1065}\). 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.

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\(^{1063}\) This includes 54 container lashers. For previous years, these workers are included in the total as well.

\(^{1064}\) Including 55 lashers.

Table 47. Port workers in Bremen and Bremerhaven with the exclusion of distribution workers, 1950-2011 (source: Annual Report for 2011 of the Unternehmensverband Bremische Häfen e.V. and Gesamthafenbetriebsverein im Lande Bremen e.V.)

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>3,224</td>
<td>7,889</td>
<td>6,348</td>
<td>6,759</td>
<td>4,965</td>
<td>2,410</td>
<td>2,543</td>
<td>4,337</td>
<td>3,782</td>
<td>3,713</td>
<td>4,187</td>
</tr>
</tbody>
</table>

Figure 83. Number of port workers in Bremen, 1990-2012 (source Gesamthafenbetrieb im Lande Bremen e.V.)

Table 48. Port workers in Bremen and Bremerhaven by employer, 2010-2012 (source: Annual Report for 2011 of the Unternehmensverband Bremische Häfen e.V.)

<table>
<thead>
<tr>
<th>Employer Type</th>
<th>Bremen</th>
<th>Bremerhaven</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual port companies (Hafeneinzelbetriebe), general cargo</td>
<td>395</td>
<td>433</td>
<td>253</td>
</tr>
<tr>
<td>BLG</td>
<td>224</td>
<td>224</td>
<td>509</td>
</tr>
<tr>
<td>Container terminals</td>
<td>0</td>
<td>0</td>
<td>1,559</td>
</tr>
<tr>
<td>Gesamthafenbetrieb</td>
<td>120</td>
<td>135</td>
<td>653</td>
</tr>
<tr>
<td>Total</td>
<td>739</td>
<td>792</td>
<td>2,974</td>
</tr>
</tbody>
</table>

GHB = pool workers; HEB = workers employed by individual companies.

Figures are for on 31 December 2010, 31 December 2011 and 7 November 2012.
Table 49. Pool workers in the ports of Bremen and Bremerhaven, 2010-2012 (source: Gesamthafenbetrieb im Lande Bremen e.V.)

<table>
<thead>
<tr>
<th>Port</th>
<th>2010 Distribution</th>
<th>Total</th>
<th>2011 Distribution</th>
<th>Total</th>
<th>2012 Distribution</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bremen</td>
<td>120</td>
<td>1,224</td>
<td>135</td>
<td>1,284</td>
<td>129</td>
<td>1,425</td>
</tr>
<tr>
<td>Bremerhaven</td>
<td>653</td>
<td>119</td>
<td>1,039</td>
<td>171</td>
<td>1,278</td>
<td>155</td>
</tr>
<tr>
<td>Total</td>
<td>773</td>
<td>1,343</td>
<td>2,116</td>
<td>1,174</td>
<td>1,455</td>
<td>1,554</td>
</tr>
</tbody>
</table>

Table 50. Distribution workers in the ports of Bremen and Bremerhaven, 1996-2012 (source: Annual Report for 2011 of the Unternehmensverband Bremische Häfen e.V.)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>400</td>
<td>1,087</td>
<td>2,047</td>
<td>2,563</td>
<td>2,083</td>
<td>2,385</td>
<td>2,513</td>
<td>2,413</td>
<td></td>
</tr>
</tbody>
</table>

Table 51. Distribution workers in the ports of Bremen and Bremerhaven by employer, 2008-2012 (source: Annual Reports for 2010 and 2011 of the Unternehmensverband Bremische Häfen e.V.)

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bremen</td>
<td>1,903</td>
<td>1,568</td>
<td>1,809</td>
<td>1,985</td>
<td>1,985</td>
</tr>
<tr>
<td>of whom at Gesamthafenbetrieb</td>
<td>1,375</td>
<td>1,069</td>
<td>1,328</td>
<td>1,510</td>
<td>1,425</td>
</tr>
<tr>
<td>Bremerhaven</td>
<td>660</td>
<td>515</td>
<td>576</td>
<td>528</td>
<td>528</td>
</tr>
<tr>
<td>of whom at Gesamthafenbetrieb</td>
<td>175</td>
<td>118</td>
<td>121</td>
<td>170</td>
<td>155</td>
</tr>
<tr>
<td>Total</td>
<td>2,563</td>
<td>2,083</td>
<td>2,385</td>
<td>2,513</td>
<td>2,513</td>
</tr>
<tr>
<td>of whom at Gesamthafenbetrieb</td>
<td>1,550</td>
<td>1,160</td>
<td>1,449</td>
<td>1,680</td>
<td>1,580</td>
</tr>
</tbody>
</table>

In the port of Rostock, 624 port workers are employed, including 531 permanent workers and 93 pool workers. Employment evolved as follows:
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 2012 that the total number of port workers in Lübeck then stood at 205, a third of which were transhipment workers\textsuperscript{1069}.

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 (\textit{i.e.}, the former DDR ports along the Baltic coast, including Rostock which we already mentioned above)\textsuperscript{1070}. 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 workers. 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.

In Germany, the average share of temporary employment (including work organised through the port labour pools) is considerably higher in the logistics sector (6.2 per cent in Hamburg in 2010) and especially in the warehousing and transhipment sector (11.1 per cent in Hamburg) than in the economy as a whole (2.6 per cent nation-wide). 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 transhipment, where a total of 58,856 persons find employment. 9.4 per cent of Hamburg’s logistics workers are foreigners.

German port labour is highly unionised. In the early 2000s, the employers’ organisation ZDS estimated union membership at about 90 per cent. In 2008, the trade union ver.di stated that it represents over 80 per cent of port workers in Germany. Another source confirms an overall unionisation level of 80 per cent in the port of Hamburg. 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 union1076.

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
situation1077, 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 Contterm1078,
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 Bremerhaven1079, and the committee
Wir sind der GHB (‘We are the Port Labour Pool’)1080. Reportedly, the latter has now joined the
former, although it continues to function separately as well. Contterm 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 workers1081. The Container
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 employment1082. Apart from training,
employers attach an increasing importance to attitude, team spirit and social skills1083.

1076 Hermel, C., Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft, Bachelorarbeit,
1077 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

1078 See http://www.contterm.de.
1079 Hermel, C., Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft, Bachelorarbeit,
Norderstedt, Grin/Books on Demand, 2010, 24-25.
1080 See http://www.wirsindderghb.de/ or http://eklin.bestworld.de.

1081 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), 57-58; Hermel, C., Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft,
Bachelorarbeit, Norderstedt, Grin/Books on Demand, 2010, 4.
1082 Hermel, C., Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft, Bachelorarbeit,
Norderstedt, Grin/Books on Demand, 2010, 33.
1083 Hermel, C., Der Hamburger Hafen als Arbeitsplatz heute und in Zukunft, Bachelorarbeit,
Norderstedt, Grin/Books on Demand, 2010, 34.
Recently, the Federal Ministry for Economy and Technology supported a major research project on innovative technologies in maritime ports.¹⁰⁸⁴

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).

969. The Maritimes Competenzzentrum (ma-co), which resulted from a merger of the Port Vocational School at Bremen (Hafenfachschule Bremen)¹⁰⁸⁵, the Hamburg Port Training Centre (Fortschungszentrum Hafen Hamburg)¹⁰⁸⁶, which was founded in 1975) and the HHLA Vocational

¹⁰⁸⁴ See http://www.isetec-2.de/.
¹⁰⁸⁶ 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;
School (HHLA-Fachschule)\textsuperscript{1087}, which has its origins in the Kaifachschule, founded in 1927\textsuperscript{1088}), 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)\textsuperscript{1089}. Ma-co employs about 20 permanent trainers and 75 freelance trainers with practical experience. It has well-equipped schooling sites in Hamburg, Bremen and Wilhelmshaven. In Hamburg, it uses a container crane simulator. The Board of ma-co is composed of representatives of associations of port companies and the trade union ver.di\textsuperscript{1090}.

Importantly, since 1975 all port workers in Hamburg, Bremen and Niedersachsen have the right to be trained as professional port workers (\textit{Hafenfacharbeiter})\textsuperscript{1091}. 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.


Table 53. Number of port training certificates issued by the Gesamthafenbetrieb Hamburg to its pool workers, 31 December 2011 (source: Annual report of the Gesamthafenbetrieb, 2011)

<table>
<thead>
<tr>
<th>Position</th>
<th>Certificates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Container gantry crane driver</td>
<td>251</td>
</tr>
<tr>
<td>Straddle carrier driver</td>
<td>512</td>
</tr>
<tr>
<td>Container checker</td>
<td>530</td>
</tr>
<tr>
<td>Container signalman</td>
<td>580</td>
</tr>
<tr>
<td>Container crane supervisor</td>
<td>600</td>
</tr>
<tr>
<td>Tractor driver</td>
<td>592</td>
</tr>
<tr>
<td>Container lasher</td>
<td>280</td>
</tr>
<tr>
<td>Rail crane / transtainer driver</td>
<td>65</td>
</tr>
<tr>
<td>Reach stacker driver</td>
<td>115</td>
</tr>
<tr>
<td>Heavy lift forklift driver</td>
<td>665</td>
</tr>
<tr>
<td>Professional port worker (Hafenfacharbeiter)</td>
<td>584</td>
</tr>
</tbody>
</table>

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-skilling.  

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).  

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 B.

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 developments and the handling of dangerous goods. The report also highlighted the need for new organisational structures including flexible working times.

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1092 For example, see figures for 2011 in Gesamthafenbetriebsverein im Lande Bremen e.V., Jahresbericht 2011, 22.
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 papers\textsuperscript{1096}. 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\textsuperscript{1097}.

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 workers\textsuperscript{1098}.

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 sector\textsuperscript{1099}.

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 stuffers\textsuperscript{1100}. 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.

\textsuperscript{1096} See http://www.soziale-innovation.de/news/detail/portwork_05_15_demografischer_wandel_in_der_bremischen_hafen_und_distributionslogistik-284/.
\textsuperscript{1097} On the latter, see http://www.ma-co.de/ma-co/projekte_hanselogistiker.php.
\textsuperscript{1098} See http://www.aap.uni-bremen.de/ccm/content/beratung-supervision/hafenlogistik-bleib-dran/.
\textsuperscript{1099} See http://www.soziale-innovation.de/news/detail/qualifizierungsinitiative_in_der_bremischen_logistikwirtschaft_qualilog-227/.
\textsuperscript{1100} See http://hamburg.hafenakademie.de/.
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

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 1897. Today, port labour is subject to the general legislation on occupational health and safety. These general rules are laid down in the Labour Protection Act. It sets out duties for the employer *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.

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.

Some safety aspects are governed by local regulations. In Hamburg, for example, Regulations on the Handling of Dangerous Goods in the Port of Hamburg apply.

1101 Gesetz betreffend der Anstellung eines Hafenispekters. For background on trade union action, see [http://library.fes.de/fulltext/bibliothek/tit00205/00205c08.htm](http://library.fes.de/fulltext/bibliothek/tit00205/00205c08.htm).

1102 See supra, para 949.

The Occupational Health and Security Agency (Amt für Arbeitsschutz, AfA) of the City State of Hamburg 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 instruments.

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:

- 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)\(^{1106}\).

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 fumigation\(^{1107}\).

It is also a founding partner in an EU cooperation project on safety inspections in ports\(^{1108}\).

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 companies\(^{1109}\).

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 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)\(^{1110}\).

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\(^{1107}\) See the overview on supra, para 260.


\(^{1109}\) See full text on http://medienn-bghw.de/uvv/75/titel.htm.

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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 cranes.

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 1999.

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1111 See [http://medien-e.bghw.de/bghw/inh/bgi.htm](http://medien-e.bghw.de/bghw/inh/bgi.htm).
1112 [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#1).
- 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 sectors\textsuperscript{1113}. 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, transhipment and storage in German ports, 2007-2011 (source: Berufsgenossenschaft Handel und Warendistribution)

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stevedoring</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-fatal accidents</td>
<td>1,454</td>
<td>1,627</td>
<td>1,201</td>
<td>1,616</td>
<td>1,760</td>
</tr>
<tr>
<td>Fatal accidents</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Shipment, transhipment and storage\textsuperscript{1114}</td>
<td>215</td>
<td>329</td>
<td>338</td>
<td>367</td>
<td>295</td>
</tr>
<tr>
<td>Non-fatal accidents</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fatal accidents</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

\textsuperscript{1113} The port labour-related sectors were identified by the BGHW as Gewerbszweignummer 0400 (cargo handling or stevedoring companies) and Gewerbszweignummer 0390 (shipment, transhipment and storage companies). The other sectors used in the comparison were defined by the competence of the various Berufsgenossenschaften.

\textsuperscript{1114} These numbers represent accidents in companies which are active in ports, but which may also have activities outside ports.
Table 55. Number and incidence rate\textsuperscript{1115} 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.)

<table>
<thead>
<tr>
<th>Year</th>
<th>Stevedoring companies</th>
<th>Raw materials and chemicals industry</th>
<th>Woodworking and metalworking industries</th>
<th>Building trade</th>
<th>Transport industry (until 2008 including rail transport)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of accidents</td>
<td>Incidence rate</td>
<td>Incidence rate</td>
<td>Incidence rate</td>
<td>Incidence rate</td>
</tr>
<tr>
<td>1995</td>
<td>n.a.</td>
<td>n.a.</td>
<td>42.80</td>
<td>70.20</td>
<td>109.71</td>
</tr>
<tr>
<td>2000</td>
<td>n.a.</td>
<td>n.a.</td>
<td>30.81</td>
<td>58.31</td>
<td>90.42</td>
</tr>
<tr>
<td>2001</td>
<td>2,171</td>
<td>82.31</td>
<td>n.a.</td>
<td>n.a.</td>
<td>82.2</td>
</tr>
<tr>
<td>2002</td>
<td>2,029</td>
<td>78.84</td>
<td>n.a.</td>
<td>n.a.</td>
<td>78.9</td>
</tr>
<tr>
<td>2003</td>
<td>1,935</td>
<td>72.50</td>
<td>n.a.</td>
<td>n.a.</td>
<td>73.1</td>
</tr>
<tr>
<td>2004</td>
<td>1,832</td>
<td>51.42</td>
<td>n.a.</td>
<td>n.a.</td>
<td>70.3</td>
</tr>
<tr>
<td>2005</td>
<td>1,885</td>
<td>52.15</td>
<td>20.42</td>
<td>43.61</td>
<td>66.96</td>
</tr>
<tr>
<td>2006</td>
<td>2,029</td>
<td>54.02</td>
<td>n.a.</td>
<td>n.a.</td>
<td>70.33</td>
</tr>
<tr>
<td>2007</td>
<td>2,413</td>
<td>48.07</td>
<td>n.a.</td>
<td>n.a.</td>
<td>66.60</td>
</tr>
<tr>
<td>2008</td>
<td>2,724</td>
<td>54.68</td>
<td>n.a.</td>
<td>n.a.</td>
<td>67.32</td>
</tr>
<tr>
<td>2009</td>
<td>2,310</td>
<td>48.79</td>
<td>17.34</td>
<td>40.16</td>
<td>65.13</td>
</tr>
<tr>
<td>2010</td>
<td>2,726</td>
<td>59.51</td>
<td>19.24</td>
<td>42.62</td>
<td>66.54</td>
</tr>
<tr>
<td>2011</td>
<td>2,686</td>
<td>55.31</td>
<td>18.75</td>
<td>43.09</td>
<td>63.68</td>
</tr>
</tbody>
</table>

\textsuperscript{1115} Number of accidents per 1000 full-time equivalent employees.

\textsuperscript{1116} See infra, para 1001 et seq.

\textsuperscript{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).

\textsuperscript{986}. In recent years, federal agencies and occupational accident insurers commissioned a number of studies on specific aspects of safety and health in port labour\textsuperscript{1116}. 
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 authorities. 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 employees.

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 explained, 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'.

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 management 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 councilors 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 councilors today are increasingly likely to think like managers, and are even developing their own rationalisation strategies.


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.

See supra, paras 957-958.
(Sklavenhändlerfirmen) in the port\textsuperscript{1120}. 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 contracts\textsuperscript{1121}. In 1984, German authorities expressly acknowledged that (1) the Port Labour Act, as a \textit{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 Gesamthafenbetrieb\textsuperscript{1122}.

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 workers\textsuperscript{1123}.

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 Gesamthafenbetriebe\textsuperscript{1124}.


\textsuperscript{1121} On the latter issue, see Assmann, J., \textit{Rechtsfragen zum Gesamthafenbetrieb}, doctoral thesis, University of Cologne, 1965, 82-83. The requirement to seek prior approval from the Gesamthafenbetrieb has since been abolished.


\textsuperscript{1124} Weinkopf, C., \textit{Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools}, Gelsenkirchen, Institut Arbeit und Technik, 1992, 71; see also Weinkopf, C., \textit{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 to 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*)[^1125].

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 crews[^1126].

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*[^1127] – should be put into perspective, because it remains true that the Port Labour Act virtually obliges all cargo handlers to cooperate with the Gesamthafenbetrieb[^1128].

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 labour[^1129]. 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 times[^1130].

[^1128]: See further *infra*, para 989.
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 Gesamthafenbetriebe. 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 port. 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 work. 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 dumping. The Gesamthafenbetriebsverein points out that in this case temporary workers were hired in a situation of necessity and in full accordance with the regulations.

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 peace. Reportedly, the terminal operator is now considering the establishment of a Gesamthafenbetrieb for JadeWeserPort.

1132 Weinkopf, C., Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools, Gelsenkirchen, Institut Arbeit und Technik, 1992, 43.
1135 Gesamthafenbetrieb im Lande Bremen e.V., Jahresbericht 2010, 11-12.
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/EC. 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 example. 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
wilder Betrieb wilde Arbeitskräfte anheuern kann), from undercutting their competitors and from paying lower wages than agreed upon by the social partners. \(^{1139}\)

Today, legal experts justify the compulsory registration by the Gesamthafenbetrieb of outsider companies by an analogy with generally binding collective labour agreements. \(^{1140}\) 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 bargaining. \(^{1141}\) 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 cartels. \(^{1142}\)

Whatever the case, Assmann argues that outsider companies may challenge an unjustified inclusion in a Gesamthafenbetrieb before the ordinary courts. \(^{1143}\) 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 so; \(^{1144}\) 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.

\(^{1139}\) Hafen Schiffahrt Wasserbau, 21 May 1951, para 11, reproduced in Rumpel, E. (Hg.), Menschen im Hafen 1945-1998, Hamburg, ÖTV, s.d., (64), 64.


\(^{1144}\) Weinkopf, C., Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools, Gelsenkirchen, Institut Arbeit und Technik, 1992, 54.
The high union density at German ports may give rise to closed shop-issues. In addition, workers are said to be often recruited on the basis of kinship. Generally, trade union density in Germany is not particularly high (perhaps around 20 per cent).

As we have explained above, recently a number of new port worker movements emerged. In particular the relations between ver.di and newcomer Contterm appear rather sour. Contterm 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 however, 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 Constitution. The Gesamthafenbetrieb of Hamburg stated that today Contterm 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 Contterm. 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.

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 measures.

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.

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990. See supra, para 967.
993. See supra, para 967.
- *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 below\textsuperscript{1152}, self-handling by ship’s crews is not permitted.

Fifthly, as we have explained above\textsuperscript{1153}, 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.

\textsuperscript{1152} See infra, para 996.
\textsuperscript{1153} See supra, para 988.
Sixthly, cargo handling companies are as a rule not allowed to directly exchange workers between themselves\textsuperscript{1154}. We have not looked into general German law on the hiring out of workers.

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.

\textit{- Competitive impact of decision to establish a Gesamthafenbetrieb}

\textbf{994.} As we have explained\textsuperscript{1155}, 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 yet\textsuperscript{1156}.

Whatever the outcome in this specific case, the voluntary and local nature of the decision to establish a Gesamthafenbetrieb and the ensuing possibility that labour conditions may substantially differ between German ports may result in competitive issues.

\textit{- Delimitation issues, logistics and self-handling}

\textbf{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

\begin{itemize}
\item \textsuperscript{1154} See \textit{supra}, paras 957 and 958.
\item \textsuperscript{1155} See \textit{supra}, para 954.
\item \textsuperscript{1156} See \textit{supra}, para 988.
\end{itemize}
explained, this definition determines the scope of the exclusive right of the Gesamthafenbetriebe. Klaus-Peter Martens observes that delimitation issues are quite 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”).

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 be to be classified as port labour within the meaning of the Port Labour Act.

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 labour. 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 issue. 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 union\(^{1163}\). 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 sector\(^{1164}\). The current Framework Agreement on Logistics in the port of Hamburg\(^{1165}\) 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 transhipment, 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 transhipment 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 longer\(^{1166}\). 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

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\(^{1164}\) [Rahmentarifvertrag für gewerbliche Arbeitnehmer und Arbeitnehmerinnen in Logistik-Unternehmen des Hamburger Hafens gültig ab 01.07.2007](http://www.ghbg.de/pdf/GHBGJahresbericht2006.pdf).

\(^{1166}\) 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.
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 Satzung.\footnote{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 obligate 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 men.\footnote{Bundesarbeitsgericht 26 February 1992, 5 AZR 99/91.}

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.\footnote{On the latter case, see infra, para 1171.} 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 regulations.\footnote{Bundesarbeitsgericht 6 December 1995, 5 AZR 307/94.}

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 ports. The Verwaltungsordnung for Bremen and Bremerhaven expressly states that ship’s crews are not allowed to perform port

\begin{itemize}
\item[(a)] All longshore activities.
\item[(b)] Exceptions:
\begin{itemize}
\item[(1)] Opening and closing of hatches, and
\item[(2)] Rigging of ship’s gear.
\end{itemize}
\end{itemize}

\footnote{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.}

\footnote{Bundesarbeitsgericht 6 December 1995, 5 AZR 307/94.}
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 unlash in g of its cargo performed by registered port workers instead of its own crew. 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 Act. 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

In 1981 and again in 1992, 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

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1173 See supra, para 953.
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 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 objectives 1176.

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 Hafenakademie 1177.

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 above 1178 suggest that port labour is among the most dangerous occupations in the German economy.

1001. As we have mentioned 1179, 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


1177 See supra, para 975.

1178 See supra, para 984.

1179 See supra, para 986.
health in container transhipment in Hamburg and Bremen on behalf of the Federal Agency for Labour Protection and Industrial Medicine. The authors recommended that the activities in this field be better coordinated\textsuperscript{1180}.

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 incidents\textsuperscript{1181}.

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 containers\textsuperscript{1182}.

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 lashing\textsuperscript{1183}.

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 level\textsuperscript{1184}.

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 systems\textsuperscript{1185}.

\textsuperscript{1180} Hamburger Sozialforschungsgesellschaft e.V., 
\textit{Containerumschlag im Hafenbereich unter besonderer Berücksichtigung der Seeschiffsassistententätigkeiten, beteiligter Verkehrsträger und Diversifikationen in der Hafenwirtschaft}, \url{http://www.hsfg.de/containerumschlag.html}.


\textsuperscript{1182} See \url{http://www.institut-aser.de/out.php?idart=419}.

\textsuperscript{1183} See \url{http://duepublico.uni-duisburg-essen.de/servlets/DocumentServlet?id=5156}.

\textsuperscript{1184} \url{http://www.dguv.de/ifa/de/pro/pro1/pr4095/index.jsp}.

\textsuperscript{1185} See \url{http://www.baua.de/de/Publikationen/Forschungsberichte/2002/Fb961.html}.
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 them1186.

### 9.8.7. Appraisals and outlook

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 partners1187. The Gesamthafenbetriebe are convinced that their contribution to the competitiveness of the ports remains of vital importance1188. Unsurprisingly, preserving their very existence has always been a prime objective of the Gesamthafenbetriebe1189.

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 workers1190.

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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 tasks. 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 authorities.

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 level. 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 essence. 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 limited.

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 time. Flexible working times were

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1195 See Weinkopf, C., Der Hamburger Gesamthafenbetrieb als Beispiel eines branchenbezogenen überbetrieblichen Arbeitskräftepools, Gelsenkirchen, Institut Arbeit und Technik, 1992, 71-78.
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 time.1197

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 however.1198

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 disrupted.1199

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 Gesamthafenbetriebe.1200

In 2005, the North German Chamber of Industry and Commerce stated that self-handling, as proposed in the second draft of an EU Port Services Directive, should be limited to short sea shipping and high-speed connections.1201


1198 Zentralverband der deutschen Seehafenbetriebe (ZDS), Stellungnahme des ZDS zum Richtlinienvorschlag über den Marktzugang für Hafendienste, http://www.zds-seehafen.de/pdf/2001_05_10_dt.pdf, 5, para 0.4.7 and 13-14, para 3.3.6.


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 aid.

1015. In its 2009 National Ports Policy Plan, 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 personnel. The Federal position was explicitly supported inter alia by the Land Bremen.

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 developments.

1203 On this Plan, see already supra, para 997.
1206 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 companies.  

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 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.di, 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 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 Contterm insisted that the Gesamthafenbetriebe must be allowed to continue their operations, and that German ports cannot 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. Synopsis

**SYNOPSIS OF PORT LABOUR IN GERMANY**

**LABOUR MARKET**

**Facts**
- 5 main seaports
- Landlord model
- 296m tonnes
- 1st in the EU for containers
- 9th in the world for containers
- Appr. 300 employers (150 regular)
- Appr. 15,000 port workers
- Trade union density: 80-85%

**The Law**
- *Lex specialis* (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:
  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

**Issues**
- ‘Micro-corporalism’
- 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**
- Jointly managed training centre (ma-co) trains workers from Hamburg, Bremen and Wilhelmshaven

**The Law**
- No national laws and regulations
- Competency-based certification available, consistent with EQF
- Right to training for every worker
- System promotes multi-skilling

**Issues**
- Need to attract young workers through training
- Unclear position of third training providers

**HEALTH AND SAFETY**

**Facts**
- Detailed statistics available
- High accident rates as compared with other sectors

**The Law**
- Specific Safety Regulations issued by Accident Insurers
- Party to ILO C152
- Local rules on dangerous goods
- Provisions in Pool Statutes, CBAs

**Issues**
- High accident rates

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1209 Throughput figures relate to maritime traffic for 2011. Container throughput ranking is for 2010. '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 system

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 2010, the gross weight of seaborne goods handled in Greek ports was about 124 million tonnes. As for containers, Greek ports ranked 12th in the EU and 52nd in the world in 2010.

Piraeus Port Authority SA 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.

As a departure from the service port model, two major private terminal concessionaires operate in Greek ports: COSCO/PCT 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 ports. 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 law.

9.9.2. Sources of law

The status of the Port Authorities of Piraeus and Thessaloniki is governed by Act 2688/1999, 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. 2932/2001.

Port Funds under the supervision of the Ministry of Mercantile Marine are governed by Act No. 2987/2002 (Art. 10), while Port Funds under the supervision of the local municipality or the local prefecture are established by Presidential Decree (Act No. 2738/1999, Art 28).

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.

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).
Port labour in Greek ports, with the exception of Piraeus and Thessaloniki, is regulated by Act No. 5167/1932 on Port Workers and Legislative Decree No. 1254/1949 on Port Workers (as amended by Act No. 1082/1980). Yet another relevant instrument is Presidential Decree No. 31/1990 on the qualifications of crane and machinery operators. 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. 685/1978. The Concession Agreement between Piraeus Port Authority and COSCO/PCT, which was approved by Act No. 3755/2009, contains a few provisions on port labour as well.

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. 3919/2011.

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. 3850/2010, on Act No. 3846 of 2010, and the Code for Collective Agreements in Public Administration “Duration of the Contract and Other Provisions”.

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. 3919/2011.

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. 3850/2010, on Act No. 3846 of 2010, and the Code for Collective Agreements in Public Administration “Duration of the Contract and Other Provisions”.
on Guarantees related to Occupational Safety\textsuperscript{1228} 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. 66/2004\textsuperscript{1229}.

Regulations on the loading, unloading and handling of dangerous goods were laid down in Presidential Decree No. 405/1996\textsuperscript{1230}.

\textbf{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 however\textsuperscript{1231}.

\textbf{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 agreement between the Port Authority and the unions. In addition, Internal Regulations on Organisation and Operations\textsuperscript{1232} 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 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 mentioned, 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 area. 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 services. The Port of Thessaloniki enjoys similar rights.

1036. In Piraeus and Thessaloniki, port workers are employed by the local port authority.

1037. The port workers of Piraeus Port Authority belong to two main categories.

1233 See supra, para 1028.
1234 See, inter alia, Art. 3 of Legislative Decree 449/1970.
1235 See Art. 3.1(iii) and 3.7 of the Concession Agreement.
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. 4046/2012 and Emergency Act No. 38/2012 (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 Operations. 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.

1039. In other ports than Piraeus and Thessaloniki, such as Corfu, Elefsina, Kavala (Eletheron, Keramoti and Philip II), Heraklion, Lavrion, Patras, Rafina and Volos, port labour is governed by specific laws and regulations.

1236 ΕΓΚΡΙΣΗ ΤΩΝ ΣΧΕΔΙΩΝ ΣΥΜΒΑΣΕΩΝ ΧΡΗΜΑΤΟΔΟΤΙΚΗΣ ΔΙΕΥΚΟΛΥΝΣΗΣ ΜΕΤΑΞΥ ΤΟΥ ΕΥΡΩΠΑΪΚΟΥ 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 ΕΥΡΩΠΑΪΚΗΣ ΕΠΙΤΡΟΠΗΣ ΚΑΙ ΤΗΣ ΤΡΑΠΕΖΑΣ ΤΗΣ ΕΛΛΑΔΟΣ ΚΑΙ ΑΛΛΕΣ ΕΠΕΙΓΟΥΣΕΣ ΔΙΑΤΑΞΕΙΣ ΓΙΑ ΤΗ ΜΕΙΩΣΗ ΤΟΥ ΔΗΜΟΣΙΟΥ ΧΡΕΟΥΣ ΚΑΙ ΤΗ ΔΙΑΣΩΣΗ ΤΗΣ ΕΘΝΙΚΗΣ ΟΙΚΟΝΟΜΙΑΣ.
1237 Ρύθμιση θεμάτων για την εφαρμογή της παρ. 6 του άρθρου 1 του ν. 4046/2012.
1238 See Art. 15 of the Internal Regulations on Organisation and Operations.
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). 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 1990.

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).

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.

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.

1239 To be precise, this Article completed, replaced or amended provisions of several earlier Acts.
1240 To be precise, by Art. 23, § 1 of Act No. 1876/1990.
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.
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.

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 terminal.

Infringements of the specific laws and regulations on port labour are criminally sanctioned.

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.

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.

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

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.
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 2012\textsuperscript{1242} 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 357 dockworkers and 346 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 Piraeus; 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.

\textit{Table 56. Number of employees of the Piraeus Port Authority by category, 30 September 2012 (source: Piraeus Port Authority)}

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dockworkers</td>
<td>357</td>
</tr>
<tr>
<td>Crane and machinery operators</td>
<td>346</td>
</tr>
<tr>
<td>Other technicians</td>
<td>176</td>
</tr>
<tr>
<td>Administrative employees</td>
<td>367</td>
</tr>
<tr>
<td>Lawyers</td>
<td>12</td>
</tr>
<tr>
<td>Total</td>
<td>1,258</td>
</tr>
</tbody>
</table>

\textsuperscript{1242} Αριθμ. 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.
In Piraeus, some 60 tallymen and an unknown number of lashers are members of separate unions.

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)**

<table>
<thead>
<tr>
<th>Employees by category</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dockworkers</td>
<td>-</td>
<td>77</td>
<td>173</td>
<td>203</td>
</tr>
<tr>
<td>Crane and Machinery Operators</td>
<td>-</td>
<td>179</td>
<td>347</td>
<td>426</td>
</tr>
<tr>
<td>Other Technicians</td>
<td>6</td>
<td>45</td>
<td>53</td>
<td>63</td>
</tr>
<tr>
<td>Administrative Employees</td>
<td>41</td>
<td>137</td>
<td>146</td>
<td>158</td>
</tr>
<tr>
<td>Tallymen</td>
<td>-</td>
<td>20</td>
<td>47</td>
<td>75</td>
</tr>
<tr>
<td>Total</td>
<td>47</td>
<td>458</td>
<td>766</td>
<td>925</td>
</tr>
</tbody>
</table>

In Thessaloniki, 416 port workers are employed, including 144 general dockworkers.

**Table 58. Number of employees of the Thessaloniki Port Authority by category, 2009-2011 (source: Thessaloniki Port Authority)**

<table>
<thead>
<tr>
<th></th>
<th>General managers</th>
<th>Lawyers</th>
<th>Administrative personnel</th>
<th>Dockworkers</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 December 2009</td>
<td>2</td>
<td>3</td>
<td>338</td>
<td>173</td>
<td>516</td>
</tr>
<tr>
<td>31 December 2010</td>
<td>1</td>
<td>3</td>
<td>293</td>
<td>157</td>
<td>454</td>
</tr>
<tr>
<td>31 December 2011</td>
<td>1</td>
<td>2</td>
<td>269</td>
<td>144</td>
<td>416</td>
</tr>
</tbody>
</table>

In the ports of Elefsina and Volos, there are 80 and 56 port workers respectively. We are unaware if these figures concern administrative staff of the port authority.

Footnote: Figures are for 30 September 2012.
In Igoumenitsa, the Port Authority employs 18 employees (all permanent staff) while the Igoumenitsa Port Workers' Union has 12 members.

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 Ε.Λ.Π.). 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 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).

Meaning 'Union of Permanent and Trainee Port Workers of the Port Authority of Piraeus'. O.L.P. (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.
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 bulk.

1053. As we have explained, 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. In 2011, the Port Training Institute EXANTAS was formally established. It aims to issue training certificates to prospective white and blue collar workers. Today, this Institute is not yet fully operational.

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);

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1245 See infra, para 1060.
1246 See supra, para 1044.
- 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).

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, 2009-2011 (source: Piraeus Port Authority)

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Accidents</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>7</td>
</tr>
<tr>
<td>2010</td>
<td>15</td>
</tr>
<tr>
<td>2011</td>
<td>12</td>
</tr>
<tr>
<td>Total</td>
<td>34</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Type</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor</td>
<td>20</td>
</tr>
<tr>
<td>Serious</td>
<td>5</td>
</tr>
<tr>
<td>On the Road</td>
<td>9</td>
</tr>
<tr>
<td>Fatal</td>
<td>-</td>
</tr>
</tbody>
</table>

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)

<table>
<thead>
<tr>
<th></th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accidents involving dockworkers</td>
<td>-</td>
<td>2</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>operators</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accidents involving other personnel</td>
<td>-</td>
<td>3</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>-</td>
<td>5</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Accidents per 100 employees</td>
<td>-</td>
<td>1.09</td>
<td>0.52</td>
<td>0.11</td>
</tr>
<tr>
<td>Severity rate (days off from work per 100 employees)</td>
<td>-</td>
<td>29.04</td>
<td>7.87</td>
<td>4.22</td>
</tr>
</tbody>
</table>

1063. The Thessaloniki Port Authority provided the following data:

Table 61. Occupational accidents in the port of Thessaloniki, 2004-2011 (source: Thessaloniki Port Authority)

<table>
<thead>
<tr>
<th>Year</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accidents involving dockworkers</td>
<td>3</td>
<td>6</td>
<td>6</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Accidents involving other personnel</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>5</td>
<td>7</td>
<td>8</td>
<td>4</td>
<td>7</td>
<td>3</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>Accidents per 100 employees</td>
<td>7.7</td>
<td>11.49</td>
<td>13.79</td>
<td>6.57</td>
<td>12.99</td>
<td>5.66</td>
<td>14.43</td>
<td>13.76</td>
</tr>
<tr>
<td>Severity Index (days off work per 100 employees)</td>
<td>27.89</td>
<td>32.02</td>
<td>50.34</td>
<td>31.53</td>
<td>36.18</td>
<td>5.47</td>
<td>57.1</td>
<td>39.22</td>
</tr>
</tbody>
</table>

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

1247 Figures are for 30 September 2012.
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 [...].

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 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 Psarafitis [...] 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, Psarafitis [...] 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 [...]1249.

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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 Bortone\textsuperscript{1250}. The Question read as follows:

\textit{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

\textsuperscript{1250} European Parliament, Written Question P-1762/03 by Adriana Poli Bortone (UEN) to the Commission (21 May 2003), \textit{OJ} 6 February 2004, C 33 E/167.
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 irrelevant\textsuperscript{1251}. 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 2010\textsuperscript{1252}.

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 loading\textsuperscript{1253}.

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.

\textsuperscript{1251} Competition Commission, 19 March 2009, Decision No. 438/V/2009.
\textsuperscript{1252} Athens Administrative Court, 14 May 2010.
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 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.

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 interest\textsuperscript{1254}.

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.

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.

\textbf{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 applicable\textsuperscript{1255}, they would amount to unjustifiable restrictions on free movement and/or apparent discriminations contrary to international and EU law\textsuperscript{1256}.

\textbf{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 ratification\textsuperscript{1257}.

\textbf{1073.} As a matter of fact, private sector representatives vigorously opposed the idea to accede to ILO Convention No. 137, because it is 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

\textsuperscript{1254} See \textit{infra}, para 1104.
\textsuperscript{1255} See \textit{supra}, paras 1028 and 1048.
\textsuperscript{1256} On the nationality requirement, see already \textit{supra}, para 1068.
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.

- Closed shop

1074. Whereas trade union density in Greece as a whole is generally estimated at between 20 and 30 per cent, which is not particularly high when compared to other European countries\(^\text{1258}\), 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 Authority\(^\text{1259}\). 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 well\(^\text{1260}\). 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.


\(^{1259}\) Art. 6(2) of Act No. 2414/1996.

\(^{1260}\) Ministerial Decree No. 4221.9/22/90.
- 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 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 serious 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 disadvantage. 1261

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

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1261 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.
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 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. 4024/20111262, 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. As we have mentioned, the EXANTAS port training institute is not yet fully operational. 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

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1262 Νόμος 4024 ΟΣΥΝΤΑΞΙΟΔΟΤΙΚΕΣ ΡΥΘΜΙΣΕΙΣ, ΕΝΙΑΙΟ ΜΙΣΘΟΛΟΓΙΟ, ΕΡΓΑΣΙΑΚΗ ΕΦΕΔΡΕΙΑ ΚΑΙ ΑΛΛΕΣ ΔΙΑΤΑΞΕΙΣ ΕΦΑΡΜΟΓΗΣ ΤΟΥ ΜΕΣΟΠΡΟΘΕΣΜΟΥ ΠΛΑΙΣΙΟΥ ΔΗΜΟΣΙΟΝΟΜΙΚΗΣ ΣΤΡΑΤΗΓΙΚΗΣ 2012-2015.
shipowners complained that training of Greek port workers is elementary and is causing accidents.

- 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, Psarafitis 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 model. 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 unions.

The Greek Parliament ratified the concession contract in March 2009. 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 Court.

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 latter.

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


1265 See supra, para 1027.


and selected other personnel working in the container terminal had reached exorbitant levels. Salaries of up to 140,000 EUR a year, with most dockworkers registering for work 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 terminal.

H. Psaraftis 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 concession.

From conversations with the terminal operator’s executives in Piraeus, Psaraftis 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 transhipment traffic. From now on, competition is right at the Port Authority's doorstep, and also includes local (gateway) traffic\footnote{Psarafitis, 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.}.


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 breaks\footnote{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.}.

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 schedules\footnote{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.”}. 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 the obligation in the Concession Agreement to organise training through the Piraeus Port Authority 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 action.

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 workforce. 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 privatised.

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 months. 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 are 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)).

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)).

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).


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).
employment at the terminal are provided above\textsuperscript{1280}. 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 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 decent\textsuperscript{1281}.

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 above\textsuperscript{1282}.

\textsuperscript{1280} See \textit{supra}, para 1050.
\textsuperscript{1281} A recent media report mentions:
\begin{quote}
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.
\end{quote}

\textsuperscript{1282} See \textit{supra}, para 1062.
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 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 terminals. 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;

See, once more, Act No. 4024/2011 (Νόµος 4024 0ΣΥΝΤΑΞΙΟΔΟΤΙΚΕΣ ΡΥΘΜΙΣΕΙΣ, ΕΝΙΑΙΟ ΜΙΣΟΘΕΣΜΟΥ ΠΛΑΙΣΙΟΥ ΔΗΜΟΣΙΟΝΟΜΙΚΗΣ ΣΤΡΑΤΗΓΙΚΗΣ 2012-2015).
- 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.

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
  - Cranes
  - RMG cranes
  - Front loaders
  - OSME (straddle carriers)
  - 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 110925
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
Langemarckestrasse 20
46144 Essen
www.tuv-nord-cert.com

TÜV NORD CERT GmbH

E7-A01-07-03-84
Figure 86. Training certificate for port workers of Diakinisis Port, 10 May 2012 (source: Diakinisis Port)
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 unions. 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 workers.

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.


1285 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 times.1286

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

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 terminal. 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 Thessaloniki. 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 companies. Currently, the Hellenic Republic Asset Development Fund (HRADF) is evaluating the most appropriate method for the privatisation of Greek ports. Reportedly, the transfer of shares in Piraeus Port Authority and Thessaloniki to

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1287 On IDC's position, see supra, para 287.
HRDAF was challenged before the Supreme Court by the dockworkers’ unions\textsuperscript{1291}. We are unaware of the current status of these proceedings.

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 issued\textsuperscript{1292}, 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 removed\textsuperscript{1293}.

\textsuperscript{1291} See X., “Athens, Thessaloniki Port Workers Go to Court Over Asset Sales”, \textit{Hellenic Shipping News} 27 June 2012, \url{http://www.hellenicshippingnews.com/News.aspx?ElementId=eba8ed55-9117-4121-b96e-f27a8e93e8e7}.

\textsuperscript{1292} See supra, para 1048.

9.9.8. Synopsis

**SYNOPSIS OF PORT LABOUR IN GREECE**

**Labour Market**

<table>
<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over 1,300 seaports, 12 major seaports</td>
<td><em>Lex specialis</em> (Act of 1932, Decree of 1949), but not applicable in Piraeus and Thessaloniki</td>
<td>Exclusive right of service ports</td>
</tr>
<tr>
<td>Mix of management models (service port in Piraeus and Thessaloniki, some terminal concessionnaires)</td>
<td>No Party to ILO C137</td>
<td>Exclusive right of associations of port workers, fixed tariffs</td>
</tr>
<tr>
<td>124m tonnes</td>
<td>CBAs and/or Internal Staff Regulations</td>
<td>Closed shop</td>
</tr>
<tr>
<td>12th in the EU for containers</td>
<td>Restrictions on access to regulated professions abolished in 2011</td>
<td>Port Labour Decree held incompatible with competition law</td>
</tr>
<tr>
<td>52nd in the world for containers</td>
<td>3 main categories of workers</td>
<td>Mandatory manning scales</td>
</tr>
<tr>
<td>30 employers (?)</td>
<td>(1) In Piraeus and Thessaloniki: workers employed by Port Authority</td>
<td>Ban on self-handling</td>
</tr>
<tr>
<td>Number of port workers: 2,500 (?)</td>
<td>(2) In other ports: self-employed workers hired by port users through workers’ associations</td>
<td>Ban on temporary agency work</td>
</tr>
<tr>
<td>Trade union density: 100% except at private terminals (0% at PCT)</td>
<td>(3) At private terminals: workers employed under general labour law</td>
<td>Wish of unions to ratify ILO C137 not supported by private sector</td>
</tr>
</tbody>
</table>

**Qualifications and Training**

<table>
<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Port training institute EXANTAS</td>
<td>No specific national regulations except licensing requirement for equipment operators</td>
<td>Lack of national framework on training requirements</td>
</tr>
<tr>
<td>Some private training providers</td>
<td>Certification by EXANTAS under preparation</td>
<td>Insufficient training of workers</td>
</tr>
</tbody>
</table>

**Health and Safety**

<table>
<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elementary statistics available</td>
<td>Specific national rules on handling of dangerous goods</td>
<td>Some specific gaps with ILO C152</td>
</tr>
<tr>
<td>No sector comparisons available</td>
<td>No Party to ILO C132 or C152</td>
<td>Opposition against ILO C152</td>
</tr>
</tbody>
</table>

Throughput figures relate to maritime traffic for 2010. Container throughput ranking is for 2010. '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 system

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 2011, the weight of seaborne goods handled in Irish ports was about 45 million tonnes. As for container throughput, Irish ports ranked 14th in the EU and 59th in the world in 2010.

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 estuarial ports where a number of port installations, both private and publicly owned, are geographically dispersed within the estuaries;
- 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


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.


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 CLP Regulations (Classification, Labelling and Packaging of substances and mixtures) Regulations 2008;
- the REACH Regulations (Registration, Evaluation, Authorisation and Restriction of Chemicals);
On its website, the Health and Safety Authority maintains a database on health and safety regulations which are relevant to docks\textsuperscript{1297}.

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 2003\textsuperscript{1298}.

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.

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 phases\textsuperscript{1299}.

\textsuperscript{1297} See \url{http://www.hsa.ie/eng/Your_Industry/Docks/Docks_and_Ports_Legislation/}.

\textsuperscript{1298} S.I. No. 347/2003 — European Communities (Safe Loading and Unloading of Bulk Carriers) Regulations 2003.
Under cas ualisation, 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 heath or retirement, thus further institutionalising the family nature of docking.

In 1971, casualisation and the button system were replaced by decasualisation. 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 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 alphabetically.

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

1301 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.
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 all. 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 abolished. The port authority of Dublin sold the cranes that it was operating and absorbed or made redundant the crane men.

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 rule.


1304. 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.


1305. O’Carroll, A., “*Every ship is a different factory*. Work Organisation, Technology, Community and Change: The Story of the Dublin Docker*, [http://nuim.academia.edu](http://nuim.academia.edu), 3-4 and also 5.
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 remained. 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 pool.

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 operations.

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

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1307 O’Carroll, A., “Every ship is a different factory’. Work Organisation, Technology, Community and Change: The Story of the Dublin Docker”, http://nuim.academia.edu, 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).

security of employment. The remaining 19 dockers, who would still be employed by the stevedores, are called on duty in order of seniority.\textsuperscript{1309}

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 Cork.\textsuperscript{1310}

In Wicklow, successive phases of dock labour rationalisation were carried out as well, without any disruption of port operations\textsuperscript{1311}.

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.

- Regulatory set-up

\textbf{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 ports.\textsuperscript{1312} 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 market\textsuperscript{1313}. This is still the case today.

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{1309}] \textit{Limerick Leader}, 20 March 2006.
\item[\textsuperscript{1310}] Port of Cork Company, \textit{Reports and financial statements for the year ended 31st December 2009}.
\end{enumerate}
\end{footnotesize}
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.

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.

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.

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)1314:

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1314 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)

<table>
<thead>
<tr>
<th>Port</th>
<th>Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cork</td>
<td>66</td>
</tr>
<tr>
<td>Drogheda</td>
<td>30</td>
</tr>
<tr>
<td>Dublin</td>
<td>250</td>
</tr>
<tr>
<td>Dundalk</td>
<td>2</td>
</tr>
<tr>
<td>Dún Laoghaire</td>
<td>5</td>
</tr>
<tr>
<td>Fenit</td>
<td>26</td>
</tr>
<tr>
<td>Foynes</td>
<td>30</td>
</tr>
<tr>
<td>Galway</td>
<td>6</td>
</tr>
<tr>
<td>Greenore</td>
<td>15</td>
</tr>
<tr>
<td>Limerick</td>
<td>10</td>
</tr>
<tr>
<td>New Ross</td>
<td>20</td>
</tr>
<tr>
<td>Rosslare</td>
<td>71(^{1315})</td>
</tr>
<tr>
<td>Waterford</td>
<td>40</td>
</tr>
<tr>
<td>Wicklow</td>
<td>6</td>
</tr>
<tr>
<td>Subtotal</td>
<td>577</td>
</tr>
<tr>
<td>Additional casual employees</td>
<td>100</td>
</tr>
<tr>
<td>Total</td>
<td>677</td>
</tr>
</tbody>
</table>

Two other sources estimate the total number of port workers in Ireland at some 600, to which some 75 temporary agency workers should be added\(^{1316}\). 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.

\(^{1315}\) Including 50 operative staff, 5 station controllers, 4 coordinators and 12 tug drivers.

\(^{1316}\) 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.\textsuperscript{1317}

Currently, the National Maritime College of Ireland (NMCI)\textsuperscript{1318} is preparing training courses for port workers and specialised courses for container gantry crane operators and mobile dockside


\textsuperscript{1318} See \url{http://www.nmci.ie}. 
crane operators. The course will take into account the forthcoming Code of Practice for Health and Safety in Dock Work. 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

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1319 See http://www.nmci.ie/professionalshortcourses.
1320 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 docks1321.

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*

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(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

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 2005. The Docks (Safety, Health and Welfare) Regulations of 1960 will be revoked.


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' and 'dock work'.

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(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.

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.

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.

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 suppliers.\(^\text{1327}\)

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.

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.

\(^{1327}\) The relevant section reads:
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 year\textsuperscript{1328}.

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 injuries\textsuperscript{1329}. Key hazards in the docking industry also include lifting operations, moving vehicles and pedestrian interface;

\textsuperscript{1328} 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.
\textsuperscript{1329} Health and Safety Authority, Management of Health and Safety in Docks, \url{http://www.hsa.ie/eng/Publications_and_Forms/Publications/Information_Sheets/Management_in_Health_and_Safety_in_Dock.pdf}, 1.
exposure to hazardous substances, environmental hazards and fatigue. 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)

See further http://www.hsa.ie/eng/Your_Industry/Docks/Key_Hazards_in_the_Docking_Industry/.
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 between 30 and 40 per cent[1331]) but that today closed shop issues only arise in specific local situations.

1139. On self-handling in Irish ports[1332], 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-handle[1333].

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:

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1332 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:

- All longshore activities on pier or on land at port.

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 matter.\textsuperscript{1234}

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.

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.

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.

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 sea.\textsuperscript{1335}

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 ship.\textsuperscript{1336}

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

\textsuperscript{1336} See SIPTU’s press release of 23 April 2012 “New draft Code of Practice to end unsafe work practices in Irish ports”, \url{http://www.siptu.ie/media/pressreleases2012/fullstory_15796_en.html}; Rogers, S., “Sleep-deprived seamen ‘put dockers’ lives at risk’”, \textit{Irish Examiner} 21 April 2012, \url{http://www.irishexaminer.com/archives/2012/0421/ireland/sleep-deprived-seamenput-dockers-lives-at-risk-191307.html}; On the Horizon project, see \url{http://www.warsashacademy.co.uk/research/horizon/horizon.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 \url{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 Directive\(^\text{137}\).


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 programme\(^\text{138}\).

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 system. 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.

1339 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;
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.

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.

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.

As we have mentioned, 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.

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

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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.
### SYNOPSIS OF PORT LABOUR IN IRELAND

#### LABOUR MARKET

<table>
<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 main ports</td>
<td>No lex specialis</td>
<td>Trade union concerns over employment of East European workers</td>
</tr>
<tr>
<td>Mix of management models</td>
<td>Company CBAs</td>
<td></td>
</tr>
<tr>
<td>45m tonnes</td>
<td>No Party to ILO C137</td>
<td></td>
</tr>
<tr>
<td>14th in the EU for containers</td>
<td>No registration of workers</td>
<td></td>
</tr>
<tr>
<td>59th in the world for containers</td>
<td>No general ban on self-handling</td>
<td></td>
</tr>
<tr>
<td>Appr. 20 employers</td>
<td>No ban on temporary agency work</td>
<td></td>
</tr>
<tr>
<td>Appr. 677 port workers</td>
<td>No restrictive working practices</td>
<td></td>
</tr>
<tr>
<td>Trade union density: 66%</td>
<td></td>
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#### QUALIFICATIONS AND TRAINING

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<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
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<tbody>
<tr>
<td>Training organised at company level</td>
<td>No national requirements</td>
<td>Absence of standardised training</td>
</tr>
<tr>
<td>Bespoke training by National Maritime College of Ireland available</td>
<td>No certification</td>
<td></td>
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#### HEALTH AND SAFETY

<table>
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<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
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</thead>
<tbody>
<tr>
<td>Statistics are maintained</td>
<td>Specific Docks Regulations (to be revoked)</td>
<td>Trade union concerns over treatment of seafarers involved in port operations</td>
</tr>
<tr>
<td>Comparison with other sectors unavailable</td>
<td>New Code of Practice for Health and Safety in Dock Work forthcoming</td>
<td>Still Party to outdated ILO C32</td>
</tr>
<tr>
<td></td>
<td>No Party to ILO C152</td>
<td></td>
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</tbody>
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1341 Throughput figures relate to maritime traffic for 2011. Container throughput ranking is for 2010. '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 system

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 2011, the gross weight of seaborne goods handled in Italian ports amounted to approximately 478.3 million tonnes. In the container branch, Italian ports ranked 5th in the EU and 14th in the world in 2010.

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 below.

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 legislation and the regulations made thereunder.

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


1344 See infra, para 1180 et seq.

1345 Legge 28 gennaio 1994, n. 84, Riordino della legislazione in materia portuale.
well as measures to ensure certain air connections\textsuperscript{1346}, as amended and converted into law by Act No. 647\textsuperscript{1347}/1996 on urgent provisions on tax, financial and accounting matters to complete the budgetary measures for 1997\textsuperscript{1348}, as amended and converted into law by Act No. 30\textsuperscript{1349}/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\textsuperscript{1350}/1998, by Act No. 472/1999 on measures in the transport sector\textsuperscript{1351}, by Act No. 186/2000 on amendments to Act No. 84\textsuperscript{1352}/1994 relating to port operations and the supply of temporary port work, by Act No. 172/2003 on provisions for the reorganisation and revitalisation of recreational boating and nautical tourism\textsuperscript{1353}, by Act No. 350/2003 on the budgetary measures for 2004, by Decree-Law No. 136\textsuperscript{1354}/2004 on urgent measures for the functionality of Public Administration, as amended and converted into law by Act No. 186/2004, 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 security, by Decree-Law No. 70/2011 on urgent measures for the economy, as amended and converted into law by Act No. 106\textsuperscript{1356}/2011, 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. 27/2012, by Decree-Law No. 5/2012 on simplification and development, as amended and converted into law by Act No.

\textsuperscript{1346} Decreto-Legge 21 ottobre 1996, n. 535, Disposizioni urgenti per i settori portuale, marittimo, cantieristico ed armatoriale, nonché' interventi per assicurare taluni collegamenti aerei.

\textsuperscript{1347} 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, nonché' interventi per assicurare taluni collegamenti aerei.

\textsuperscript{1348} 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.


\textsuperscript{1350} Legge 27 luglio 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.

\textsuperscript{1351} Legge 7 dicembre 1999, n. 472, Interventi nel settore dei trasporti.

\textsuperscript{1352} 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.

\textsuperscript{1353} Legge 8 luglio 2003, n. 172, Disposizioni per il riordino e il rilancio della nautica da diporto e del turismo nautico.


\textsuperscript{1355} 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.

\textsuperscript{1356} 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.

\textsuperscript{1357} 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.

\textsuperscript{1358} Decreto-Legge 9 febbraio 2012, n. 5, Disposizioni urgenti in materia di semplificazione e di sviluppo.

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 activities 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. 84/1994.

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 2012.

Health and safety is port labour regulated in Act No. 833/1978 on the establishment of the national health service, Act No. 485/98 on delegation to the government on occupational safety in the maritime ports sector, Legislative Decree No. 272/1999 on safety and health in cargo handling and ship maintenance and repair, Legislative Decree No. 276/2003 on the implementation of the delegations in respect of employment and the labour market under Act No. 30/2003 and Legislative Decree No. 81/2008 on the implementation of Article 1 of Act 123/2007 relating to health and safety in the workplace.

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 2004.
1163. As we will see below, 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. 137 and ILO Convention No. 152. 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 2008. 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 diverse.

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

1370 See infra, para 1182.
1372 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 63ª, della 64ª e della 65ª sessione della Conferenza generale.

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 agreement.\footnote{Burroni, L. and Pedaci, M., \textit{Sector-level bargaining and possibilities for deviations at company level: Italy}, Dublin, Eurofound, 2011, \url{http://www.eurofound.europa.eu/pubdocs/2010/876/en/1/EF10876EN.pdf}, 2-3.}

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 agreements.\footnote{See Pedersini, R., “Intersectoral agreement on representativeness heals rift”, \textit{Eironline} 9 January 2012, \url{http://www.eurofound.europa.eu/eiro/2011/08/articles/it1108029i.htm}.}

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 intensity.\footnote{Burroni, L. and Pedaci, M., \textit{Sector-level bargaining and possibilities for deviations at company level: Italy}, Dublin, Eurofound, 2011, \url{http://www.eurofound.europa.eu/pubdocs/2010/876/en/1/EF10876EN.pdf}, 1-2.}

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 company,\footnote{The ISFORT report contains the following results:} but another survey shows that it occurs in almost all port companies.\footnote{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?

- Yes/Yes, but only in my company: 84%
- Yes: 16%
- No/I don’t know: 8%

What is the frequency of this type of bargaining in the undertakings present in the port?

- Rare: 7%
- Limited to a few sectors: 1%
- Quite frequent: 12%
- Very frequent: 17%
- Once a year: 9%
- Twice or more a year: 20%

On average, what is the impact of this form of bargaining on the overall remuneration of the employees?

- Very large (> 50% of salary): 9%
- Large (about 50% of salary): 3%
- Significant (about 30% of salary): 17%
- Insignificant (about 20% of salary): 12%
- Marginal (about 10% of salary): 12%
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 developments. 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 Rome and that the origin of Genoa’s current port labour pool dates back to at least 1340, when the Compagnia dei Carava...
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 Navigazione) which was enacted in 1942. Its provisions on port labour remained in force until 1994.\footnote{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, \url{http://dspace.unive.it/bitstream/10579/925/2/Raffaelli_955317_tesi.pdf}, 8-23.}

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, transhipment, 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)\footnote{Querci, F.A., Diritto della navigazione, Padua, CEDAM, 1989, 174-176; Campanilla, M., Le operazioni portuali, Bologna, Bonomo, 2004, 36.}.

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\footnote{Raffaelli, P.F., La somministrazione di lavoro portuale, doctoral thesis, Ca’ Foscari University of Venice, 2010, \url{http://dspace.unive.it/bitstream/10579/925/2/Raffaelli_955317_tesi.pdf}, 10-11.}. 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 nationality\footnote{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.}.

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 members\footnote{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.}. The possibility of granting exceptions to the legal monopoly of the compagnie was only applied to berths of petrochemical or steel factories\footnote{Raffaelli, P.F., La somministrazione di lavoro portuale, doctoral thesis, Ca’ Foscari University of Venice, 2010, \url{http://dspace.unive.it/bitstream/10579/925/2/Raffaelli_955317_tesi.pdf}, 12.}.

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
wholly, or largely, controlled by the port authorities. 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 cycle. However, this provision did not seem to have any legal basis and some authors considered it ultra vires.

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 stakeholders. 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 containerisation. 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 State. 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
Court of Justice, which in 1991 issued its landmark Merci judgment 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 Genoa. 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 purpose.

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 Genoa. Siderurgica and the European Commission also noted that the dock work

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1401 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 transhipment of one unit varied between 110,000.00 LIT (about 56.00 EUR) and 560.00 LIT (about 29.00 EUR).
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
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
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.
and export operations as a whole in the Member State concerned, that market may be regarded 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 TFEU. The Italian competition authority, for its part, issued several opinions with regard to competitive distortions in Italian ports, which were aimed at legislative reform.

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.

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1172. The reform of the Italian port labour regime was laid down in the abovementioned Act No. 84 of 28 January 1994. This Act repealed the abovementioned Articles of the Shipping 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 Commission 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, 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

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1404 See supra, para 1161.
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).

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).

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.

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.

1175. As we have mentioned, 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 courts.

**- Regulatory set-up**

1176. Today, Act No. 84/1994 defines “port operations” as “the loading, unloading, transhipment, 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 changed. 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 port. 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 goods.

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1408 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.

1409 See supra, para 1161.


1411 For a thorough discussion of the definition, see Campailla, M., Le operazioni portuali, Bologna, Bonomo, 2004, 31-52.


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 these authorisations is set out in Article 16 of the Act. 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 competition. 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. 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.

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. Their tariffs are made public. No authorisation is required for the handling of liquid petroleum and chemical products.

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 unlashing, 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 these. 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 Tauris, La Spezia, Leghorn, Manfredonia, Marina

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1414 See also Art. 3-5 of Ministerial Decree No. 585/1995.
1416 See also Carbone, S.M. and Munari, F., La disciplina dei porti tra diritto comunitario e diritto interno, Milan, Giuffrè, 2006, 223-227.
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)\textsuperscript{1418}. Port authorities are public bodies enjoying administrative and 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 area\textsuperscript{1419}. These companies are also called \textit{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 potential\textsuperscript{1420}. 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 adopted\textsuperscript{1421}. 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

\textsuperscript{1418} Port authorities for Manfredonia and Trapani were established but wound up.


\textsuperscript{1420} Carbone, S.M. and Munari, F., \textit{La disciplina dei porti tra diritto comunitario e diritto interno}, Milan, Giuffrè, 2006, 212.

services directly to port users. Importantly, both authorised operators and concessionaires may employ their own workforce.

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. 347 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 market.

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 services. 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. 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.

Temporary work providers in ports must be authorised by the port authority as well. In line with the ECJ’s Raso judgment and with the consent of the Commission, the Act provides that temporary port work can only be provided by an undertaking having the provision of temporary port work as its sole activity. 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 labour.

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

1427 See supra, paras 1173.
1428 See supra, para 1174.
1429 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.
on general temporary work agencies, authorised under the Legislative Decree 276/2003 (Art. 17(6)). Interestingly, in its relationship with the general temporary work agency, the temporary port work undertaking or agency is considered to be the client or user company. Except in the case dealt with in Article 17(6), recruitment of port workers via general temporary work agencies is prohibited. 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 possesses, 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)).

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1431 The Legislative Decree 276/2003 repealed the Law 1369/1960 and its general prohibition on the hiring out of workers.
1433 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/allegati/documenti/62-pubblicazioni/62-quaderno_sito01_04.pdf, (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).
1435 See further Carbone, S.M. and Munari, F., La disciplina dei porti tra diritto comunitario e diritto interno, Milan, Giuffrè, 2006, 261-262.
Certain aspects of temporary port labour must be regulated by collective labour agreements (Art. 17(7) of Act No. 84/1994). 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.

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 legislation. 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 purpose. Recently, Act No. 92/2012 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 regulation.

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).

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1439 Legge 28 giugno 2012, n. 92 Disposizioni in materia di riforma del mercato del lavoro in una prospettiva di crescita (Art. 3).

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 training\textsuperscript{1144}, good behaviour, absence of a criminal record, drug and alcohol tests, and/or trade union membership).

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).

\textsuperscript{1144} On training, see \textit{infra}, para 1193 et seq.
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. According to the Italian Association of port terminals Assiterminal, there are currently 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 estimates the total number of port workers at roughly 20,000\textsuperscript{1442}. The trade

\textsuperscript{1442} 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:
unions FILT-CGIL, FIT-CISL and UILtrasporti mention that in ports controlled by a Port Authority, 214 authorised operators, pools and terminal concessionaires operate, who employ 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 Genoa)

<table>
<thead>
<tr>
<th>Year</th>
<th>Port undertakings (since 1994: authorized handlers and concessionaires)</th>
<th>Pools (compagnie portuali, since 1994: temporary workforce providers)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985</td>
<td>6</td>
<td>3,899</td>
<td>3,905</td>
</tr>
<tr>
<td>1990</td>
<td>206</td>
<td>1,487</td>
<td>1,693</td>
</tr>
<tr>
<td>1995</td>
<td>979</td>
<td>698</td>
<td>1,677</td>
</tr>
<tr>
<td>2000</td>
<td>1,533</td>
<td>1,046</td>
<td>2,579</td>
</tr>
<tr>
<td>2001</td>
<td>1,618</td>
<td>1,057</td>
<td>2,675</td>
</tr>
<tr>
<td>2002</td>
<td>1,752</td>
<td>1,008</td>
<td>2,760</td>
</tr>
<tr>
<td>2003</td>
<td>1,817</td>
<td>973</td>
<td>2,790</td>
</tr>
<tr>
<td>2004</td>
<td>1,870</td>
<td>1,104</td>
<td>2,974</td>
</tr>
<tr>
<td>2005</td>
<td>1,740</td>
<td>1,099</td>
<td>2,839</td>
</tr>
<tr>
<td>2006</td>
<td>1,772</td>
<td>1,091</td>
<td>2,863</td>
</tr>
<tr>
<td>2007</td>
<td>2,033</td>
<td>1,125</td>
<td>3,158</td>
</tr>
<tr>
<td>2008</td>
<td>2,144</td>
<td>1,075</td>
<td>3,219</td>
</tr>
<tr>
<td>2009</td>
<td>2,181</td>
<td>1,079</td>
<td>3,260</td>
</tr>
</tbody>
</table>

In 2010, port workers in Ravenna, Naples and Gioia Tauro numbered 1,061, 837 and 1,359 respectively. 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.

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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, UILtransporti). 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 UILtrasporti, 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 union. 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 UILtrasporti 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 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 whole.

1191. Despite the existence of a common national legal framework, the set-up of the port labour market differs widely between individual ports.

Today, 32 of the 44 Italian ports have 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 Savona. In ports with several terminals, pools tend to be bigger. Especially in Ravenna, the temporary port work undertaking still plays a role of prime importance. It often supplies

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1445 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, Éditions législatives, 2004, 250).


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 shifts. Also in Genoa, the pool continues to play its central ‘historical’ role, and, from a national perspective, its size is exceptional. 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 bankrupt and the Port Authority granted a temporary authorisation to Società Minerva Servizi a.r.l. which is owned by the terminal operators and employs the remaining 26 temporary port workers. In 2012, the pool of Leghorn (Agelp – Agenzia di lavoro portuale S.r.l.) encountered serious financial difficulties as well. 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 agencies.

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

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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 basis\(^\text{1456}\).

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 agencies\(^\text{1457}\). 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, 2011\(^\text{1458}\))

<table>
<thead>
<tr>
<th>Number of workers</th>
<th>Ports</th>
</tr>
</thead>
<tbody>
<tr>
<td>more than 100</td>
<td>Genoa, Civitavecchia, Ravenna, Palermo, Savona</td>
</tr>
<tr>
<td>around 90</td>
<td>Cagliari, Naples, Salerno, Venice</td>
</tr>
<tr>
<td>between 30 and 50</td>
<td>Chioggia, Leghorn, Manfredonia, Taranto</td>
</tr>
<tr>
<td>between 15 and 50</td>
<td>Bari, Barletta, Brindisi, Marina di Carrara, Milazzo, Monfalcone, Oristano</td>
</tr>
<tr>
<td>under 15</td>
<td>Ancona(^\text{1459}), Baia, Catania, Gaeta, Imperia, Pescara, Pozzuoli, Piombino, Sant’Antioco</td>
</tr>
</tbody>
</table>

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 is 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.


\(^{1457}\) See infra, para 1224.


\(^{1459}\) The Ancona Port Authority informed us that the pool numbers 6 workers.
Table 65. Number of port workers employed by authorised operators, labour pools and terminal concessionaires in selected Italian ports, 2012 (source: ISFORT\(^{1460}\))

<table>
<thead>
<tr>
<th>Port</th>
<th>Authorised operators</th>
<th>Labour pools</th>
<th>Terminal concessionaires</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trieste</td>
<td>n.a.</td>
<td>25</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>Genoa</td>
<td>676</td>
<td>990</td>
<td>1,541</td>
<td>3,207</td>
</tr>
<tr>
<td>Naples</td>
<td>276</td>
<td>96</td>
<td>465</td>
<td>837</td>
</tr>
<tr>
<td>Gioia Tauro</td>
<td>219</td>
<td>0</td>
<td>1,140</td>
<td>1,359</td>
</tr>
<tr>
<td>Ravenna</td>
<td>n.a.</td>
<td>439</td>
<td>n.a.</td>
<td>622</td>
</tr>
<tr>
<td>Leghorn</td>
<td>615</td>
<td>64</td>
<td>810</td>
<td>1,489</td>
</tr>
<tr>
<td>La Spezia</td>
<td>647</td>
<td>0</td>
<td>727</td>
<td>1,374</td>
</tr>
<tr>
<td>Bari</td>
<td>77</td>
<td>24</td>
<td>0</td>
<td>101</td>
</tr>
<tr>
<td>Palermo</td>
<td>198</td>
<td>110</td>
<td>0</td>
<td>308</td>
</tr>
<tr>
<td>Venice</td>
<td>619</td>
<td>126</td>
<td>671</td>
<td>1,416</td>
</tr>
</tbody>
</table>

Figure 92. Distribution of port workers among authorised operators, labour pools and terminal concessionaires in selected Italian ports, 2012, in per cent (source: ISFORT\textsuperscript{1461})

\begin{itemize}
\item Workers employed by authorised operators (Art. 16)
\item Workers employed by labour pools (Art. 17)
\item Workers employed by terminal concessionaires (Art. 18)
\end{itemize}

Table 66. Modes of operation in port services and distribution of port workers in selected Italian ports, 2012 (source: ISFORT1462)

<table>
<thead>
<tr>
<th></th>
<th>Presence of labour pool</th>
<th>Presence of terminal concessionaires</th>
<th>Dominance of authorised operators / Irrelevance of labour pool</th>
<th>Presence of public quays</th>
<th>Liner services (share of throughput)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trieste</td>
<td>x</td>
<td></td>
<td>x</td>
<td>x</td>
<td>n.a.</td>
</tr>
<tr>
<td>Genoa</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td>n.a.</td>
</tr>
<tr>
<td>Naples</td>
<td>x</td>
<td></td>
<td></td>
<td>x</td>
<td>51%</td>
</tr>
<tr>
<td>Gioia Tauro</td>
<td>x</td>
<td></td>
<td></td>
<td>x</td>
<td>100%</td>
</tr>
<tr>
<td>Ravenna</td>
<td>x</td>
<td></td>
<td></td>
<td>x</td>
<td>14%</td>
</tr>
<tr>
<td>Leghorn (Agency)</td>
<td>x</td>
<td></td>
<td></td>
<td>x</td>
<td>67%</td>
</tr>
<tr>
<td>La Spezia</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td>n.a.</td>
</tr>
<tr>
<td>Bari</td>
<td>x</td>
<td></td>
<td></td>
<td>x</td>
<td>67%</td>
</tr>
<tr>
<td>Palermo</td>
<td>x</td>
<td></td>
<td></td>
<td>x</td>
<td>82%</td>
</tr>
<tr>
<td>Venice</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td>7%</td>
</tr>
</tbody>
</table>

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 role1463.

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Table 67. Overview of port traffic, port service providers, workforce and operations in 10 Italian ports, 2012 (source: ISFORT\textsuperscript{1464})

<table>
<thead>
<tr>
<th></th>
<th>Trieste</th>
<th>Genoa</th>
<th>Naples</th>
<th>Gioia Tauro</th>
<th>Ravenna</th>
<th>Livorno</th>
<th>La Spezia</th>
<th>Bari</th>
<th>Palermo</th>
<th>Venice</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Traffic (distribution in percentages, excluding liquid bulk)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ro-ro</td>
<td>47.8</td>
<td>27.4</td>
<td>41.8</td>
<td>1.5</td>
<td>3.7</td>
<td>49.3</td>
<td>0.0</td>
<td>63.6</td>
<td>94.1</td>
<td>13.0</td>
</tr>
<tr>
<td>Containers</td>
<td>30.4</td>
<td>53.2</td>
<td>27.8</td>
<td>98.0</td>
<td>12.3</td>
<td>34.8</td>
<td>86.2</td>
<td>0.0</td>
<td>0.0</td>
<td>13.2</td>
</tr>
<tr>
<td>Dry bulk</td>
<td>17.4</td>
<td>16.1</td>
<td>30.4</td>
<td>0.5</td>
<td>55.6</td>
<td>4.3</td>
<td>9.2</td>
<td>36.4</td>
<td>0.0</td>
<td>46.3</td>
</tr>
<tr>
<td>General cargo</td>
<td>4.3</td>
<td>3.2</td>
<td>0.0</td>
<td>0.0</td>
<td>28.4</td>
<td>11.6</td>
<td>4.6</td>
<td>0.0</td>
<td>0.0</td>
<td>13.0</td>
</tr>
<tr>
<td>Liner traffic</td>
<td>n.a.</td>
<td>n.a.</td>
<td>51</td>
<td>100</td>
<td>14</td>
<td>67</td>
<td>n.a.</td>
<td>67</td>
<td>82</td>
<td>7</td>
</tr>
</tbody>
</table>

|                |         |       |        |             |         |         |           |      |         |        |
| **Port undertakings** |     |       |        |             |         |         |           |      |         |        |
| Presence of a labour pool (Art. 17) | YES | YES | YES | NO | YES | YES\textsuperscript{1465} | NO | YES | YES |
| Port operators and port service providers (Art. 16)\textsuperscript{1465} | 29 | 12 | 19 | 7 | 5 | 13 | 9 | 8 | 7 | 22 |
| Terminal operators (Art. 18) | 16 | 11 | 7 | 2 | 17 | 15 | 8 | 0 | 0 | 21 |


\textsuperscript{1465} Temporary port work agency.

\textsuperscript{1466} With the exception of the terminal operators (Art. 18).
<table>
<thead>
<tr>
<th></th>
<th>Trieste</th>
<th>Genoa</th>
<th>Naples</th>
<th>Gioia Tauro</th>
<th>Ravenna</th>
<th>Livorno</th>
<th>La Spezia</th>
<th>Bari</th>
<th>Palermo</th>
<th>Venice</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Workforce</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of port</td>
<td>n.a.</td>
<td>3,207</td>
<td>837</td>
<td>1,359</td>
<td>622</td>
<td>1,489</td>
<td>1,374</td>
<td>101</td>
<td>308</td>
<td>1,416</td>
</tr>
<tr>
<td>employees †</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employees of port</td>
<td>n.a.</td>
<td>676 (21%)</td>
<td>276 (33%)</td>
<td>219 (16%)</td>
<td>n.a.</td>
<td>615 (41%)</td>
<td>647 (47%)</td>
<td>77 (76%)</td>
<td>198 (64%)</td>
<td>619 (44%)</td>
</tr>
<tr>
<td>operators and port</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>service providers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employees of the</td>
<td>25</td>
<td>990 (31%)</td>
<td>96 (11%)</td>
<td>-</td>
<td>439 (71%)</td>
<td>64 (4%)</td>
<td>-</td>
<td>24 (24%)</td>
<td>110 (36%)</td>
<td>126 (9%)</td>
</tr>
<tr>
<td>pool</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employees of the</td>
<td>n.a.</td>
<td>1,541 (48%)</td>
<td>465 (56%)</td>
<td>1,140 (84%)</td>
<td>n.a.</td>
<td>810 (54%)</td>
<td>727 (53%)</td>
<td>-</td>
<td>-</td>
<td>671 (47%)</td>
</tr>
<tr>
<td>terminal operators</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average size of</td>
<td>n.a.</td>
<td>140</td>
<td>66</td>
<td>570</td>
<td>n.a.</td>
<td>54</td>
<td>91</td>
<td>-</td>
<td>-</td>
<td>32</td>
</tr>
<tr>
<td>terminal operators</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(number of</td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>employees)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

† Including the employees of port operators and port service providers, labour pools and terminal operators.
<table>
<thead>
<tr>
<th>Operations</th>
<th>Trieste</th>
<th>Genoa</th>
<th>Naples</th>
<th>Gioia Taurro</th>
<th>Ravenna</th>
<th>Livorno</th>
<th>La Spezia</th>
<th>Bari</th>
<th>Palermo</th>
<th>Venice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average size of port undertakings (number of employees)(^{1468})</td>
<td>n.a.</td>
<td>134</td>
<td>31</td>
<td>151</td>
<td>27</td>
<td>51</td>
<td>81</td>
<td>11</td>
<td>39</td>
<td>32</td>
</tr>
<tr>
<td>Frequency index for use of temporary labour</td>
<td>n.a.</td>
<td>2.2</td>
<td>7.7</td>
<td>-</td>
<td>1.4</td>
<td>22.3</td>
<td>-</td>
<td>3.2</td>
<td>1.8</td>
<td>10.2</td>
</tr>
<tr>
<td>Presence of a public dock</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>Percentage of traffic at a public dock</td>
<td>n.a.</td>
<td>-</td>
<td>&lt;10%</td>
<td>1-2%</td>
<td>7%</td>
<td>n.a.</td>
<td>-</td>
<td>100%</td>
<td>100%</td>
<td>-</td>
</tr>
<tr>
<td>Percentage of work contracted out</td>
<td>30-50%</td>
<td>0%</td>
<td>40%</td>
<td>30%</td>
<td>&lt;30%</td>
<td>30-40%</td>
<td>30-50%</td>
<td>0%</td>
<td>0%</td>
<td>30-50%</td>
</tr>
</tbody>
</table>

\(^{1468}\) 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 website.\footnote{5469}

### 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 course\footnote{5470}. The regulations also cover the training of interim port workers under Article 17(6).

**1194.** The aforementioned\footnote{5471} 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 apprenticeships\footnote{5472}.

\footnote{5469} See for example, on the Compagnia Portuale Ravenna, \url{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.


\footnote{5471} See supra, para 1162.

\footnote{5472} 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.
**- 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 training.\(^{1473}\)

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 recruits.\(^{1474}\) Within the Port Authority of Venice, a special Training Committee was set up.\(^{1475}\) 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 course are compulsory and all training must be certified. The port of Leghorn also has training curricula and a training centre using a crane simulator.\(^{1476}\) 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 courses.\(^{1477}\) In July 2012, the Cagliari Port Authority published a a job announcement for trainers.\(^{1478}\)

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;

\[^{1475}\text{See http://www.port.venice.it/en/training-needed-to-work-in-the-port.html.}\]
\[^{1476}\text{See www.globalservice.livorno.it.}\]
- 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 operator.\textsuperscript{1479}

In recent years, employers have given more attention to continued training.\textsuperscript{1480}

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-skilling.\textsuperscript{1481}

_Figure 93. Training plan for new workers at Contship Italia, 2009 (source: Marcucci / Contship Italia)_

<table>
<thead>
<tr>
<th>Workers concerned</th>
<th>Theoretical phase (in hours)</th>
<th>Practical phase (in hours)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Checker Rail / Gate</td>
<td>40</td>
<td>36</td>
</tr>
<tr>
<td>Checker Reefer</td>
<td>40</td>
<td>120</td>
</tr>
<tr>
<td>RMG</td>
<td>40</td>
<td>80</td>
</tr>
<tr>
<td>STS cranes</td>
<td>40</td>
<td>80</td>
</tr>
<tr>
<td>FLT</td>
<td>40</td>
<td>80</td>
</tr>
<tr>
<td>RTG</td>
<td>40</td>
<td>80</td>
</tr>
<tr>
<td>Maintenance</td>
<td>40</td>
<td>160</td>
</tr>
</tbody>
</table>


Companies also provide safety training for their workers (this is the case, for example, at ICO Blg in Gioia Tauro\(^{1485}\)).

### 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)).

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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 recodification 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 company. 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 workplace.

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)).

Finally, it places certain responsibilities with regard to occupational safety on the Social Dialogue Committees.

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.

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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 workers.\textsuperscript{1487}

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”\textsuperscript{1488}.

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 apply\textsuperscript{1489}. 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 prepared\textsuperscript{1490}. It is easy to understand how this situation might cause a number of interpretative difficulties with regard to the interrelation of both legislative decrees\textsuperscript{1491}.

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)\textsuperscript{1492}.


\textsuperscript{1488} See also \url{http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=25052&chapter=9&query=Italy%40ref&highlight=&querytype=booi&context=0}.


\textsuperscript{1491} 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., \textit{La sicurezza sul lavoro nei porti}, in \textit{I Working Papers di Olympus}, 2012, no. 9, \url{http://www.puntosicuro.info/documenti/documenti/120511_WPO_sicurezza_nei_porti.pdf}, 12-13.

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".

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 Viareggio.

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 purposes.


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 Italy. 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 given. 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:

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1496 See further infra, para 1222.
The collected data show that over the past years, both the number and the gravity of accidents have decreased considerably\textsuperscript{1498}. As regards the port of Trieste, where elaborate statistics are maintained, ISFORT collected the following data on the evolution of accidents and days of incapacity\textsuperscript{1499}:


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 terminal\textsuperscript{1500}.

Table 68. Incidence rate of occupational accidents in the port of Gioia Tauro, 2008 (source: ISFORT\textsuperscript{1501})

<table>
<thead>
<tr>
<th>Port undertakings</th>
<th>Number of accidents</th>
<th>Number of workers</th>
<th>Incidence rate (number of accidents per 100 workers)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Container terminal</td>
<td>113</td>
<td>550</td>
<td>20.5</td>
</tr>
<tr>
<td>Automotive terminal</td>
<td>2</td>
<td>49</td>
<td>4.1</td>
</tr>
<tr>
<td>Other port undertakings</td>
<td>18</td>
<td>87</td>
<td>20.7</td>
</tr>
<tr>
<td>Total</td>
<td>133</td>
<td>686</td>
<td>19.4</td>
</tr>
</tbody>
</table>

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 accidents\textsuperscript{1502}. 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

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".

Figure 98. Frequency index of occupational accidents in the port of Genoa and selected other sectors, 1980-2006 (source: Fabiano, Currò, Reverberi and Pastorina)

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

Italy. 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 spine.

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 lawsuits 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”. 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 position.

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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 firms\(^\text{[1509]}\).

Following a complaint by the Genoese Compagnia Portuale Pietro Chiesa Soc.coop.ri., 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 dismissed\(^\text{[1510]}\).

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 manner\(^\text{[1511]}\). Each port has developed its own organisational model tailored to specific local circumstances\(^\text{[1512]}\). Historical factors continue to play a decisive role, in many ports the old compagnie portuali remained in place, and trade union consciousness is still strong\(^\text{[1513]}\).

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 liberalisation\(^\text{[1514]}\).

In its 2012 survey, ISFORT reiterated that organisational patterns continue to diverge widely among Italian ports. As we have seen\(^\text{[1515]}\), 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

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\(^{1509}\) See supra, para 1173.


\(^{1511}\) Ghio, L. and Moglia, F., "Il lavoro portuale nel porto di Genova: situazione attuale e prospettive di sviluppo", Qua


\(^{1515}\) See supra, paras 1191-1192.
roles of the authorised operators and the pool overlap. Legal constructs (such as Lettera di Commitenza 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 context.\textsuperscript{1516}

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 sector\textsuperscript{1517}. 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 warehouses\textsuperscript{1518}. 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 frequent\textsuperscript{1519}.

\textsuperscript{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.
<table>
<thead>
<tr>
<th>Ports</th>
<th>Governance</th>
<th>Operational model</th>
<th>Critical issues</th>
<th>Strengths</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ravenna</td>
<td>- Good balance between companies, labour and authorities</td>
<td>- High number of terminal operators (Art. 18), limited presence of authorised port operators (Art. 16), leading role of the pool (Art. 17)</td>
<td>- High use of temporary labour which performs dock work in conditions similar to contracting out</td>
<td>- Internal cohesion between entities - High operational integration</td>
</tr>
<tr>
<td></td>
<td>- Needs of local stakeholders are reconciled</td>
<td>- Low frequency of contracting out</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trieste</td>
<td>- 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</td>
<td>- 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</td>
<td>- 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</td>
<td>- Presence of free port zones (punti franchi) - High level of professionalism in the handling of non-unitsed cargo</td>
</tr>
<tr>
<td>Venice</td>
<td>- Climate of conflict - Business logic prevails, though restricted through regulatory action by the Port Authority</td>
<td>- 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</td>
<td>- Opposing sides: on the one hand the pool, on the other the terminal operators and port services companies</td>
<td>- Good organisational distribution of dock work - Moderate operational fragmentation</td>
</tr>
<tr>
<td>Gioia Taura</td>
<td>- New port, with little history, having limited contact with and impact on its hinterland - Born from a</td>
<td>- “Quasi-monopoly” position of the main terminal operator - No pool (Art. 17) present and port service providers</td>
<td>- High dependence of the port on the main terminal operator - Provision of temporary workforce is concealed in</td>
<td>- Although this is a public model, the port’s employment policy is strongly influenced by the port operators</td>
</tr>
</tbody>
</table>

Figure 99. Main issues in the organisation of port services and the port labour market in 10 Italian ports, 2012 (source: ISFORT)

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<table>
<thead>
<tr>
<th>Location</th>
<th>Business Idea</th>
<th>Terms of Dependence</th>
<th>Contractual Relationships</th>
</tr>
</thead>
<tbody>
<tr>
<td>La Spezia</td>
<td>Strong private focus, tempered by incisive regulatory action by the Port Authority</td>
<td>Practically a “single player” port without a temporary work pool</td>
<td>Absence of a pool affects functioning of authorised port operators (Art. 16)</td>
</tr>
<tr>
<td>Genoa</td>
<td>Low integration between companies, labour and authorities</td>
<td>Central role of the pool (Art. 17)</td>
<td>High use of temporary labour</td>
</tr>
<tr>
<td>Bari</td>
<td>Port Authority performs regulatory role</td>
<td>Only public docks (absence of terminal operators (Art. 18))</td>
<td>Competition between operators in the same segment of traffic</td>
</tr>
<tr>
<td>Naples</td>
<td>Conflict between the old and the new goes on</td>
<td>Limited presence of terminal operators (Art. 18) and high number of port service companies</td>
<td>Use of the pool (Art. 17) in some sectors only</td>
</tr>
<tr>
<td>Leghorn</td>
<td>General conservative attitude</td>
<td>Marginal role of the pool (Art. 17 agency – voluntary consortium)</td>
<td>Surplus of workers</td>
</tr>
</tbody>
</table>

- Business approach
- Reason in the organisation of dock work
- Prominent regulatory role of the Port Authority
- 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
- 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
- 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)
- 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
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 community\textsuperscript{1521}. 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

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words, the exclusive right of the compagnie only applies to those services for which the port users effectively rely on port workers. As we have seen, 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 Instance.

As we have explained, 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 down. 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 conclusion.

In Venice, the local Port Labour Ordinance expressly envisages the possibility of lashing and unlashung being performed by terminal workers, pool workers or the ship’s crew. 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

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1523 See supra, para 1171.
1524 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.
1525 See supra, para 1181.
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 above\textsuperscript{1529}, 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 agency\textsuperscript{1530}. 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/EC\textsuperscript{1531}. To our knowledge, the Italian transposition instrument brought no change to the existing regulation of port labour\textsuperscript{1532}.

Next, tariffs for the provision of temporary port work to third parties must be approved by the port authority\textsuperscript{1533}. As a result, the contracting parties are not free to bargain on prices. On the

\textsuperscript{1529} See \textit{supra}, para 1182.
\textsuperscript{1531} On the latter provision, see \textit{supra}, para 225 et seq.
\textsuperscript{1533} For an example of such a tariff, see \url{http://www.port.ravenna.it/work/doc_alleg/DCP15_08.pdf}. 
other hand, the current system is said to offer terminal operators cost certainty as well as regularity.

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 discretion, 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 undertaking. 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)).
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 hours\(^{1538}\). 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 employers\(^{1539}\). 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 above\(^{1540}\).

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 undertakings\(^{1541}\). 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.


\(^{1540}\) See supra, para 1182.

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 all\textsuperscript{1542}. 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 explained\textsuperscript{1543}, 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 end\textsuperscript{1544}.


\textsuperscript{1543} See supra, para 1208.

\textsuperscript{1544} 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
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 companies.

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 pools. 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 demand.

As we have mentioned above, 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.

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.
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 firm.\(^{1549}\)

The Institute summarised its findings in the following tables:

Figure 100. Impact of the Italian Port Reform Act No. 84/94 as judged by stakeholders, 2012 (source: ISFORT)\textsuperscript{1550}

The Act 84/94 has been a success from the point of view of:

- **The law**
  - Absolutely, because it has fundamentally changed the internal organisational model, with a positive influence on the performance of the port system: 39 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

- **Economics**
  - 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)

- **Labour organisation**
  - 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)

- **Other**

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Has the reorganisation of port labour, in your opinion, contributed to a competitive revival of the Italian ports?

- Yes, it has allowed the port to get out of a rigid model of labour organisation, making it more flexible and able to compete in...
- No, it has made the situation worse (9%)
- It has not produced any significant change (24%)
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: ISFORT)*

**Should the Act No. 84/94 be updated with regard to the organisation of port labour?**

- 38%: It should be totally revised
- 26%: It should be revised only partially
- 30%: It should only be implemented
- 4%: There is no need for further legislative action or implementation
- 2%: Other (*)

(*) Introduction of greater liberalisation of the organisational model of companies

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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: ISFORT)*

Impact of the application of the national collective labour agreement for ports on:

<table>
<thead>
<tr>
<th></th>
<th>Very positive</th>
<th>Positive</th>
<th>Insignificant</th>
<th>Negative</th>
<th>Very negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Companies</td>
<td>7</td>
<td>26</td>
<td>11</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Workers</td>
<td>9</td>
<td>35</td>
<td>4</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Port competitiveness</td>
<td>4</td>
<td>20</td>
<td>20</td>
<td>6</td>
<td></td>
</tr>
</tbody>
</table>

Still according to ISFORT, most stakeholders judge the current training level of port workers reasonable.


Figure 103. Appraisal of the professional training level among Italian port workers by stakeholders, 2012 (source: ISFORT\textsuperscript{1554})

Assessment of vocational training

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good</td>
<td>18%</td>
</tr>
<tr>
<td>Sufficient</td>
<td>22%</td>
</tr>
<tr>
<td>Fair</td>
<td>56%</td>
</tr>
<tr>
<td>Insufficient</td>
<td>4%</td>
</tr>
<tr>
<td>Grossly insufficient</td>
<td>0%</td>
</tr>
</tbody>
</table>


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
suffocate the pool and inflate the price of temporary work.\textsuperscript{1555} Also, ISFORT reports that, according to its interviewees, port authorities tend to become tangled up in red tape and lobbying.\textsuperscript{1556}

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 \textit{Merci} and \textit{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 ports.\textsuperscript{1557}

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,
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 workers.1558

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

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services. Nevertheless, the unions judge the relationship with employers satisfactory. As we 
have explained\textsuperscript{1559}, unemployment benefit for pool workers has been introduced by Act No. 
92/2012.

\textbf{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.

\textbf{1238.} Assiterminal believes that guidelines concerning maximum working time (regular time and 
overtime, daily and weekly) could be adopted at EU level.

\textbf{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 objectives\textsuperscript{1560}.

Responding to our questionnaire, the unions FILT-CGIL, FIT-CISL and Ultrasporti 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.

\textbf{1240.} In its assessment of Italy's 2012 national reform programme and stability programme, the 
European Commission the European Commission stated:

\emph{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}\textsuperscript{1561}.

\textsuperscript{1559} See supra, para 1220.
\textsuperscript{1560} See Ministère de l'emploi, du travail et de la cohésion sociale, \emph{La négociation collective en 
\textsuperscript{1561} European Commission, \textit{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, 
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 levels. It will have 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 modification.

1562 See lastly Art. 36 of Decreto Legge 24 gennaio 2012, n. 1, Disposizioni urgenti per la concorrenza, lo sviluppo delle infrastrutture e la competitività.

1563 See various consecutive proposals in Parliamentary documents, Senate, XVI Legislatura, No. 143, No. 263 and No. 754.
9.11.8. Synopsis

### SYNOPSIS OF PORT LABOUR IN ITALY

#### LABOUR MARKET

<table>
<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Some 13 main ports</td>
<td>• <em>Lex specialis</em> (Act of 1994), applicable in all ports</td>
<td>• Differences between ports as to implementation of 1994 Act and organisation of labour market</td>
</tr>
<tr>
<td>• Landlord model</td>
<td>• Party to ILO C137</td>
<td>• Exclusive right of Pool Companies to supply temporary work</td>
</tr>
<tr>
<td>• 478m tonnes</td>
<td>• National CBA and company CBAs</td>
<td>• Fixed tariffs of Pool Companies approved by port authority</td>
</tr>
<tr>
<td>• 5th in the EU for containers</td>
<td>• Several, largely successful, reforms since 1994</td>
<td>• Influence of port operators and unions on decision-making by port authorities</td>
</tr>
<tr>
<td>• 14th in the world for containers</td>
<td>• 3 categories of port workers</td>
<td>• Still some nepotism</td>
</tr>
<tr>
<td>• Between 214 and 400 employers</td>
<td>(1) Workers employed by authorised port operators</td>
<td>• Factual ban on self-handling (locally)</td>
</tr>
<tr>
<td>• Between 11,615 and 18,000 port workers</td>
<td>(2) Workers employed by terminal concessionaires</td>
<td>• Ban on temporary agency work</td>
</tr>
<tr>
<td>• Trade union density: 55%</td>
<td>(3) Pool workers employed by local Pool Company holding exclusive right to supply temporary labour</td>
<td>• Doubts over compatibility with EU law</td>
</tr>
<tr>
<td></td>
<td>• All workers are registered by port authority</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Authorisation for self-handling possible</td>
<td></td>
</tr>
</tbody>
</table>

#### QUALIFICATIONS AND TRAINING

<table>
<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Training centres run by port authorities or pools</td>
<td>• Law requires training and certification of all workers</td>
<td>• No specific issues</td>
</tr>
<tr>
<td>• Company-based training</td>
<td>• Pools must provide training</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Provisions in national CBA</td>
<td></td>
</tr>
</tbody>
</table>

#### HEALTH AND SAFETY

<table>
<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>• No national accident statistics</td>
<td>• Specific national regulations on port safety</td>
<td>• No national system for collection and analysis of accident statistics</td>
</tr>
<tr>
<td>• Local monitoring programmes</td>
<td>• Party to ILO C152</td>
<td>• High accident rates</td>
</tr>
<tr>
<td>• Scattered data suggest higher accident rates than in other industries</td>
<td>• Provisions in national CBA and local MOUs</td>
<td></td>
</tr>
</tbody>
</table>

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1564 Throughput figures relate to maritime traffic for 2011. Container throughput ranking is for 2010. ‘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 system

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 2011, the gross weight of seaborne goods handled in Latvian ports was about 68.8 million tonnes. Latvian container ports ranked 20th in the EU and 90th in the world in 2010.

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


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1567 Likums par ostām. Likums par ostām.
1568 Rīgas brīvostas likums.
1569 Ventspils brīvostas likums.
1570 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 2001\textsuperscript{1571}.

1249. Occupational health and safety is governed by, \textit{inter alia}, the Labour Protection Act of 20 June 2001\textsuperscript{1572} and the State Labour Inspectorate Act of 19 June 2008\textsuperscript{1573}. 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 carriers\textsuperscript{1574}.

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.

\textsuperscript{1571} \textit{Darba likums}.
\textsuperscript{1572} \textit{Darba aizsardzības likums}.
\textsuperscript{1573} \textit{Valsts darba inspekcijas likums}.
\textsuperscript{1574} \textit{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\textsuperscript{1575}. 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 Latvia\textsuperscript{1576}. 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). This union reports that it has about 800 port workers among its members, which would result in a unionisation degree of approximately 53 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.

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 15 per cent\textsuperscript{1577}.

\textsuperscript{1576} 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>
<thead>
<tr>
<th>Year</th>
<th>Cargo handling</th>
<th>Storage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>6,990</td>
<td>1,153</td>
</tr>
<tr>
<td>1998</td>
<td>6,790</td>
<td>1,125</td>
</tr>
<tr>
<td>1999</td>
<td>6,478</td>
<td>1,387</td>
</tr>
<tr>
<td>2000</td>
<td>6,315</td>
<td>1,136</td>
</tr>
<tr>
<td>2001</td>
<td>6,166</td>
<td>1,471</td>
</tr>
<tr>
<td>2002</td>
<td>6,644</td>
<td>1,378</td>
</tr>
<tr>
<td>2003</td>
<td>6,564</td>
<td>1,564</td>
</tr>
<tr>
<td>2004</td>
<td>6,954</td>
<td>1,771</td>
</tr>
</tbody>
</table>

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 mentioned\textsuperscript{1578}, 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.

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.

\textsuperscript{1578} See supra, para 1249.
Table 70. Number of occupational accidents in water transport and warehousing and support for transportation activities in Latvia, 2008-2011 (source: State Labour Inspectorate)

<table>
<thead>
<tr>
<th>Year</th>
<th>H50 Water transport</th>
<th>H52 Warehousing and support activities for transportation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Serious</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>2009</td>
<td>11</td>
<td>1</td>
</tr>
<tr>
<td>2010</td>
<td>13</td>
<td>1</td>
</tr>
<tr>
<td>2011</td>
<td>4</td>
<td>1</td>
</tr>
</tbody>
</table>

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 either. There are indications that self-handling is not allowed in Latvian ports. 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.

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1580 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.
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.

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.

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).
In 2012, an ITF coordinator added that wages of port workers in Latvian ports remain very low. 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 companies. 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 issues.

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”. 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

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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. Synopsis

## SYNOPSIS OF PORT LABOUR IN LATVIA

### Labour Market

**Facts**
- 3 main ports
- Landlord model
- 69m tonnes
- 20th in the EU for containers
- 90th in the world for containers
- 58 employers
- Appr. 1,500 port workers
- Trade union density: 36-53%

**The Law**
- No *lex specialis*
- 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

**Issues**
- Reluctance of employers to cooperate with unions
- Ban on temporary agency work (?)
- Union advocates ratification of ILO C137

### Qualifications and Training

**Facts**
- Company-based training only

**The Law**
- No national requirements on skills and competences

**Issues**
- Lack of training
- Union advocates national training system

### Health and Safety

**Facts**
- No national accident statistics on port labour

**The Law**
- No specific regulations
- No Party to ILO C32 or C152

**Issues**
- Lack of specific statistics
- Union advocates ratification of ILO C152

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1584 Throughput figures relate to maritime traffic for 2011. Container throughput ranking is for 2010. *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 system

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 2011, the gross weight of seaborne goods handled in Lithuanian ports was about 45.5 million tonnes. As for container throughput, Lithuanian ports ranked 19th in the EU and 86th in the world in 2010.

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.

For unknown reasons, Lithuanian stakeholders seemed rather reluctant to supply information and to double-check the data below, so some caution is warranted.

9.13.2. Sources of law

The main legal instrument on port management is the Klaipėda State Seaport Act No. I-1340 of 16 May 1996. It sets out a duty on all port-based enterprises to ensure safety of work but contains no further rules on port labour.


See infra, para 1298.
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 Communications\textsuperscript{1589}. 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)\textsuperscript{1590}.

1282. Health and safety are governed by the Occupational Safety and Health Act (Act No. IX-1672 of 1 July 2003)\textsuperscript{1591}.

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 2005\textsuperscript{1592}.

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 Klaipėda as a whole.

\textsuperscript{1589} Lietuvos Respublikos Susisiekimo Ministerijos Įsakymas (1997 m. liepos 7 d. Nr. 264 Dėl Klaipėdos Valstybinio Jūrų Uosto Naudojimo Taisyklių Patvirtinimo).

\textsuperscript{1590} Lietuvos Respublikos Darbo Kodeksas.

\textsuperscript{1591} Darbuotojų Saugos Ir Sveikatos (DSS) Įstatymas.

\textsuperscript{1592} Lietuvos Respublikos Saugios laivybos įstatymo pakeitimo įstatymas Nr. X-116; Susisiekimo ministro 2004 sausio 15 d. Įsakymas 3-24 Dėl Saugaus sausakrūvių laivyų pakrovimo ir išskrovimo 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 practice. 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.

1593 See also Blaziene, I., "Lithuania>: Temporary agency work and collective bargaining in the EU", 19 December 2008, http://www.europarl.europa.eu/RegData/etudes/报告/2008/491047/IPOL-REGD-2008-0109EN.pdf, 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 Klaipėda. 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. The unions informed us that today about 350 port workers are members of a trade union: the Independent Dockers’ Union has 174 members, whereas the union Uostininkas has 106 members. Several individual terminal operators informed us that they currently employ no unionised workers. In Lithuania as a whole, trade union density is probably below 10 per cent. 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).

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).

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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 own. 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, 2002-2011 (source: State Labour Inspectorate)

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of all accidents</th>
<th>Total number of accidents in the loading, unloading and storage sector</th>
<th>Percentage of all accidents</th>
<th>Accidents in handling in the ports and stevedoring sector</th>
<th>Percentage of all accidents</th>
<th>Accidents in other port work</th>
<th>Percentage of all accidents</th>
<th>Accidents in the shipbuilding and repair industry</th>
<th>Percentage of all accidents</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>2,599</td>
<td>282</td>
<td>11</td>
<td>20</td>
<td>0.76</td>
<td>6</td>
<td>0.23</td>
<td>38</td>
<td>1.48</td>
</tr>
<tr>
<td>2003</td>
<td>2,721</td>
<td>267</td>
<td>10</td>
<td>13</td>
<td>0.48</td>
<td>11</td>
<td>0.40</td>
<td>40</td>
<td>1.47</td>
</tr>
<tr>
<td>2004</td>
<td>2,705</td>
<td>289</td>
<td>11</td>
<td>18</td>
<td>0.66</td>
<td>5</td>
<td>0.18</td>
<td>73</td>
<td>2.68</td>
</tr>
<tr>
<td>2005</td>
<td>3,356</td>
<td>456</td>
<td>14</td>
<td>27</td>
<td>0.80</td>
<td>8</td>
<td>0.23</td>
<td>62</td>
<td>1.84</td>
</tr>
<tr>
<td>2006</td>
<td>3,580</td>
<td>521</td>
<td>15</td>
<td>11</td>
<td>0.30</td>
<td>10</td>
<td>0.27</td>
<td>68</td>
<td>1.89</td>
</tr>
<tr>
<td>2007</td>
<td>3,679</td>
<td>561</td>
<td>15</td>
<td>34</td>
<td>0.92</td>
<td>14</td>
<td>0.38</td>
<td>49</td>
<td>1.33</td>
</tr>
<tr>
<td>2008</td>
<td>3,328</td>
<td>477</td>
<td>14</td>
<td>28</td>
<td>0.84</td>
<td>16</td>
<td>0.48</td>
<td>47</td>
<td>1.41</td>
</tr>
<tr>
<td>2009</td>
<td>2,092</td>
<td>287</td>
<td>14</td>
<td>20</td>
<td>0.96</td>
<td>10</td>
<td>0.47</td>
<td>55</td>
<td>2.63</td>
</tr>
<tr>
<td>2010</td>
<td>2,356</td>
<td>357</td>
<td>15</td>
<td>22</td>
<td>0.93</td>
<td>4</td>
<td>0.17</td>
<td>30</td>
<td>1.27</td>
</tr>
<tr>
<td>2011</td>
<td>2711</td>
<td>416</td>
<td>15</td>
<td>14</td>
<td>0.51</td>
<td>7</td>
<td>0.26</td>
<td>26</td>
<td>0.96</td>
</tr>
</tbody>
</table>
Table 72. Fatal and non-fatal accidents in port work in Lithuania, 2002-2011 (source: State Labour Inspectorate) (works at the port)

<table>
<thead>
<tr>
<th>Year</th>
<th>Accidents in handling in the port and stevedoring sector</th>
<th>Accidents in the shipbuilding and repair industry</th>
<th>Accidents in other port work</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Non-fatal accidents</td>
<td>Percentage of all non-fatal accidents</td>
<td>Fatal accidents</td>
</tr>
<tr>
<td>2002</td>
<td>20</td>
<td>0.79</td>
<td>0</td>
</tr>
<tr>
<td>2003</td>
<td>23</td>
<td>0.88</td>
<td>0</td>
</tr>
<tr>
<td>2004</td>
<td>17</td>
<td>0.65</td>
<td>1</td>
</tr>
<tr>
<td>2005</td>
<td>27</td>
<td>0.83</td>
<td>0</td>
</tr>
<tr>
<td>2006</td>
<td>10</td>
<td>0.28</td>
<td>1</td>
</tr>
<tr>
<td>2007</td>
<td>33</td>
<td>0.92</td>
<td>1</td>
</tr>
<tr>
<td>2008</td>
<td>26</td>
<td>0.80</td>
<td>2</td>
</tr>
<tr>
<td>2009</td>
<td>20</td>
<td>0.97</td>
<td>0</td>
</tr>
<tr>
<td>2010</td>
<td>22</td>
<td>0.95</td>
<td>0</td>
</tr>
<tr>
<td>2011</td>
<td>11</td>
<td>0.41</td>
<td>3</td>
</tr>
</tbody>
</table>
Table 73. Fatal occupational accidents in Lithuania by economic activity, 2002-2011 (source: State Labour Inspectorate)

<table>
<thead>
<tr>
<th>Economic activity</th>
<th>Fatal accidents at work</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2008 Percentage of all fatal accidents</td>
</tr>
<tr>
<td>Total</td>
<td>81</td>
</tr>
<tr>
<td>Forestry</td>
<td>2</td>
</tr>
<tr>
<td>Agriculture</td>
<td>7</td>
</tr>
<tr>
<td>Construction</td>
<td>21</td>
</tr>
<tr>
<td>Transport, storage and communication</td>
<td>23</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>13</td>
</tr>
<tr>
<td>Other activity</td>
<td>15</td>
</tr>
</tbody>
</table>
Table 74. Non-fatal occupational accidents in Lithuania by economic activity, 2002-2011 (source: State Labour Inspectorate)

<table>
<thead>
<tr>
<th>Economic activity</th>
<th>2008 year</th>
<th>Percent of all non-fatal accidents</th>
<th>2009 year</th>
<th>Percent of all non-fatal accidents</th>
<th>2010 year</th>
<th>Percent of all non-fatal accidents</th>
<th>2011 year</th>
<th>Percent of all non-fatal accidents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number</td>
<td>3,247</td>
<td>2,043</td>
<td>2,306</td>
<td>2,660</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forestry</td>
<td>28</td>
<td>0.86</td>
<td>23</td>
<td>1.1</td>
<td>31</td>
<td>1.34</td>
<td>26</td>
<td>0.97</td>
</tr>
<tr>
<td>Agriculture</td>
<td>61</td>
<td>1.87</td>
<td>61</td>
<td>2.9</td>
<td>74</td>
<td>3.2</td>
<td>92</td>
<td>3.5</td>
</tr>
<tr>
<td>Construction</td>
<td>590</td>
<td>18.2</td>
<td>257</td>
<td>12.6</td>
<td>288</td>
<td>12.5</td>
<td>362</td>
<td>13.6</td>
</tr>
<tr>
<td>Transport, storage and communication</td>
<td>396</td>
<td>12.2</td>
<td>287</td>
<td>14.0</td>
<td>328</td>
<td>14.2</td>
<td>336</td>
<td>12.6</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>972</td>
<td>29.9</td>
<td>581</td>
<td>28.4</td>
<td>621</td>
<td>26.9</td>
<td>710</td>
<td>26.7</td>
</tr>
<tr>
<td>Other activity</td>
<td>1,200</td>
<td>36.9</td>
<td>834</td>
<td>40.8</td>
<td>964</td>
<td>41.8</td>
<td>1,134</td>
<td>42.6</td>
</tr>
</tbody>
</table>
Table 75. Frequency rate of occupational accidents in Lithuania by economic activity, 2008-2011 (source: State Labour Inspectorate)

<table>
<thead>
<tr>
<th>Economic activity</th>
<th>Fatal accidents at work (per 100,000 employees)</th>
<th>Non-fatal accidents at work (per 100,000 employees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>6.22</td>
<td>4.24</td>
</tr>
<tr>
<td>Forestry</td>
<td>22.92</td>
<td>26.96</td>
</tr>
<tr>
<td>Agriculture</td>
<td>33.15</td>
<td>5.26</td>
</tr>
<tr>
<td>Construction</td>
<td>17.52</td>
<td>12.70</td>
</tr>
<tr>
<td>Transport. storage and communication</td>
<td>23.88</td>
<td>11.57</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>5.96</td>
<td>5.14</td>
</tr>
<tr>
<td>Other activity</td>
<td>1.79</td>
<td>2.05</td>
</tr>
</tbody>
</table>
Table 76. Incidence rate of occupational accidents in Lithuanian ports, 2008-2011 (source: State Labour Inspectorate)\(^{1599}\)

<table>
<thead>
<tr>
<th>Year</th>
<th>All accidents in works in port</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Non-fatal accidents</td>
<td>Incidence rate</td>
</tr>
<tr>
<td>2008</td>
<td>86</td>
<td>652.9</td>
</tr>
<tr>
<td>2009</td>
<td>85</td>
<td>616.7</td>
</tr>
<tr>
<td>2010</td>
<td>56</td>
<td>445.8</td>
</tr>
<tr>
<td>2011</td>
<td>44</td>
<td>340.0</td>
</tr>
</tbody>
</table>

\(^{1599}\) 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-handling\textsuperscript{1599}, 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

\textsuperscript{1599} 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 work\textsuperscript{1600}.

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 issues\textsuperscript{1601}.

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.


## Synthesis of Port Labour in Lithuania

### Labour Market

<table>
<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 ports</td>
<td>No <em>lex specialis</em></td>
<td>Reluctance of employers to cooperate with unions</td>
</tr>
<tr>
<td>Landlord model</td>
<td>No Party to ILO C137</td>
<td></td>
</tr>
<tr>
<td>45m tonnes</td>
<td>Some company CBAs</td>
<td>Unions advocate ratification of ILO C137</td>
</tr>
<tr>
<td>19th in the EU for containers</td>
<td>All permanent and fixed-term workers employed under general labour law</td>
<td></td>
</tr>
<tr>
<td>86th in the world for containers</td>
<td>No registration of workers</td>
<td></td>
</tr>
<tr>
<td>Appr. 15 employers</td>
<td>No hiring halls</td>
<td></td>
</tr>
<tr>
<td>Appr. 2,000 port workers (?)</td>
<td>No ban on temporary agency work</td>
<td></td>
</tr>
<tr>
<td>Trade union density: appr. 20% (?)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Qualifications and Training

<table>
<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Training by official institutions (?)</td>
<td>No national requirements</td>
<td>Insufficient specialisation of workers</td>
</tr>
<tr>
<td>Company-based training</td>
<td>Local port regulations require training for handling of dangerous goods</td>
<td></td>
</tr>
</tbody>
</table>

### Health and Safety

<table>
<thead>
<tr>
<th>Facts</th>
<th>The Law</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>No specific national accident statistics</td>
<td>No Party to ILO C32 or C152</td>
<td>Lack of specific accident statistics</td>
</tr>
<tr>
<td></td>
<td>Safety rules in local port regulations</td>
<td>High accident rates for ‘transport, storage and communication’ as a whole</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Unions advocate ratification of ILO C152</td>
</tr>
</tbody>
</table>

---

*Throughput figures relate to maritime traffic for 2011. Container throughput ranking is for 2010. *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.*