



PORT LABOUR REFORM IN THE EU

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Prof Dr Eric Van Hooydonk
Advocate, Eric Van Hooydonk Lawyers, Antwerp
Professor, University of Ghent



The EU Port Labour Study
2012-2013

General cargo work



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General cargo work



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Ro-ro work



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Container work



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Container work



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Office work



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Unmanned container work



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Logistics work



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Hiring hall



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Training school



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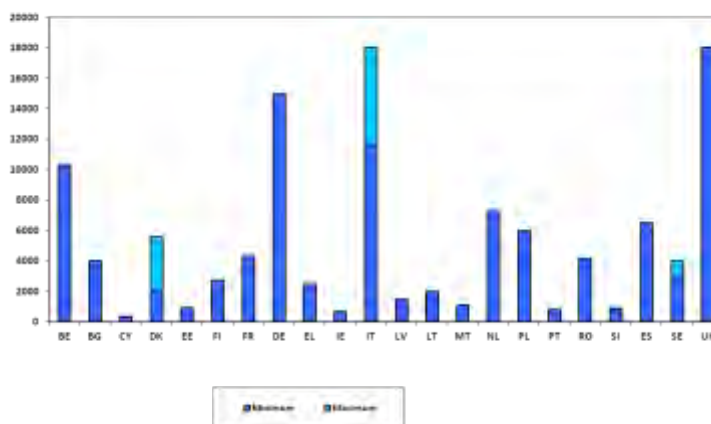
Historical background

- 1200-1800: corporations
- 1800-1900: free hiring
- 1900-1945: regulated pools
- 1945-1980: social security, nationalisation, unitisation, 'perversion' of pool systems
- 1980-current: reforms, gradual deregulation, normalization

Categories of dockers

- Permanent workers employed by the operator
- Pool workers supplied by a monopoly pool
- Occasional workers
- Temporary agency workers ('interim' workers)
- Self-employed

Estimated number of port workers in the EU
by Member State, 2012
(total: appr. 110,000 port workers)



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Share in total employment in port areas:
The port of Antwerp

Category	Employment	Share of port workers s.s.
Port workers sensu stricto	6,000	100 %
Port workers sensu lato	8,000	75 %
Cargo handling	14,500	41 %
Maritime cluster	30,000	20 %
Maritime + non-maritime cluster	60,000	10 %
Total employment incl. indirect effects	143,000	4 %

- Sources: Portius and National Bank of Belgium (2011 – 2012)

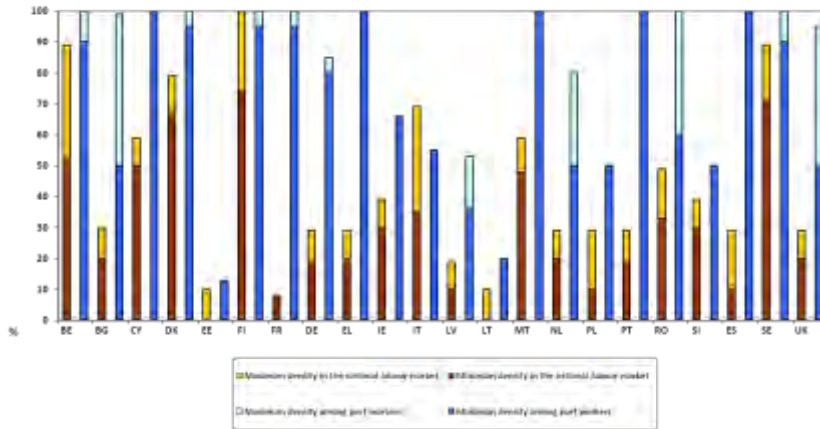
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Estimated trade union density among port workers and all employees in the EU by Member State, 2012



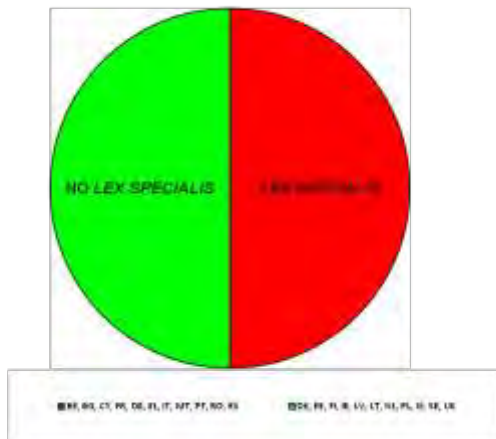
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Leges speciales on employment of port workers in the EU by Member State, 2012

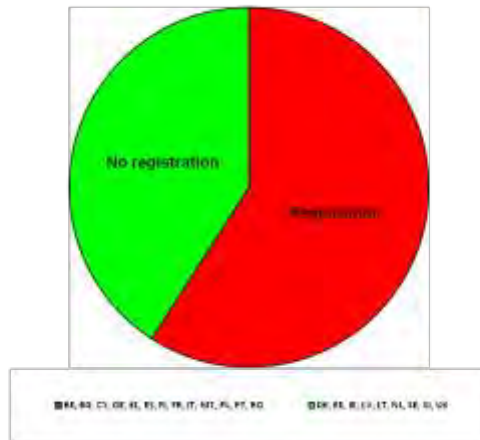


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Registration of port workers in the EU
by Member State, 2012

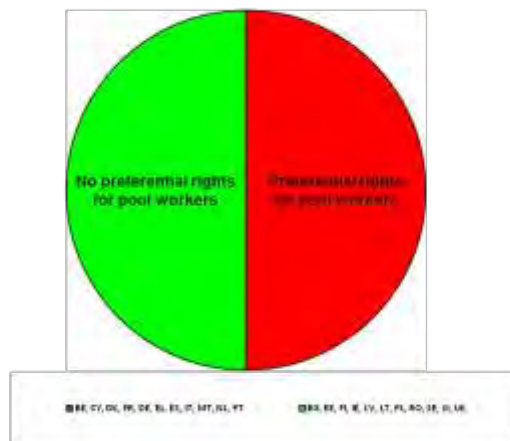


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Exclusive or preferential rights for pool
workers in EU ports by Member State, 2012

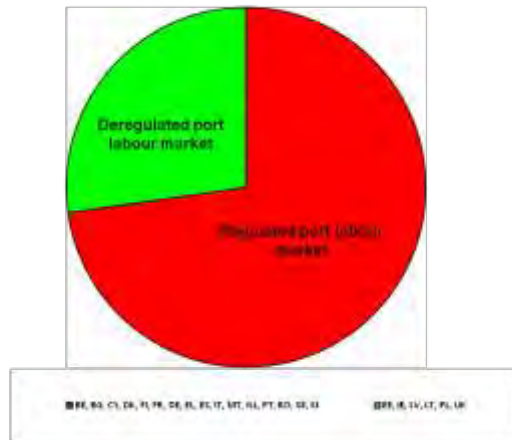


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Regulated and deregulated port labour markets in the EU by Member State, 2012

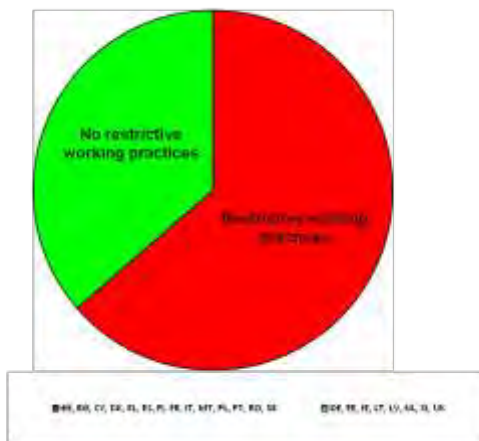


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Reported occurrence of restrictive working practices in port labour in the EU by Member State, 2012

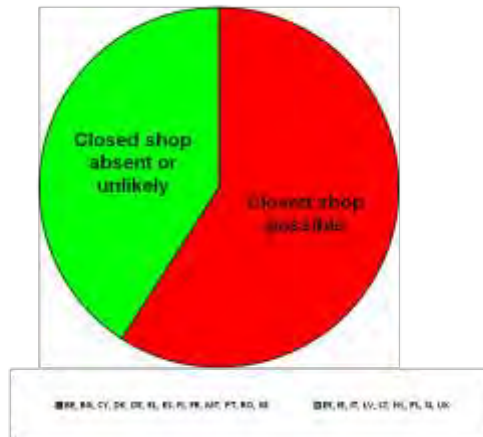


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Possible occurrence of closed shop situations in EU ports by Member State, 2012

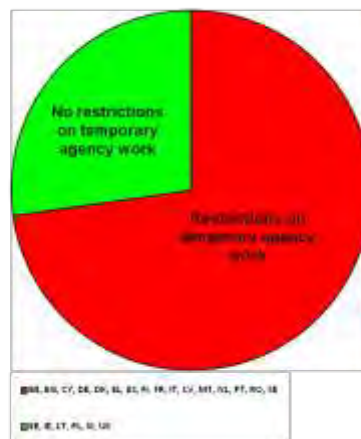


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Prohibitions and restrictions on temporary agency work in port labour in the EU by Member State, 2012



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The general trend

- Port labour ‘old style’
 - Manual work
 - Pool & shift system
 - Specific laws and CBAs
 - Restricted market access
 - Closed shop
 - Restrictive practices
 - Overstaffing
 - High wages
 - Untrained workers
 - High accident rates
 - Poor image
- Port labour ‘new style’
 - High tech work
 - Permanent employment
 - General labour law
 - Free access incl. for TWAs
 - Freedom of association
 - Efficiency
 - Normalized employment
 - Normal wages
 - Multiskilled workers
 - Safer work
 - Normal image

A labour market in transition

- High diversity of organisational patterns across the EU
- Trend towards ‘banalisation’ or ‘normalization’
- Trend towards the abolition of *leges speciales*

Impact of EU Treaty Law

Port labour reform: the broad EU picture

- World Bank Report (1990): port labour can only be reformed through strong external intervention, not through mere collective negotiations
- Drivers of port labour reform in the EU
 - Strong Government leadership
 - UK, FR, NL
 - Intervention by the EC or the ECJ (condition for accession or financial assistance, infringement procedure, preliminary ruling)
 - IT, PT, IE, EL, MT, CY, **BE**, **ES**, NO
 - Fall of the Iron Curtain (and subsequent EU accession)
 - EE, PL, RO, BG, LV

Issues in Spain

- Compulsory participation of operators in Pool Company (SAGEP)
- Exclusive right of SAGEP workers
- Last national CBA partly annulled due to anti-competitive effect
- Obligation to employ 25% permanent workers not observed
- Closed shop and nepotism
- Broad definition of port labour
- Disputes over scope of exclusive right of SAGEP workers
- Detailed classification of workers
- Mandatory manning scales
- Restrictions on self-handling
- Exclusive right of 1 temporary work agency per port
- Restrictive working practices
- Weak employer's authority
- Low acceptance among terminal operators
- Reform no priority for Government

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Issues in Belgium

- Exclusive right of recognized workers and their employers
- Closed shop
- Opacity of recognition procedure (full union control)
- Ban on permanent employment
- Strict sub-classification of workers (ban on multi-tasking)
- Mandatory manning scales
- Inefficient hiring procedures
- Ban on self-handling
- Ban on temporary agency work
- Restrictive working practices
- Legal uncertainty
- Scope extended to logistics
- Low acceptance of system
- Differences between ports
- No major reform to date

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Link between Spanish and Belgian cases

- Spain and Belgium are major EU port countries
- Spain and Belgium are the only Member States where port labour was never fundamentally reformed
- The EC is a crucial ally for those who need change
- For both countries, it's probably now or never
- In Brussels, the cases are politically intertwined

TFEU

- Free movement
- Free competition
- Member State obligations
- Cases
 - *Merci*
 - *Raso*
 - *Becu*
 - *Commission / Spain*
 - *Holship Norge AS / Norsk Transportarbeiderforbund*

Status of ES and BE infringement cases

Timeline of **ES** case

- **09.10.2009**: EC Letter to Government
- 19.05.2010: EU pilot note
- 09.07.2010: EU pilot note
- 25.11.2011: Letter of formal notice
- 27.09.2012: Reasoned opinion
- 14.11.2013: First Court referral
- 11.12.2014: Court judgment declaring the current system illegal
- **28.04.2016: Second Court referral**
- **28.10.2017 (?)**: Second Court judgment imposing **financial penalties** on Government

Timeline of **BE** case

- **07.06.2012**: EU pilot note
- 20.02.2013: EU pilot note
- 22.10.2013: EU pilot note
- 28.03.2014: Letter of formal notice
- 11.12.2015: Informal 'deal' on reform process between Belgian Minister and EU Commissioner
- 30.03.2016: First reform deadline passed without any result
- **15.07.2016 (?)**: **First reform package adopted (or reasoned opinion)**
- **Additional steps ?**

Commission / Spain C-576/13 (1)

- Current system
 - SAGEP = Pool company
 - 100 % of shares held by users
 - Mandatory participation
 - Exclusive right of SAGEPs and SAGEP dockers
 - Restrictions, inefficiencies and subculture despite earlier reforms

Commission / Spain C-576/13 (2)

- Infringement action
- Art 49 TFEU: freedom of establishment
- No discrimination based on nationality, but disincentive for non-Spanish undertakings
- 2 restrictions on freedom:
 - Mandatory participation in SAGEPs
 - Mandatory employment of SAGEP dockers

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Commission / Spain C-576/13 (3)

- No justification
 - ‘Overriding reasons of general interest’
 - Protection of workers
 - Public service and safety
 - Must be appropriate to attain the objectives
 - Not demonstrated by Spain
 - Must be proportional (not beyond what is necessary to attain the objective)
 - Not demonstrated by Spain

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Commission / Spain C-576/13 (4)

- Less restrictive rules may lead to an equivalent result
 - Employment agencies operating in a free labour market
 - Temporary work agencies operating in a free labour market
- Conclusion: infringement

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Holship Norge AS (E-14/15)

- Preliminary ruling by EFTA Court on monopoly pool in Norwegian port of Drammen
- Pool system contrary to
 - Freedom of establishment
 - Competition law
 - Human rights (negative freedom of association)
- ILO C137 cannot go against Treaty rules

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Belgian infringement case (1)

- The EC wants
 - free choice of workers (including of temporary agency workers)
 - no mandatory use of dockers' pools
 - free use of normal permanent employment contracts
 - free composition of gangs by the employer
 - multi-tasking (no submonopolies for subcategories of dockers)
 - free access to the labour market for logistics work

Belgian infringement case (2)

- The Belgian Government proposes
 - Recruitment outside the pool gradually possible (2016-2020)
 - Recognition of dockers by joint commission still needed
 - All operators must still co-finance the pool
 - Minor acceleration of procedure to grant derogations from gang composition rules (union veto)
 - Multi-tasking possible on a voluntary basis by 2020-2023
 - Recognition of logistic workers replaced by safety certificate

Belgian infringement case (3)

- The Belgian proposals are questionable as they -
 - maintain the closed shop
 - maintain the monopoly of employers' associations
 - will change little or nothing
 - introduce additional monopolies and restrictions
 - are incompatible with *Commission / Spain* (C-576/13) and *Holship Norge AS* (E/14/15)
- Consistency of EU policy ?

Impact of the Draft EU Ports Regulation

EU Port Policy

- Green Paper 1997
- Ports Directive 2001 and 2004 (failed)
- Ports Communication 2007
- Ports Regulation 2013 (pending)

Impact of EU Port Regulation

- Proposed EU Port Directives (Port Package I (2001) & II (2004)) covered dock labour but failed in the European Parliament
- Proposed EU Port Regulation (2013): dock labour not covered
- Amendments to proposed EU Port Regulation (2016) by EU Parliament
 - dock labour still not covered but implicit acceptance of restrictive pools and message to European Commission to leave labour reform to EU Social Dialogue
- 2016: Trilogue on final text of Regulation



Conclusions



Many good developments

- Anachronistic monopoly pools are disappearing from the EU
- Dock work can be organized on the basis of general, normal labour law
- The EC achieved successes and is an essential ally for those who need reform
- Excellent and very clear case law on the illegality of monopoly pools is now available



Some worrying developments

- Old habits die hard and dockers' unions cling to their power
- Reform of dock labour can be either genuine or cosmetic
- The EC might have a problem of consistency and equal treatment of Member States