



Eric Van Hooydonk: The EU Seaports Regulation Portius Publishing, 2019, pp. 1307. ISBN 9789463882422

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Is it effectively possible to write a short review of an academic book which extends over more than 1300 pages? Most probably not, in particular, if the intention of the review is to acknowledge the long-lasting (almost historic) efforts which the author had to invest in order to create such a massive work. The author, Professor Eric Van Hooydonk, is based in Belgium (Ghent and Antwerp) and also practices as an advocate. He is undoubtedly recognised as the leading expert on the applicable legal regime for seaports which are geographically situated in the European Union (EU). The EU has hundreds of “bigger” seaports which are commercially relevant (here understood as handling more than one million freight tonnes per year). Given the long histories, diverse geographical positions and major differences in the way European ports are economically and legally organised, those seaports have proved extremely difficult for the EU to address in developing a Union-wide maritime policy and regulation.¹

For this reason, before the review addresses the behemoth legal substance of the legal commentary itself, all readers, particularly those with a non-EU background, should be reminded (in a nutshell) that the political history to agree on an EU-wide Regulation on seaports was enormously painful and protracted. On the one hand, the full negotiation history—all of which is thoroughly discussed in the book—reflects massive political sensitivities on the question of how exactly an EU-wide regulated access to port services should work. But on the other hand, it is also a paradigm example for the steady persistence of the European Commission to drive legal harmonisation efforts forward, no matter how harsh stakeholder backlash and political rejection materialises in the meantime. Effectively, the commentary of Professor Van Hooydonk on Regulation (EU) 2017/352 establishing a framework for the provision of port services and common rules on the financial transparency of ports² represents the

¹The discussion also includes seaports of the European Economic Area (EEA).

²Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of port, OJ L 57, 03 March 2017, pp. 1–18.

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culmination of about 20 years of intra-EU harmonisation efforts, aimed to agree on a Union-wide legal regime for ports. Effectively, the author's 1300-page commentary is the legal essence of a two-decade-long political process which ultimately resulted in the adoption of one EU Regulation of (just) 18 pages.

Almost 20 years before Regulation (EU) 2017/252 was finally passed, the European Commission had adopted a Communication on "Reinforcing Quality Service in Sea-ports: A Key for European Transport". This Communication was later commonly labelled as the first "Port Package". For example, this "Port Package I" had initially attempted to implement an approach on transparency in port dues. Another historic cornerstone of the Communication was a proposal for a "Directive on Market Access to Port Services". In order to remove existing trade barriers, the European Commission had already proposed at this time to combine issues of transparency of financial relations (including State funding) with a highly controversial regime for the granting of concessions to port operators and other providers of port services, accompanied by equally controversial provisions on the right of a vessel's crew to engage in cargo operations by way of "self-handling". The proposal led to an intensive political debate. Ultimately, "Port Package I" and (the only slightly amended) "Port Package II" were openly rejected by the majority of the European Parliament in 2003 and 2004.

The initial criticism had mostly concentrated on the provisions on access to port services. In contrast, the (limited) rules on financial transparency had already received sufficient political backing. After the failure of both "Port Packages", the European Commission expressed its intent to rapidly release guidelines on financial transparency in ports—independently from any aspects of market access to port services. Afterwards, updated initiatives addressed—again—the political desire to reduce legal uncertainties in relation to the access to the market of port services but also to financial transparency in port funding. As part of that approach, the European Commission proposed a "Port Transparency Regulation" in 2013 which—again—proposed to combine measures for the enhancement of access to the market of port services with transparency aspects (both in relation to public funding and port charges). This initiative earned similar criticism and rejection from affected stakeholders as the previous two "Port Packages" had already received before. Nevertheless, the pathway for political compromise over the next years was set to successfully lead to Regulation (EU) 2017/352 as thoroughly analysed in the legal commentary as written by Professor Eric Van Hooydonk.

Given its historic development and legal continuation, Regulation (EU) 2017/352 has also been labelled as "Port Package III". It entered into force in March 2019 and marks a truly important milestone in the EU's quest to improve the efficiency and financial transparency of port services through the introduction of regulated competition as regards pilotage, towing, mooring, passenger reception and cargo handling. The "Port Package III" seeks to establish a stable legal framework for port investment and to contribute to "a climate favorable to investments to develop ports in line with current and future transport and logistics requirements" (see Recital 1 of the Regulation). As such, the third "Port Package" is rather a legal instrument to liberalise and standardise EU-wide port services, especially in the area of financial transparency, and it also aims to tackle the performance gap across some major EU ports. Chapter 1 of the commentary introduces a summary of these political objectives and it also highlights the scope of the whole Regulation in a succinct yet comprehensive manner. Basically, Chapter 1

almost serves as a “book within the book” and any reader who only seeks to read a manageable summary is hereby directed to the very first chapter of the commentary—which also includes the 25 most important questions and answers in relation to Regulation (EU) 2017/352.

Afterwards, Chapter 2 discusses extensively the policy background and the legislative history of “Port Package III” (which has also been introduced in a nutshell above). Chapter 3 (“Legal status”) should be particularly useful for any non-EU reader because it sets out how Regulation (EU) 2017/352 fits into the wider framework of applicable EU law. The scope of application of “Port Package III” is then discussed in Chapter 4. This chapter embodies the key principles of the Regulation, a description of port services, an overview of the concept of maritime ports and an explanation of any applicable special rules. Chapter 5—a major part of the commentary which extends over more than 400 pages—analyses the provision of port services in EU ports. For the interested practitioner, this discussion is definitely at the heart of the “daily” port business because the chapter enumerates the underlying principles behind the Regulation, it describes the minimum requirements for the application of the Regulation; it analyses the (controversial issue of) limitations on the number of port service providers; and it discusses the complicated process of public service obligations (PSOs), the position of internal operators and the position of employee rights. Chapter 5 alone is thus far more expansive than many legal textbooks. In addition, all different sub-areas as discussed in the chapter could be subject to a magnitude of individual legal analyses.

As introduced above, tracing all the way back to historic origins of “Port Package III”, the topic of financial transparency of port operations was comparatively less controversial (at least from an intra-EU perspective). Port autonomy and financial transparency are both analysed in Chapter 6 of the commentary. This also includes the transparency of public port financing. Some more sensitive issues discussed here in detail include the approach to pricing and charges, in particular, the levying of port service/port infrastructure charges (the latter topic is thoroughly discussed over more than 100 pages). Chapter 7 is then entitled “procedural safeguards”. It primarily deals with matters which are vitally important under social protection laws, in particular, user and stakeholder consultation and information, complaints handling and penalties. Finally, Chapter 8 provides a critical assessment of the whole “Port Package III”. It is by far the shortest chapter of the book and concludes with the (accurate) optimistic note that the third “Port Package” has finally introduced a much-needed, harmonised legal framework for EU ports which now provides for much more legal clarity as compared to the decades before 2019.

In sum, Professor Van Hooydonk’s extensive commentary of Regulation (EU) 2017/352 (which rather takes the form of an all-encompassing encyclopedia on the topic) addresses all historic, political, procedural and material aspects of EU port law. It is thus an indispensable tool for anyone interested in the subject (this would include not only port lawyers/regulators but also port service providers, port officials, port/infrastructure finance experts and even shipping executives, representing the client side). If there would be anything left to complain, user criticism would probably relate to how any reader can effectively manage a 1300-pages commentary in practice—because it might be assumed that almost no one will actually read the commentary from “A-Z”. However, the book is also equipped with an excellent (and vast) index and a massive list of helpful academic references. As a result, there is simply no room left for

any kind of complaints. This commentary is as comprehensive, detailed and complete as humanly possible. As such, it can safely be recommended as the “one-stop-shop”—both for practitioners and academics—when it comes to understanding EU seaport law as based on Regulation (EU) 2017/352.

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