

9.14. Malta

9.14.1. Port system

1313. Malta's main seaports are the port of Valletta and Malta Freeport at the port of Marsaxlokk¹⁶⁰³. The port of Valletta is a multi-purpose port. Malta Freeport is a container port where 95 per cent of the throughput consists of transshipment. It also handles considerable volumes of oil. There is little competition between Valletta and Marsaxlokk.

According to Eurostat, Maltese ports handled about 6 million tonnes of maritime traffic in 2010. However, these statistics do not seem to take into sufficient account cargo handled at Malta Freeport, where 2,360,489 TEU were handled in 2011. Based on a ratio of 11 tonnes for 1 TEU, some 26 million tonnes may have been handled at the Freeport, resulting in 32 million tonnes for the country as a whole. For containers, Malta ranked 8th in the EU and 37th in the world in 2010¹⁶⁰⁴.

1314. Maltese ports are operated on the basis of a landlord model. In the port of Valletta, the port authority functions are carried out by Transport Malta, a governmental agency. Malta Freeport Cooperation fulfils the role of landlord and authority over the Freeport zone.

1315. Although several Maltese stakeholders filled out our questionnaire, responses to requests for additional information remained very limited.

¹⁶⁰³ For general information on the ports of Malta, see Dingli, K.F., "Port management and operation in Malta", Presentation at the Third International Annual Conference 'Practice of Maritime Business: Sharing Experience', Odessa, 2007, http://www.murs.com.ua/ru/press/kevin_dingly.pdf; ECOTEC Research & Consulting, *Employment trends in all sectors related to the sea or using sea resources, Country Report - Malta*, European Commission DG Fisheries and Maritime Affairs, 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/employment_trends_en.htm, 6-11; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 370 et seq.; Malta Maritime Authority, *Cargo Handling Terminal Management Concession. Port of Valletta, Malta. Process Document for Persons Interested in Submitting an Expression of Interest*, http://www.doi.gov.mt/en/press_releases/2005/08/pr1153a.doc; for statistics, see http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#; NEA, *Ports and their connections within the TEN-T*, 2010, http://ec.europa.eu/transport/infrastructure/studies/doc/2010_12_ports_and_their_connections_within_the_ten-t.pdf, 126.

¹⁶⁰⁴ Container ranking based on UNCTAD, *Review of Maritime Transport 2011*, New York and Geneva, UNCTAD / UN, 2011, http://unctad.org/en/Docs/rmt2011_en.pdf, 201-203.

9.14.2. Sources of law

1316. The administration of Maltese ports is governed by the Ports and Shipping Act¹⁶⁰⁵ and a body of subsidiary legislation which includes, for example, the Tallying of Goods Regulations¹⁶⁰⁶ and the Ports (Handling of Baggage) Regulations¹⁶⁰⁷.

Transport Malta assumed the functions that were previously exercised by the Malta Maritime Authority, the Malta Transport Authority and the Director and Directorate of Civil Aviation. The powers of Transport Malta are set out in the Authority for Transport in Malta Act¹⁶⁰⁸ which *inter alia* empowers the competent Minister to regulate the performance of port labour services¹⁶⁰⁹. For services provided by Transport Malta or its contractor, rates shall be payable in accordance with the Port Rates Regulations, which also mention rates for port work¹⁶¹⁰.

Malta Freeport, which is a customs-free zone, is managed on the basis of the Malta Freeports Act¹⁶¹¹. Under this Act, Malta Freeport has the exclusive right to grant licences to cargo handling companies operating in Freeports (see in particular Art. 10(1) and (4) of the Act).

1317. Port labour in Malta is governed by the (repeatedly amended) Port Workers Ordinance of 1962¹⁶¹² (Chapter 171 of the Laws of Malta), which is supplemented by the (repeatedly

¹⁶⁰⁵ Act XVII of 1991 to provide for the establishment of ports in Malta, for the registration and licensing of boats and ships and to regulate the use thereof within the territorial waters of Malta and to establish fees and dues and other matters ancillary to shipping (Chapter 352 of the Laws of Malta).

¹⁶⁰⁶ S.L. 499.05.

¹⁶⁰⁷ S.L. 499.42.

¹⁶⁰⁸ Act XV of 2009 to provide for the establishment of a body corporate to be known as the Authority for Transport in Malta which will assume the functions previously exercised by the Malta Maritime Authority, the Malta Transport Authority and the Director and Directorate of Civil Aviation and for the exercise by or on behalf of that Authority of functions relating to roads, to transport by air, rail, road, or sea, within ports and inland waters, and relating to merchant shipping; to provide for the transfer of certain assets to the Authority established by this Act; and to make provision with respect to matters ancillary thereto or connected therewith (Chapter 499 of the Laws of Malta).

¹⁶⁰⁹ Pursuant to Article 43(3), Regulations may deal with, *inter alia*:

(t) *regulating the use of warehouses, wharves, quays, docks, piers and other places in ports on or from which goods are loaded or unloaded and the conduct of persons taking part in the loading or unloading of goods on or from a ship in any port;*

[...]

(x) *regulating matters concerning porters, carriers and other labourers to be employed within the precincts of a port, the issue of licences for the performance of such occupation and any matter concerning the discipline of such personnel;*

Provided that the service of luggage porters shall be subject to the supervision and control of the Authority;

Provided further that no responsibility shall attach to the Government or to the Authority for any loss or damage caused during the embarking, disembarking or transhipment of any luggage by any licensed luggage porter;

[...].

¹⁶¹⁰ Legal Notice 53 of 1969.

¹⁶¹¹ Act XXVI of 1989 to provide for the establishment of a Freeport system in Malta and to regulate its operation (Chapter 334 of the Laws of Malta).

¹⁶¹² Ordinance XIV of 1962 to regulate the employment of port workers and to make other provisions connected therewith (Chapter 171 of the Laws of Malta).

amended) Port Workers Regulations of 1 January 1993¹⁶¹³. As we will explain below¹⁶¹⁴, the Ordinance and the Regulations apply to certain categories of port workers only.

Mention should also be made of the Retiring Age of Port Workers Regulations¹⁶¹⁵.

1318. Health and safety in port labour is mainly governed by the general Occupational Health and Safety Authority Act and its subsidiary legislation, which are both of a general nature, and also the Dock Safety Regulations under the same Act¹⁶¹⁶.

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 2004¹⁶¹⁷.

1319. Malta has ratified neither ILO Convention No. 137, nor ILO Convention No. 152, but it is apparently still bound by ILO Convention No. 32¹⁶¹⁸.

1320. Port work is further governed by a number of company-specific collective agreements and Service Level Agreements.

The latter type of instrument is specific to the situation of self-employed registered port workers and is defined in the law as "an agreement concluded between port workers and employers of port workers in connection with the provision of services by port workers" (Art. 2 of the Port Workers Ordinance). The conclusion of Service Level Agreements is compulsory¹⁶¹⁹. Currently, port workers from the pool have two Service Level Agreements – one with the Malta Freeport Terminals and another with the Valletta Gateway Terminals. The same applies in respect of foremen of port workers.

¹⁶¹³ Legal Notice 90 of 1993.

¹⁶¹⁴ See *infra*, para 1334.

¹⁶¹⁵ Legal Notice 33 of 1974.

¹⁶¹⁶ See *infra*, para 1383 *et seq.*

¹⁶¹⁷ Merchant Shipping Notice No. 60 of 21 April 2004 on Safe Loading and Unloading of Bulk Carriers.

¹⁶¹⁸ This Convention had been made applicable to Malta, before the attainment of independence, by the Government of the United Kingdom of Great Britain and Northern Ireland. By letter dated 29th December 1964, the Government of Malta informed the Director General of the International Labour Organisation that it considered itself bound by the Convention as from 21st September, 1964 (see <http://justiceservices.gov.mt>).

¹⁶¹⁹ See *infra*, para 1360.

Neither the collective labour agreements, nor the Service Level Agreements are public. Transport Malta informed us that these documents are confidential. As a consequence, they could not be consulted by us¹⁶²⁰.

9.14.3. Labour market

- Historical background

1321. A comprehensive overview of the evolution of port labour law in Malta is given in an excellent thesis on port reform from 2009 by lawyer Joseph Zammit¹⁶²¹.

Before WW2, although port workers had been providing their services 'informally' for a long time, there was no form of legal framework to regulate either their existence or employment. It was an established practice that strong men would go down to the docks awaiting vessels. The agent representing a vessel would have his own foreman who in turn would choose the required number of men to conduct the cargo operation on the ship. All personnel involved in the discharge or loading of cargo from ships were referred to as 'port workers' but there were several different categories of persons performing different duties. Stevedores only worked in the ship's hold, lightermen worked on the lighters, port labourers worked on the quay, while cargo workers were engaged in warehouses, sheds or wharves. Since employment was granted on a casual / daily basis, this entailed that there existed no fixed or permanent employment nor any form of legislation regulating port workers or their employment. Handouts to the foremen in order to be called for work became an informal practice¹⁶²².

The first legislation concerning port workers was Ordinance No. XXI of 1939¹⁶²³. It regulated the employment of stevedores and port labourers and made other provisions connected therewith. The Ordinance distinguished the legal standing of the stevedore (working on board), the port

¹⁶²⁰ The only agreement which we were able to consult is the Collective Agreement between Malta Freeport Terminals LTD and Union Haddiema Maghqudin regarding Senior Shift Leaders, Senior Planners, Duty Supervisors, Shift Leaders, Supervisors Equipment / Operators of 23 June 2005. However, this agreement does not seem to deal with port labour as defined in the present study. In Malta, collective labour agreements do not have to be registered nor must a notice be given to the Government (see Lofaro, A., Report on collective agreements in Malta to the XIVth Meeting of European Labour Court Judges, 4 September 2006, Cour de Cassation, Paris, http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@dialogue/documents/meetingdocument/wcms_159949.pdf, 5.

¹⁶²¹ Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 131 p. For general background on the history of industrial and employment relations in Malta, see http://www.industrialrelations.gov.mt/industryportal/publications_and_archives/history/brief_history_of_the_dier.aspx.

¹⁶²² Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 14-15.

¹⁶²³ Ordinance No. XXI of 28 April 1939 "that regulates the employment of Stevedores and Port Labourers and makes other provisions regarding this".

labourer (working on shore) and the foreman. The latter acted as an employer of stevedores and port labourers and needed an official, annual, licence from the Commissioner of Labourers and of Emigration (Section 3(a)). Although this Ordinance helped to improve the position of port workers, it still had its flaws. While before the enactment of this legislation there was no form of permanent employment, with its coming into force, port workers were registered for the first time. The foremen, who were also registered, could only employ persons from this pool of recognised workers. However they could still choose whomsoever they wanted¹⁶²⁴.

The Port Workers Ordinance of 1962 replaced that of 1939. From a critical perspective it was merely a cosmetic exercise since the archaic practices found in both the 1939 Stevedores and Port Labourers Ordinance, and the 1950 Port Workers Regulations, also found their way into the newly enacted Ordinance of 1962. This Ordinance was also supposed to cater for the then newly built Deep Water Quay which was envisaged to restructure and revolutionise port work. However, the new Ordinance did include some major innovations, such as the setting up of the Port Disputes Board. Although this Ordinance created a very efficient framework and structure of port work organisation, efficiency was still found to be lacking when compared to that of other ports, due mainly to inflexible work practices. At this stage, the situation was getting out of hand. Workers dictated their own terms and held their employers to ransom. International studies at the time indicated that the right of employers to choose their employees was conducive to efficiency, and that flexibility of workers increased productivity. Furthermore it was recognised that training of workers was imperative and closely linked to increased productivity¹⁶²⁵.

In 1973, a Pension and Contingencies Fund was created. The first objective was to provide for a pension fund for retiring workers, and for port workers who were either injured or found to be unable to continue their job due to health problems. The Fund was to provide for the safety gear and other contingencies of port workers. Furthermore it also provided for a bonus for each port worker. The Fund was to be raised out of contributions according to tonnage paid by the employers of port workers¹⁶²⁶.

In 1992, all port workers in the pool were amalgamated into one homogeneous group, a shift system was introduced to cover 24 hours of work and previous fixed gang systems were removed in order to allow for more flexible and efficient ordering systems for terminal operators. The Port Workers Ordinance was supplemented by the Port Workers Regulations of 1 January 1993¹⁶²⁷. The main objective of the new amendments was to remove archaic practices and to ensure flexibility. At this time there were two major innovations in Maltese ports. One was the decision of the Government of the day to set up an Authority which had to regulate and control all related port matters. Secondly traffic at Freeport was on the rise and it was felt that Freeport had to be different from the Valletta Port, both in respect of working practices and

¹⁶²⁴ Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 16.

¹⁶²⁵ Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 22 and 23.

¹⁶²⁶ Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 23 and 24.

¹⁶²⁷ See already *supra*, para 1317.

tariffs. Freeport was intended as a transshipment port. There was no way that the Freeport could compete with other ports and attract shipping companies, if it was to pay the same rates charged by the service providers for domestic cargo, for transshipment cargo. The restrictive and inflexible practices also had to be corrected for this new operation in order to ensure Freeport's success. The latter objective was not achieved however. Other problems persisted, foremost being the various complex tariffs, and the complicated roster system. Furthermore, in the agreement and subsequent legislation, complicated clauses dealing with methods of allocation of workers and ordering time, waiting time and overtime rates were retained if not increased¹⁶²⁸.

1322. In 2006 and 2007, the Maltese port labour system, which rested on a traditional, complex and highly regulated combination of monopolies for self-employed registered port workers, registered foremen, tallymen, delivery clerks and port cargo hauliers (*burdnara*) underwent further reform. The main steps leading to this reform are summarised below.

1323. In 1999, the Port of Valletta Strategic Development Plan prepared by TecnEcon on behalf of the Malta Maritime Authority concluded that port operations at Valletta were controlled, and to a large extent, constrained by legislation. Port workers were licensed by the Malta Maritime Authority under the terms of the Port Workers Ordinance which contained no requirement for workers to pass or attend any skills test or training. The licence was granted virtually on demand, passing from father to son. This arrangement was discontinued in 1973, but reinstated in 1990. Other legislation also controlled port tariffs and fees paid to port workers, foremen and tally clerks, their method of calculation and method of payment, pension payments, port working hours, and the organisation and ordering of labour¹⁶²⁹.

The consultants issued a harsh judgment on these arrangements:

The method of allocating port labour has developed into an inflexible working system that creates difficulties for port users. The system is unresponsive to changes in operational requirements, and a number of questionable practices are endemic. The principal cause of this unsatisfactory situation is the fact that under current port regulations, the men are casual workers, they do not have contracts and do not receive basic pay. A situation has evolved where management of the port labour workforce is ineffective, casual employment and shared payment provides no employee loyalty or

¹⁶²⁸ Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 24-25.

¹⁶²⁹ TecnEcon, *Port of Valletta strategic development plan. Executive summary*, Malta Maritime Authority, December 1999, para 13. The Executive Summary was kindly provided by Transport Malta. However, the full study was not made available to us. Transport Malta mentioned that parts of it are not available to third parties.

*incentive, and the potential for high supplementary payment undermines worker discipline*¹⁶³⁰.

The overall appraisal of the situation at the port of Valletta was as follows:

*The core problem affecting the future development of Valletta Grand Harbour as a commercial port is a combination of an inappropriate and unnecessarily complicated institutional framework, an outdated and unnecessarily regulatory framework, and a political environment which seems to encourage inertia and discourage positive action. If these matters are not attended to, there is the risk that the port will become progressively more costly to use than its competitors in the region. For national trade, the implication of this is that imports and exports will become more costly. Maltese consumers will have to pay more for goods imported through Valletta, while exports via the port will become less competitive in the international market with a consequent loss of market share. In the case of potentially lucrative international transshipment trades, there is also every prospect of progressive decline as shipping lines transfer their Mediterranean transshipment services to other less costly ports in the region*¹⁶³¹.

The Development Plan recommended that the necessary modernisation of the port's institutions and operations address, *inter alia*, the organisation of port work and working practices¹⁶³².

1324. In 2002, the Federation of Industry (FOI) and the General Workers Union (GWU) expressed their agreement that an overhaul of the Maltese port labour regime was needed. Regarding the criticism over high costs at the port of Valletta, the FOI agreed that the charges accrued were excessive, while the GWU felt that the costs related to a ship simply berthing were not excessive, it was when the stevedores and other "insiders" took over that costs went up. The FOI stated: "EU or no EU, a major overhaul of the present situation at the ports is needed. We can't continue overcharging like we are doing now. We are losing important work just because we seem happy to continue working with an anarchic situation" and that "the sphere of cargo handling is a very delicate one – as there no competition involved, which leads to higher costs, the highest when compared to the other industrialised countries". Still according to FOI, there was a good deal of interest involved but there were no steady tariffs: "The tariffs are calculated according to one's mood. The terminal should be operated by one common parent and not by different people who all have some kind of presence at the port". FOI went on to say that costs at the ports varied because one ship would be carrying loose cargo, while another would carry different types of items. FOI also cited the fact that four *burdnara* would normally be working while the rest are at home getting paid just the same, as being unhealthy for any enterprise. FOI's spokesman said:

¹⁶³⁰ TecEcon, *Port of Valletta strategic development plan. Executive summary*, Malta Maritime Authority, December 1999, para 14.

¹⁶³¹ TecEcon, *Port of Valletta strategic development plan. Executive summary*, Malta Maritime Authority, December 1999, para 32.

¹⁶³² TecEcon, *Port of Valletta strategic development plan. Executive summary*, Malta Maritime Authority, December 1999, para 34.

We are losing work, everything that comes into Malta becomes costly and all those concerned should start working on an organised system. Some time ago we also lost the transshipment of cars coming through Malta because the port costs were so high. Do we want to increase our work load or do we want to continue working with systems that are a hundred years old ?

GWU replied to this that the tariffs had not been changed over the past 20 years and that the only thing that has been changed at the ports resulted from a price modification in the early 1990s.

Reportedly, there was also a request to the Office of Fair Competition to issue a report on the current situation at the ports. The parties involved, which also included the unions and the FOI, which later submitted its own report, gave their views on the ports but reportedly nothing happened. The report was intended to be used as a basis for any action the Government might feel needed to be taken at the ports. As the Government knew there was a monopoly in the transport services at the port, it was important for the Government to have an exact report on the costs involved, so that it would be better placed to take any action, if this was needed.

According to a media report, the main benefactor of the monopoly situation at the ports was undoubtedly the General Workers Union. The GWU controlled the cargo handling company, which was responsible for the loading and unloading of cargo to and from ships. The *burdnara*, who are responsible for the transport of cargo to and from ships, also enjoyed a monopoly situation and licences were inherited from family to family. Those stevedores who handle bulk cargo belong to the GWU and, together with the control of the cargo handling company, this is the reason why the GWU was in a position to paralyse the country's ports. The expense for clearing and internal transport compared to the international shipping charge was very high indeed. A breakdown of the local costs included Free-in-Free out (FIOS) as well as landing charges levied by the government contractor, port labourers on ship and ashore, container charges, heavy lifts fees, transport and stuffing/unstuffing charges (road haulers), crane (from shore to trailer) and return of empty container. At the time, the Federation of Industry was pinning its hopes on the report by the Office of Fair Competition. It stated: "Everybody knows that the situation at the ports is a monopoly. The FOI has been speaking on this issue for years but nothing happens, what happens is that every elected government, being Labour or Nationalist continues to do with the monopoly". On what was reported on the GWU weekly paper about possible redundancies for cargo handling and port workers if Malta joined the European Union, GWU said that "an EU directive is stating that the unloading of ships can be carried out by the seamen of the same ship, something completely against the GWU principles"¹⁶³³.

¹⁶³³ X., "FOI and GWU agree that changes are needed at Malta's ports", *The Malta Financial & Business Times* 14 August 2002, <http://www.businessstoday.com.mt/2002/08/14/focus.html>.

In 2003, some *burdnara* complained that existing enforcement rules needed to be improved, as it would otherwise be difficult for the General Retailers and Traders Union (GRTU) to ensure that outsiders would not be allowed to haul cargo to the Freeport without a *burdnara* licence¹⁶³⁴.

1325. In 2003, the ship owner Sea Malta criticised the inflexibility of port workers, who forced its vessel the m/v Maltese Falcon to spend 21 hours in port on Monday because they were not available to handle cargo. Sea Malta said the ship made port at the scheduled time but because all port workers had been engaged on other ships, there was none available to work on the Sea Malta vessel. "Shortage of berthing space for a ship the size of the Maltese Falcon has further compounded the state of affairs at Laboratory Wharf," Sea Malta said. The company said the vessel had completed the weekly voyage between Tunis, Marseilles, Genoa and Malta. Due to the activity in Grand Harbour at the time, the ship was allocated a berth at around 2 p.m. but there were no gangs of port workers available to offload and load the vessel with exports. The ship owners added:

Although Sea Malta had all the necessary crew, equipment and tug masters available to effect its own direct cargo operation, the current port regulations prohibited them from carrying it out even though the port workers were unavailable. Had the port workers been flexible, they could have easily sent someone to oversee the operation being performed by Sea Malta staff and get paid as if they did it themselves.

Because of this "ridiculous situation", 53 trailers and 24 containers with a mixture of cargoes, ranging from perishables to hazardous chemicals, were stranded on board. The only concession was to allow ashore a truck with livestock. According to Sea Malta, this also meant that the ship lost the carriage of cargo usually loaded on Monday to Genoa and Tunis, with loss of revenue to the Maltese line. Efforts to find a solution proved futile. This meant a delay of 21 hours. The ship owner further commented as follows:

It is such absurd situations with substantial loss of revenue to ship owners which prompted the European Union to change port regulations to allow crew members to effect discharge operations.

He added that port workers had been intransigent and impractical and that Sea Malta strove hard to operate on a punctual timetable because several members in local industry worked on the just-in-time concept, having goods delivered to them only as they needed them at the eleventh hour. Trade union GWU said it was not the workers' fault that none were available at the time because they were engaged on other duties. It added it wanted to extend its sympathy to Sea Malta but argued that the EU's proposal to liberalise work at the ports was being opposed by many European unions¹⁶³⁵.

¹⁶³⁴ X., "GRTU achieves agreement on burdnara issues", *Times of Malta* 3 March 2003, <http://www.timesofmalta.com/articles/view/20030303/local/grtu-achieves-agreement-on-burdnara-issues.155339>.

¹⁶³⁵ X., "Sea Malta complains about port workers' inflexibility. Maltese Falcon delayed 21 hours in port", *Times of Malta* 26 February 2003,

1326. In the course of negotiations on Malta's accession to the EU in 2004, two issues related to port labour attracted special attention.

First of all, it was agreed that the licence issued to *burdnara* simply grants the individual or undertaking a 'security-pass' to a restricted port area and does not in itself prevent EU hauliers from operating in Malta. This meant that the existing situation with regard to the licensing of *burdnara* including their limited number remained unaltered after accession. A 2006 attempt to widen the system of granting operator licences so that all cargo handlers would have to apply for a permit met with resistance from the *burdnara* and GRTU. The *burdnara* reiterated that although licenses are limited to a set number, this does not make the business a closed shop or a monopoly¹⁶³⁶.

Secondly, accession talks focused on the registration of port workers. In a draft version of the National Programme for the Adoption of the *Acquis*, the Maltese Ministry of Foreign Affairs presented the issue as follows:

*[...] port work is executed within a monopolistic set up notwithstanding the fact that terminal operators use their own employees for the handling of heavy plant. Therefore such port services may not be fully in line with EU competition rules*¹⁶³⁷.

During negotiations in the area of free trade in services, attention focused on the right of registered port workers to pass on their exclusive permit to their descendants, by inheritance. However, inheritance rights have not been given since the early 1990s. The issue concerned those who still had this right and whether they would be able to retain it in view of EU law. On this point, Malta had originally requested a transitional period to allow for the phasing out of the inheritance scheme applicable to the port workers' pool, thereby maintaining the right of the workers to pass on their permit to their descendants (inheritance scheme). The issue was solved when it was agreed that a joint-registration system would enable those workers who still had the inheritance right to be jointly registered with their next descendant in line. When it was agreed that Malta would introduce competitive recruitment for new vacancies while preserving

<http://www.timesofmalta.com/articles/view/20030226/local/sea-malta-complains-about-port-workers-inflexibility.155803>. In 2005, Sea Malta was liquidated after a failed privatisation bid.

¹⁶³⁶ See Debono, M. and Farrugia, C., "Strike at port over new cargo tariffs", *Eironline* 25 September 2006, <http://www.eurofound.europa.eu/eiro/2006/07/articles/mt0607029i.htm>; Depasquale, I., "Negotiations closed on Transport", *Aggornat* November 2001, Special Edition No. 5, http://www.meusac.gov.mt/Portals/FME/Documents/AGGSE05e_Transport.pdf, item 2.2.1; X., "GRTU achieves agreement on burdnara issues", *Times of Malta* 3 March 2003, <http://www.timesofmalta.com/articles/view/20030303/local/grtu-achieves-agreement-on-burdnara-issues.155339>. See also Malta-EU Information Centre, *Question & Answer on Malta & the European Union*, Information booklet compiled by the Malta-EU Information Centre, 2002, 109, where it is noted that *burdnara* was the first Maltese word "to make it to the lexicon of the Brussels bureaucracy".

¹⁶³⁷ Ministry of Foreign Affairs, *Malta: National Programme for the Adoption of the Acquis*, 1 September 2000. The second sentence was omitted in the final draft of the National Programme (see Ministry of Foreign Affairs, *Malta: National Programme for the Adoption of the Acquis, as at January 2001*).

the legitimate expectations of existing port workers, the Maltese request for a transitional period was withdrawn. This decision and the announced introduction of a competitive recruitment for port workers' vacancies were welcomed by the Council of Ministers¹⁶³⁸. Interestingly, the discussions on registered port workers took place during negotiations on free movement of services¹⁶³⁹, an indication that the Negotiating Parties were of the opinion that the freedom to provide services effectively applies to port labour¹⁶⁴⁰.

Also with a view to EU accession, an express nationality requirement for tallymen was removed in 2004¹⁶⁴¹.

1327. Still in 2004, Malta Freeport was privatised through the granting of a concession to CMA-CGM¹⁶⁴².

In the same year, trade union GWU declared an industrial dispute at the Malta Freeport after the Government refused to consider the union's demand for a major pay increase. The Government deemed the proposed level of pay, which is three times the national average, to be exorbitant. While port workers were paid different rates for different jobs, Freeport management proposed to pay them a set wage. On the other hand, GWU insists they should be paid a fixed rate per container. While wage levels are beyond the scope of the present study, it is interesting to note that changing current work practices was another issue of contention between GWU and Freeport management. Freeport management argued that work practices were "archaic" and drastically reduced the organisation's competitiveness vis-à-vis similar ports on the continent. Management was pushing for more flexible shiftwork. Meanwhile, UHM was negotiating a separate collective agreement for its 500 members at the Freeport. These workers' collective agreement expired in June 2003. UHM was urging government to guarantee Freeport workers' jobs. UHM also insisted that the new agreement should enhance the personal life of Freeport workers though fixed shiftwork. However, due to the fluctuating nature of the work, Freeport management believed that such a rigid system would not be conducive to efficient work. It thus proposed that 65 per cent of the shifts be fixed and 35 per cent flexible. This, it argued, would ensure the efficiency of the port while alleviating workers from too much pressure when there is a high workload¹⁶⁴³.

¹⁶³⁸ See Depasquale, I., "Negotiations closed on Transport", *Aggornat* November 2001, Special Edition No. 5, http://www.meusac.gov.mt/Portals/FME/Documents/AGGSE05e_Transport.pdf, item 2.2.2; Pirotta, F., "Free trade in Services: What does it mean?", *Aggornat* Special Edition No. 2, July 2001, 3; see also Council of the European Union, "I" Item Note of 30 May 2001, 9307/01 ELARG 122.

¹⁶³⁹ See Association between the European Community and Malta, *Agreed Minutes of the EC-Malta Association Committee of 9 July 2001*, Brussels, 10 April 2002, CE-M 602/02, 8.

¹⁶⁴⁰ On the latter issue, see *supra*, para 202.

¹⁶⁴¹ See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 40.

¹⁶⁴² See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 66.

¹⁶⁴³ Debono, M., "Freeport workers demand higher wages", *Eironline* 5 October 2004, <http://www.eurofound.europa.eu/eiro/2004/10/inbrief/mt0410101n.htm>.

1328. In 2005, Charles V. Schembri, Executive Director for Ports of the Malta Maritime Authority gave an assurance that the Maltese ports are open to all shipping, that the Maltese legal system grants a right of establishment in Malta and that the legislation is consonant with the EU acquis and based on international best practices¹⁶⁴⁴.

However, he also mentioned the exclusivity enjoyed by most service providers for reasons of economies of scale as a critical issue, and stated that most service providers are subject to law that is "cumbersome to implement", hence the existence of numerous *ad hoc* agreements. He advocated *inter alia* a better regulation of exclusive service providers, an upgrading of the labour force at all strata through education and training, the enactment of basic port legislation, the establishment of service providers in legal entities that would conclude service contracts with terminals, authorising terminal operators to employ people of their choice and forfeiting services that are not required by terminals even if that would mean a loss of earnings¹⁶⁴⁵.

In another presentation, the Executive Director for Ports mentioned the following labour issues:

- Diverse "service providers" entities often enjoying legislative or time-honoured exclusivity
- No surplus labour
- Educated workforce, flexible, multi-disciplined and innovative
- High remunerative regime¹⁶⁴⁶
- A restructuring process is necessary
- Retention of existing job security
- Conscious that the ports require to retain their competitiveness vis-à-vis transshipment operations in view of cut-throat competition from existing and emerging neighbouring ports
- Being small is beautiful but could be problematic
- Given limited economies of scale, often one has to deal with exclusive service providers
- Ports are the "life link of the islands"
- Having just two ports engaged in international trade requires that supply of services is uninterrupted
- The imposition of reforms could lead to the closure of ports putting the economy at a standstill and jeopardise jobs

¹⁶⁴⁴ Schembri, C.V., "Malta: Appraisal of Port Reform. A Gap Analysis and Way Forward", Presentation delivered at the Euromed Training Seminar on Port Reform, Marseilles, 26-30 September 2005, <http://www.euromedtransport.org/image.php?id=1479>, 6.

¹⁶⁴⁵ Schembri, C.V., "Malta: Appraisal of Port Reform. A Gap Analysis and Way Forward", Presentation delivered at the Euromed Training Seminar on Port Reform, Marseilles, 26-30 September 2005, <http://www.euromedtransport.org/image.php?id=1479>, 9-11 and 13.

¹⁶⁴⁶ In 2004, mention was made of a level of pay which is three times the national average. See Debono, M., "Freeport workers demand higher wages", *Eironline* 5 October 2004, <http://www.euromedtransport.org/euro/2004/10/inbrief/mt0410101n.htm>.

- *Drastic measures could mean the loss of skilled labour, a long term learning curve for new recruits, additional expenses in training, congestions and loss of contracts*¹⁶⁴⁷.

The author went on to describe the cautious approach taken that has rendered the Maltese ports successful:

- *A long process of persuasion explaining the benefits of gradual change*
- *The notion that earnings could increase with increased volumes (transshipment) that otherwise would go to other ports*
- *Introduction of training schemes and developing a sense of belonging*
- *Gradually introduce flexibility in number of gangs, allocation of port work, interoperability between sectors, discipline*
- *Realisation that added-value cargo operations have to be and remain competitive*
- *Certain services that may not be required by a private operator have to be forfeited*¹⁶⁴⁸.

Finally, Mr Schembri outlined "The Way Forward" in the following terms:

- *Determine a practical operational regime within a "terminal operator" management model*
- *Streamline operations through assimilation of sectors*
- *Encourage various service providers to establish themselves in legal entities that could conclude service agreements with terminal operators under contract law*
- *Authorise such legal entities for determined periods subject to qualitative criteria and obligations*
- *Determine services that are no longer required, provide retraining for redeployment*
- *Determine which services are subject to SGEIs [i.e. Services of General Interest] that stand to benefit the islands if exclusivity were ascertained through a selection process*¹⁶⁴⁹.

1329. In 2006, the media exposed the high cost of operations at Maltese ports, which were caused by the monopolistic market structure. The following report provides interesting background information on the situation before the 2007 reform:

A typical bill showing the costs incurred to transport a container from ship to warehouse could easily run up to Lm300.

¹⁶⁴⁷ Schembri, C.V., "Case Study: Maltese Port Reform Experience towards the EU Acquis", Presentation delivered at the Euromed Training Seminar on Port Reform, Marseilles, 26-30 September 2005, <http://www.euromedtransport.org/image.php?id=1478>, 21-22.

¹⁶⁴⁸ Schembri, C.V., "Case Study: Maltese Port Reform Experience towards the EU Acquis", Presentation delivered at the Euromed Training Seminar on Port Reform, Marseilles, 26-30 September 2005, <http://www.euromedtransport.org/image.php?id=1478>, 23.

¹⁶⁴⁹ Schembri, C.V., "Case Study: Maltese Port Reform Experience towards the EU Acquis", Presentation delivered at the Euromed Training Seminar on Port Reform, Marseilles, 26-30 September 2005, <http://www.euromedtransport.org/image.php?id=1478>, 24.

A bill seen by MaltaToday for the handling of a 40-foot container issued in May 2006, lists the various charges owed to different agencies, monopolies and categories of workers operating at the port, each taking their cut from the Lm300 an importer has to pay.

Back in 2001 a study conducted by the Malta Development Corporation had established that an importer has to pay Lm35 to port workers. This includes a levy of Lm15 on each container to finance the port workers' pension and contingency fund. Since 2001 there have not been any changes in legislation and charges remained practically unaltered.

A typical bill shows that 82 per cent of the costs are paid in charges within the port itself. Only 18 per cent of the costs are paid to cargo haulers who transport merchandise from the port to the warehouse. [...]

Shipping agents are responsible for 36 per cent of the charges in what are known as FIOS (Free in Out Stowed) fees. It is the shipping agent who then [sic] pays the various other stakeholders in the port.

These FIOS charges are incurred in moving containers from the vessel's hold to the ship's ramp. Such charges include costs related to the Port Worker Scheme as well as costs related to the shore foreman, tally clerks, overtime allocation and customs (table 2).

Yet Shipping Agents also make their own profit margin. According to the MDC's 2001 estimate shipping agents get a generous Lm20.50 on each 40 foot container.

26 per cent of costs at the Freeport and 34 per cent of the costs at Grand Harbour end up in the Cargo Handling Company's coffers.

These terminal handling costs are related to the pulling of the cargo from the vessel's ramp to stack. There are also Cargo Handling Company charges for the shifting of the containers to quay and then to stack.

Strangely enough it costs about Lm17 more to transport goods out of the Grand Harbour than to transport goods from the Freeport due to double charging.

At the Grand Harbour, importers have to pay a Lm10 charge on heavy lifts. But since Cargo Handling does not possess any such lift, they also have to pay an additional Lm12 to Salvu Meli Ltd for the unloading of containers on trucks.

Protagonists at the port

The main players at the port are the Malta Maritime Authority, shipping agents, port workers, the Cargo Handling Company and cargo haulers.

The Malta Maritime Authority which acts as a regulator of this sector also imposes its own charges on berthing and pilotage. It also administers the port workers pension fund.

The 300 strong port workers are the only persons in Malta licensed to unload merchandise from ships at the port.

They are effectively self-employed workers whose cut from the costs are enshrined in the Port Workers Regulations.

Malta is not unique in this respect as in many European ports stevedores enjoy similar monopolies. Safety reasons are often cited as justification for keeping this monopoly.

Yet advances in shipping and port handling such as pumping cement in silos have not reduced costs in Malta but only relieved port workers of part of their work.

Their work now mainly consists of lashing containers to stabilise them while they are being lifted - a difficult and potentially risky job which comes with a handsome reward that sees most port workers earning between Lm15,000 and Lm18,000 annually.

Port workers are engaged by Cargo Handling Company Ltd, a company formerly owned by the General Workers Union. The GWU's union monopoly on cargo handling was officially ended after the government issued a call for tenders for this service.

The GWU's bid to retain its hold in the port by teaming up with the Hili Group failed as the union was not among the two companies short-listed for the contract. The two short-listed consortia are La Valletta Terminal Co (Malta) Ltd, which is made up of Salv Bezzina & Sons Ltd, Salvu Meli & Sons Ltd and Joseph Paris and TF Shipping Agencies Ltd which consists of Tumas Group Company Ltd, Portek Ports (Mauritius) Ltd and Portek International Ltd.

This was a hard blow for the GWU's finances and strategic strength in the country.

But according to industry sources, the new company, which will be taking over in June will not be able to lower charges if other port charges are not reformed.

A small number of shore and ship foremen-numbering less than 30 also take their cut from any container entering Malta. Ship foremen get a Lm5.40 cut on each container while shore foremen get Lm1.90.

Cargo Haulers, known as burdnara are also granted a licence which effectively gives them a security pass to a restricted port area to load their trucks with merchandise. While some industrialists lament of cartels in this sector, haulers insist that there is stiff competition in this sector which drives prices down.

Business leaders react

The Malta Employers Association, the GRTU and the Federation of Industry are all united in calling for a radical reform of work practices at the port.

According to GRTU Director General Vince Farrugia the port structure is laden with monopolies.

"These monopolies are not consonant with European structures," Farrugia told MaltaToday. Farrugia insists that the GRTU has always spearheaded the drive to reform out dated practices at the port.

Farrugia would not single out port workers as the sole culprits. He even adds the Malta Maritime Authority itself to the list of monopolists in the port.

"Since it replaced the Department for ports the MMA has increased costs."

Farrugia absolves cargo haulers, who are represented by the GRTU from any charge of monopolistic practices.

"Competition exists between cargo haulers. Although they possess a licence, importers are free to load merchandise on their own trucks. They are not forced to rent the services of a hauler as is the case with port workers and others at the port," insists Farrugia.

FOI Director General Wilfred Kenely considers removing archaic and inefficient work practices at the port as a pressing need for the country. He also considers exorbitant port charges as an unnecessary hurdle to Malta's export oriented industry.

"At present, the local port ranks as one of the most expensive operations when compared to other ports in Europe, adding additional pressures on our already fragile competitiveness," says Kenely.

According to Kenely, the global market place has become so sensitive to price movements that firms exporting goods from Malta stand to lose markets if they only attempt to pass on our ports' inefficiencies to their overseas clients.

As regards the port workers' monopoly, Kenely points out that the current legislation dates back to the post war era and does not reflect today's reality in terms of the cost of services against the actual operation.

"The FOI looks forward to having a more professional approach by allowing the new operator to conduct its business on more modern market-driven operation."

The Malta Employers Association also concurs that outdated port monopolies and work practices are stifling competitiveness.

"The interests of the few should not prevail over those of the many," insists Director General Joe Farrugia.

Competitiveness at risk

The claim that port charges are eroding Malta's competitiveness is supported by an international cost comparison of handling imports from ship to port gate. [...]

The Malta Freeport emerges as more expensive than European ports like Marseille, Barcelona, Rotterdam and Antwerp. For 20-foot containers, port charges in Malta are three times higher than those in Antwerp and twice higher than those in Rotterdam. Costs in Marseille and Barcelona are 50 per cent lower. When it comes to 40-foot containers Malta is five times more expensive than those in Antwerp and more than three times as much those in Rotterdam. Costs are also more than double those in Barcelona and Marseille¹⁶⁵⁰.

1330. Also in 2006, another newspaper article reported on practices at a major grain terminal in the port of Valletta:

"It's nothing but daylight robbery," Charles Demicoli, the chairman of the Kordin Grain Terminal says about the charges for port handling services. "The worst thing is that at Kordin, where we don't use any of the workers to offload our grain, we have the machinery to put it straight into the silo, and yet we still have to pay them."

Port reform is on the agenda, but what changes can be expected are yet to be known. People like Demicoli want radical change. The exorbitant charges paid to the dynasty of

¹⁶⁵⁰ See Debono, J., "The costly business of using a Maltese port", *Malta Today* 14 May 2006, <http://www.maltatoday.com.mt/2006/05/14/t6.html>.

port workers, which own a monopoly of the service on the island, are among the changes many businessmen and importers want to see in the coming reforms.

What is ironic is that the workers, who are in fact “self-employed”, are by law paid a national insurance and pension fund contribution by anybody who has to employ their services. “When we unload grain off a ship, we can only employ the port workers there,” Demicoli says, “and then we get to pay the charges, an administration fee to the Malta Maritime Authority, including the rate of national insurance and a contribution to their pension fund.”

These include those fees which go to what is called the ‘pensions and contingency fund’ which was set up in 1973. Nowadays it amounts to some Lm10 million, while port workers are also guaranteed their pensions by the state.

That means a levy of 32c5 each time for each tonne of cargo that is loaded or unloaded. An anomaly means that the fee is being charged twice, 65c, for unloading from the ship to the quay, and then loading the cargo onto the rail from where it will be collected. The 65c goes to the pension fund.

What’s more: it is the government’s Malta Maritime Authority that actually collects the pension fund “contribution” it redistributes to workers who are self-employed. A lot of ‘hands’ tend to be involved in the process of port handling in Malta: there are foremen for both on board ships and those on the ground, tally clerks physically check the freight being loaded off the vessel when today most freight arrives in containers that are never checked. And of course, port workers – there are always seven port workers on hand even if you don’t need as many workers. This is the rigid reality of port services in Malta.

What many ask of the reforms is how much of the charges currently in force will become reasonable, and of course, whether the anomalies will be removed. A spokesperson for Competitiveness and Communications Minister Censu Galea says that at this stage of discussions there is an agreement between the parties that no information is to be divulged on the ongoing discussions.

Costs are considerable for employing the port workers, whose licences are inherited by their children from generation to the other. Foremen, for example, are paid a tariff to supervise the work irrespectively of whether their services are employed by the ship’s agent. That means shore foremen will be paid 2c5 for each tonne of cargo, whether or not their service is required or not.

Several agents refuse to pay for the service when it is not even made use of. Others claim they have used ‘other methods’ in order to have as many as they require on demand.

Port reform is a big deal for the 300 or so workers who are entering into negotiations with the government on the issue. All of them General Workers Union members, they have already clashed with the union since taking on the services of the GWU’s former legal counsel George Abela, kicked out of the union after openly declaring he would no longer file court cases he did not believe in¹⁶⁵¹.

¹⁶⁵¹ Vella, M., "Port workers get 65c per cargo tonne for their pension fund", *Business Today* 3 May 2006, <http://www.businesstoday.com.mt/2006/05/03/focus.html>.

The same operator reiterated his criticism in a second media report published shortly afterwards:

Case in point is the reigning port chaos, where a multitude of hands have been siphoning off all sorts of fees from importers making a travesty of the word 'competitiveness' – which without any hint of irony happens to be the official name of the ministry in charge of this racket.

"It's nothing but daylight robbery," Demicoli said a couple of weeks ago about the port workers' empire which is supposedly in for some drastic reforms.

He was speaking as chairman of Kordin Grain Terminal, the state-owned depository of imported grain and cereals which is billed thousands of Liri for every cargo reaching our shores by port workers and cargo handlers for literally doing nothing.

This is because the grain company has special machinery that unloads the cargo off the ship and transfers it to its silos, and yet it still has to pay the full fees as if cargo handlers were physically unloading the grain in sacks and carrying it to the stores.

Daylight robbery indeed: Kordin Grain Terminal pays Lm1,695 for a 15,000 tonne freight meant for transshipment. If the same cargo is meant for local consumption, then fees soar up to a staggering Lm17,000.

"They're supposed to be a gang of eight workers, but they're never the full complement," Demicoli says. "They're maybe two or three, and all they do is to sweep the ship's hold so that our Bobcat picks up the remaining grain. We're basically paying them for nothing.

"I once wrote to Minister Censu Galea, just to get him to know about the situation. I told him I don't need them and that I can work without them. If I was told I could do without them I wouldn't use them. In fact when we had that famous 'Issa Daqshekk' strike a couple of years ago we still went ahead with our work without any port workers. I had received a phone call from the director of ports who told me that I was breaking the law. I told him I knew and I intended to go on breaking it. About 30 minutes later I received a phone call telling me to go ahead."

Demicoli does not disclose who phoned him the second time, but now Minister Censu Galea wants to break the racket, or at least make fees more decent.

"I don't know how it is being carried out," Demicoli says about the impending port reform. "I know there were some meetings between very important stakeholders but as usually happens in this country nobody says a thing. I would say port workers are essential for the country but there should be competition and they should only be used when they are needed. Otherwise inflation will keep going up with these kind of prices [sic].

I import grain myself at Federated Mills. It is costing me thousands more to import, for nothing, because Kordin Grain Terminal's costs ultimately go on to the clients."

It is one of those mammoth tasks for Galea, dismantling a labyrinthine dynasty that has crippled Malta's business for ages, but Demicoli believes the minister can manage it.

“There needs to be either competition or a regulator,” he says. “If you’re going to operate as a monopoly you need a regulator. There’s a regulator for everything how can you not have a regulator for this crucial sector?”¹⁶⁵²

1331. In the 30 years prior to 1 July 2006, cargo handling services at Valletta were provided on the basis of exclusivity by Cargo Handling Company Ltd. which was wholly owned by the General Workers Union (GWU). In 2006, it lost its position, however, after the Government issued a call for tenders. GWU’s bid to continue its activities failed¹⁶⁵³ and a concession to manage and operate terminals at the port was granted to Valletta Gateway Terminals (VGT), a joint venture of a Maltese and a Singaporean company, which obtained the right to handle cargo all the way from the hold to the gate, which was a change from practices of the past. The previously operating Cargo Handling Company did not unload certain categories of cargo from the ships, essentially because it did not have the capacity or equipment to do so. As a result, this business was subcontracted to the hauliers – the *burdnara*. VGT, however, is handling this itself¹⁶⁵⁴. The latter is now responsible for the handling of containers, trailers, breakbulk, vehicles and other cargoes at the port of Valletta.

1332. In the same period, the Ministry of Finance, Economy & Investment (MFEI) published *The Industry Strategy for Malta 2007-2010* which, together with the National Strategic Plan for Research and Innovation 2007-2010, provided a framework for guiding innovation and research policies and measures.

The Industry Strategy comprised a chapter on the reform of the transportation and logistics services chain (Chapter 06.7.2), which highlights the high transportation costs of raw materials to Malta and the exportation of the final product. In this regard, the Government announced various initiatives including the overhauling of "archaic operational labour practices".

In this respect, the Industry Strategy stated:

¹⁶⁵² Schembri, K., “Fading blue”, *Malta Today* 14 May 2006, <http://www.maltatoday.com.mt/2006/05/14/interview.html>.

¹⁶⁵³ Reportedly, GWU’s loss of the contract resulted in the loss of a major source of revenue for the union (see Debono, M. and Farrugia, C., “Union dispute in the wake of port restructuring”, *Eironline* 30 October 2006, <http://www.eurofound.europa.eu/eiro/2006/09/articles/mt0609039i.htm>). One high ranking employee with the Cargo Handling Company who had overall control of the company’s operations and who had joined another consortium that expressed its interest to obtain the new concession, was unfairly dismissed by his employer (see Johnston, W., “Ex-GWU subsidiary employee awarded €8,000 for unfair dismissal”, *Times of Malta* 2 February 2010, <http://www.timesofmalta.com/articles/view/20100202/local/ex-gwu-subsiadiary-employee-awarded-euro-8-000-for-unfair-dismissal.292309>).

¹⁶⁵⁴ X., “Seeking Efficiency -The Malta Economic Update interview to Mr Peter Darley”, 5 July 2006, http://www.vgt.com.mt/News/tabid/803/ModId/1851/CategoryId/0/CatalogID/1084/MainView/ViewOne/View/0/Paging/2/cat_fk/0/language/en-GB/Default.aspx.

[...] it is recognised that significant changes to labour practices are particularly required in the provision of services given by port workers, foremen of port workers, and tally clerks so as to increase efficiency and cost-effectiveness within our ports. One important initiative in this regard is the introduction of a Certificate of Competence issued by the Malta Maritime Authority for a specific category of port work after obtaining a Certificate of Completion of training from a recognised training institution, such as the MCAST. Terminal operators will henceforth be obliged to engage only individuals in possession of a Certificate of Competence in order to provide port work. It is also intended to provide clearer definitions of work which may be considered to fall under the regulation of prescribed port services. The ultimate objective of these port reform discussions are to bring about a culture change in the present archaic work practices in the ports, to ensure that services are paid only where they are rendered, to achieve value for money and to make Malta's ports more competitive, particularly with respect to rival Mediterranean ports. It is also worth noting that the former delivery clerks group has been assimilated with the staff of previous cargo handling terminal operator in the Port of Valletta and who are now all employed by the new terminal operator in the Grand Harbour following the award of the cargo handling concession tender in June 2006.

Further initiatives in this regard include the setting up of a consultative committee where industry players, port users, terminal operators, exclusive services providers and the Malta Maritime Authority as regulator would have a forum for discussion aimed at continually improving and updating port labour legislation and practices. It is also intended to set up an independent appeals board in order to provide remedies against decisions taken by the regulator. In addition, discussions are also under way with the port workers on the necessary reforms regarding the Pensions and Contingency Fund which is currently administered by a Government-appointed committee¹⁶⁵⁵.

1333. In June 2007, after four years of negotiations, a port reform agreement was signed between the Malta Dockers' Union (MDU), the Malta Maritime Authority (MMA) (now Transport Malta) and the Ministry for Competitiveness and Communications. Reportedly, main innovations included a net decrease in port expenses regulated by law which consisted of amounts paid to port operators and sums paid to port workers, an introduction of minimum levels of service in order to secure efficiency and a faster service provided by licensed port workers, an agreement between port workers and port operators regarding discipline procedures and cautionary warnings, a reform in the regulation of port workers' licences to ensure that the number of workers who have a licence truly reflects the demand for their service in port operations, and a change in the manner of how the Fund for Contingency and Pensions is managed¹⁶⁵⁶.

¹⁶⁵⁵ X., *Enabling Industry to Achieve High Value-added and Productivity Growth. Industry Strategy for Malta: 2007-2010*, <http://www.doi.gov.mt/en/archive/budget2007/engl.pdf>, 60-61.

¹⁶⁵⁶ On the Agreement, see Attard Gialanze, S., "Positive reactions from industry on port workers agreement", *Business Today* 4 July 2007, <http://www.businesstoday.com.mt/2007/07/04/focus.html>; Farrugia, C. and Debono, M., "New collective agreement for port workers signed", *Eironline* 20 August 2007, <http://www.eurofound.europa.eu/eiro/2007/07/articles/mt0707039i.htm>; Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009,

The text of the agreement, which only applies to registered port workers, was not made public. In this regard, Transport Malta informed us that the agreement contains confidential financial information on individual persons. Some information on the content of the agreement is however included in Port Circular No. 03/07 of 2 July 2007 issued by the Malta Maritime Authority (now Transport Malta) to the employers of port workers. According to this Circular, the objective of the reform agreement was to implement a number of recommendations put forward by industry players and stakeholders to further enhance the provision of services in ports in Malta within an efficient, cost-effective and competitive environment and to further ameliorate the conditions of work of port workers. The agreement required the amendment of the Port Workers Ordinance and the Port Workers Regulations and affected the constitution of a number of boards and committees. The principle that port work may only be carried out by licensed port workers remained unaltered. The port workers continued to form one homogeneous section and, in conformity with legislation, to be involved in the loading, unloading and shifting of cargoes from ship to shore, storage facilities and open stack and vice versa and in the provision of other ancillary services. The agreement further stipulated that the working hours for the provision of port work shall be 24 hours, 7 days a week and in accordance with existing legislation. Port work was to be organised on the basis of 4 shifts. Orders for the provision of labour continued to be made to the Office of Port Workers of the Ports Directorate by employers of port workers / terminal operators. The order in which port workers are supplied now became, save as otherwise provided, the working priority of the ships as submitted by the employers of port workers / terminal operators. Terminal operators were allowed to employ personnel of their choice to carry out specific port work if the number of port workers in the pool was not sufficient. The 2007 port reform also introduced the concept of Service Level Agreements as an instrument that could bring the organisation of port work in line with the demands of the industry. As regards tariffs of port workers, the agreement stated that tariffs for the handling of domestic cargo would continue to be regulated by the Malta Maritime Authority (Transport Malta) while the tariff for transshipment cargo would be freely negotiated between the port workers and the terminal operator. The agreement provided a basis for a significant reduction of existing tariffs and was said to reduce operation costs at Maltese ports by 20 per cent. The overall reduction in tariffs included:

- 20 per cent for trailers imported through Valletta and containers imported through Valletta and the Malta Freeport;
- 28 per cent for cars;
- 29 per cent for wheat;
- 50 per cent for cement and aggregate;
- 100 per cent for bitumen, accompanied cars and coaches¹⁶⁵⁷.

71-79; see also Debono, M. and S. Rizzo, "Malta: Industrial relations developments in Europe 2007", *Eironline* 23 September 2008, <http://www.eurofound.europa.eu/eiro/studies/tn0803029s/mt0803029q.htm>. The 2007 agreement is also referred to as a "collective agreement": see for example Farrugia, C. and Debono, M., "New collective agreement for port workers signed", *Eironline* 20 August 2007, <http://www.eurofound.europa.eu/eiro/2007/07/articles/mt0707039i.htm>.

¹⁶⁵⁷ According to Regulation 3 of the Port Workers Regulations, as amended in 2007, the Ordinance does not apply to bitumen in bulk, accompanied motor vehicles and accompanied vehicles of a cargo capacity of 10 tons or less, which would appear to explain the 100 per cent reduction.

Finally, the administrative surcharge on the hiring of pool workers was abolished, as well as the differentiation between tariffs for Government silos and other silos, and the agreement set a new tariff for contributions to the Pensions and Contingency Fund (P&CF)¹⁶⁵⁸.

It would appear that most of the innovations agreed upon in 2007 were indeed implemented through the adoption of amendments to the relevant laws and regulations.

In 2008, a similar reform agreement was reached with the foremen¹⁶⁵⁹. Yet other agreements covered the tally clerks¹⁶⁶⁰ and the delivery clerks¹⁶⁶¹.

- *Regulatory set-up*

1334. Today, in legal terms a distinction must be made between no fewer than 9 different categories of port workers.

First of all, a number of workers are registered general port workers, who form a pool and who are employed under the specific and quite detailed rules contained in the Port Workers Ordinance and the Port Workers Regulations. The registered port workers of Malta are self-employed and receive fixed fees for work performed, which are calculated on the basis of the tonnage or units handled (piecework fees). Transport Malta does not employ port workers but is responsible for the administration of the registered port workers including the allocation of port workers to terminal operators in terms of established roster, to charge the relative fees to terminals, to pay port workers for the work carried out and to finance the pool's administration. The port workers in the pool are only utilised for manual labour (handling of general cargo, lashing, unlashings, trimming, driving of cars).

Secondly, the Maltese port labour legislation identifies as separate categories foremen, 'prospective' port workers, 'eligible' port workers and 'auxiliary' port workers.

A next category, which today represents a majority of port workers in Malta, comprises non-registered workers who are directly employed by the terminal operators under general labour law conditions. These workers mainly perform specialised functions, such as the operation of forklift trucks, gantry cranes and wet and dry bulk handling equipment.

¹⁶⁵⁸ In a newspaper interview MDU president Joe Saliba stated that following the reform "port workers would be getting some Lm 7.4 million [17,24 million EUR] from the Pensions and Contingency Fund" (Fenech, N., "Dock-side reformers", *Times of Malta* 15 September 2007, <http://www.timesofmalta.com/articles/view/20070915/local/dock-side-reformers.5038>).

¹⁶⁵⁹ See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 79-82.

¹⁶⁶⁰ See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 82-85.

¹⁶⁶¹ See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 85-86.

In addition, specific Regulations govern the work of tallymen and baggage handling operators.

Finally, Maltese law gives a specific status to *burdnara* or Cargo Clearance and Forwarding Agents. Their tasks include a number of activities that are closely related to port labour as defined for the purposes of the present study. The *burdnara* are independent contractors but may employ workers of their own under general labour law conditions¹⁶⁶².

1335. Below, we shall first of all summarize the specific regime of port workers *sensu stricto*.

The Port Workers Ordinance defines a port worker as (1) a person employed in a port in the provision of services of a temporary nature involving the handling of cargo in the process of loading or unloading cargo on or from a ship, from or to any place on shore; (2) a person so employed or authorised by the Authority or so employed by an employer of port workers to handle cargo in a warehouse; and (3) a person employed in the handling of cargo, as the Minister may from time to time prescribe, from a transit shed or stack or open quay to vehicle or in the consolidation, groupage or dismantling of goods in or from a unit load in a port (Art. 2).

The cargoes referred to in relation to the handling thereof from transit shed or stack on open quay to vehicle (*i.e.* item (3) in the previous paragraph) are:

- (1) cereals, canary seed, sugar, seed potatoes, salt, in bags;
- (2) frozen meat;
- (3) timber;
- (4) liquid gas cylinders;
- (5) bitumen and asphalt in drums;
- (6) any substances in bags or in drums for use in the oil industry;
- (7) in an enclosed port area -
- (8) the packing and unpacking of containers; and
- (9) the consolidation of unit loads for loading on board a ship (Reg. 21 of the Port Workers Regulations).

1336. A port within the meaning of the Port Workers Ordinance means a port for the purposes of the Authority for Transport in Malta Act, and includes a warehouse and any such inland depot and any such other area where goods are handled to form or to dismantle unitised cargo as may be declared by order of the Minister (Art. 2 of the Port Workers Ordinance).

¹⁶⁶² See further *infra*, para 1370. Burdnara have also been considered workers engaged in "economically dependent work" (Grech, L. and Debono, M., "Malta: Self-employed workers", 24 February 2009, <http://www.eurofound.europa.eu/comparative/tn0801018s/mt0801019q.htm>).

The Authority for Transport in Malta Act defines a port as "the place declared to be a port by or under any law, and may include a yachting centre provided it is so declared under this Act or any other law" (Art. 2 of the Authority for Transport in Malta Act).

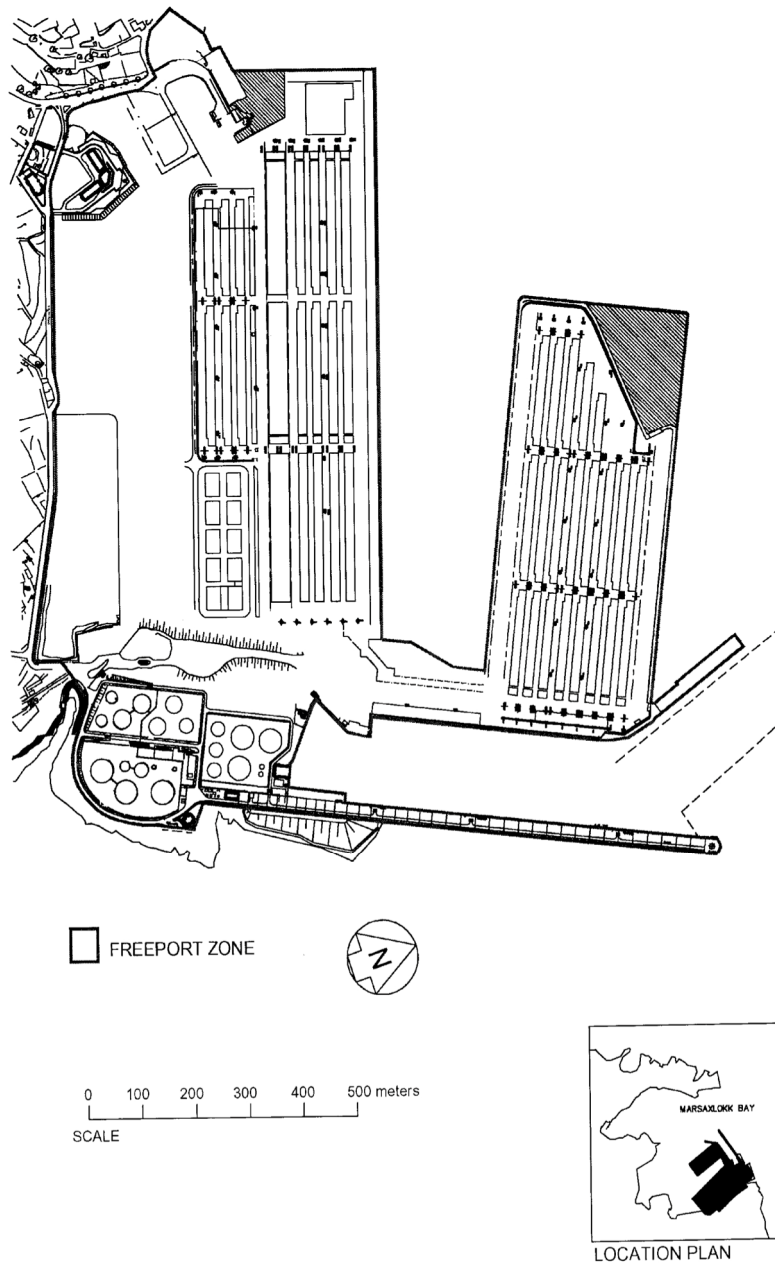
Under the Ports and Shipping Act (Art. 3(1), the competent Minister may, after consultation with Transport Malta, by order, *inter alia*, declare any place together with any land area in Malta to be a port, or a yachting centre, within the meaning of the Act, and establish the limits of any place declared to be a port, or yachting centre. However, the same Act declares the following places to be ports:

- (1) the Grand Harbour of Valletta (with the exclusion of certain areas);
- (2) Marsamxett Harbour;
- (3) Marsaxlokk Harbour;
- (4) Saint Paul's Bay;
- (5) The landing places at -
 - (a) Ramlal-Bir;
 - (b) Iċ-Ċirkewwa
- (6) Mġarr, Gozo (Art. 3(2) and the Schedule of the Ports and Shipping Act).

Practically, port labour rules are implemented in those ports where there is loading, unloading or transshipment, predominantly in the Grand Harbour and the Freeport terminal.

A delimitation of the Freeport of Marsaxlokk is provided in the Schedule to the Malta Freeports Act.

Figure 104. The Freeport Zone at the port of Marsaxlokk as defined in the Schedule to the Malta Freeports Act.



1337. An employer of port workers is defined in the law as a person authorised or licensed to provide services including the loading, unloading, transhipment, storage and the movement of general cargoes and other materials in a port, including a terminal operator (Art. 2 of the Port Workers Ordinance).

1338. The Port Workers Ordinance empowers the Minister to exclude certain types of port work from its scope (Art. 20 of the Port Workers Ordinance).

On that basis, the Port Workers Ordinance was declared inapplicable to the handling of:

- (1) cargo transported between the Islands of Malta and Gozo and Comino;
- (2) coke or coal in bulk other than bagged coke or coal;
- (3) oils or wines in bulk;
- (4) cattle, horses or other animals;
- (5) fish from fishing vessels;
- (6) bitumen in bulk;
- (7) accompanied motor vehicles;
- (8) accompanied commercial vehicles of a cargo capacity of 10 tons or less (Reg. 3 of the Port Workers Regulations).

1339. As we have mentioned¹⁶⁶³, no registered port workers must be used for the operation of equipment such as forklift trucks, cranes, gantry cranes and specific equipment for bulk handling and for supervision activities. This work can be performed by workers directly employed by a terminal operator. Malta Freeport Terminal, for example, only uses registered port workers for driving tug masters and for unlashings operations. For all other operations, including the handling of gantry cranes, it uses its own personnel¹⁶⁶⁴.

1340. The essence of the Maltese port labour regime is laid down in Article 3 of the Port Workers Ordinance which contains three complementary rules.

First of all, no person shall act as a port worker unless he is registered as such with Transport Malta, for which purpose this authority shall keep a register (Art. 3(1) of the Port Workers Ordinance).

Secondly, no person shall employ another person as port worker except in accordance with its provisions. However, in respect of port work involving the handling of cargo in a warehouse, or from or to any place on shore, other than the handling of cargo in the process of loading or unloading of cargo on or from a ship, the Minister may authorise Transport Malta or a contractor to employ persons who are not registered (Art. 3(3)).

¹⁶⁶³ See *supra*, para 1334.

¹⁶⁶⁴ ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 372; see also Schembri, C.V., "Malta: Appraisal of Port Reform. A Gap Analysis and Way Forward", Presentation delivered at the Euromed Training Seminar on Port Reform, Marseilles, 26-30 September 2005, <http://www.euromedtransport.org/image.php?id=1479>, 5.

Thirdly, no port worker shall cause or allow a person to act as a port worker in his stead (Art. 3(4) of the Port Workers Ordinance).

1341. A registration as a port worker is valid for a period of one year (from 1 January until 31 December), but it may be renewed at the end of each period (Art. 3(2) of the Port Workers Ordinance).

1342. The port workers are registered in a Port Workers Register (Reg. 10 of the Port Workers Regulations).

The complement of port workers is established by the Port Workers Board by notice published in the official Gazette. The complement is reviewed bi-annually. If in the intervening period of two years the number of port workers required by employers of port workers is insufficient, the Board shall review the complement to ensure that the number is adequate to meet the requirements of all employers of port workers (Reg. 12(2) of the Port Workers Regulations).

In its determination of the required complement, the Board shall take into consideration the volume of port work, the availability of cargo handling equipment and the introduction of new port operations systems (Reg. 12(3) of the Port Workers Regulations).

The relevant legislation does not use the term pool but the Port Workers Regulations stipulate that all port workers on the port workers register form "one homogeneous section" and shall perform such duties consisting of all work from hold to truck, stacking ground or warehouse or vice-versa (Reg. 12(1) of the Port Workers Regulations).

In greater particular, the Sixth Schedule Port Workers Regulations confirms that all port workers appearing on the Port Workers Register shall form "one homogeneous section" and shall perform port work consisting of or involving:

- (1) the loading, unloading and shifting of cargoes from ship to shore, storage facilities and open stack and vice versa;
- (2) the handling of unitised cargo on a ship, on a quay and in a warehouse, including the lashing, unlash, slinging, unslinging, hooking and unhooking, of cargo in unit loads from ship to quay or stacking ground or warehouse and vice-versa, provided that port work on shore is performed only when it constitutes a continuous operation while cargo is in the custody of Transport Malta or the employer of port workers and, or [sic] terminal operator, as the case may be;
- (3) operations under ship's tackle including slinging and unslinging, stowing and stacking on lighters, trailers or other equipment or on quay at ship's side; operations from lighters to quay, from lighters, or quay to stack in warehouse or on quay or stacking ground or on truck or vice versa, including the identification and sorting of

goods to bill of lading shipping marks, the stacking or stowing to such marks as directed by the employer and the provision of drivers for mechanical handling equipment other than for lift trucks and cranes;

(4) shed work when the workers are employed for this work by the Authority or by the employer of port workers as the case may be, provided that they may be required to work on a quay and/or in a warehouse with complete flexibility and without being tied down to specific jobs;

(5) bagging and tying;

(6) the duties applicable to winchman, driver, heavy plant driver, and signalman (Par. 1 of the Sixth Schedule to the Port Workers Regulations).

As registration is only mandatory for port workers performing tasks defined in the relevant laws and regulations, Transport Malta considers the Maltese registration scheme to be (partly) a register within the meaning of ILO Convention No. 137 (which Malta has not ratified). As we have already mentioned¹⁶⁶⁵, the workers directly employed by the terminal operators do not have to be registered.

1343. No person shall be eligible to be registered as a port worker unless he or she:

(1) is over the age of 18 and under the age of 45 years;

(2) is examined by a medical board appointed by the Minister and is found to be physically fit for port work;

(3) satisfies the Port Workers Board¹⁶⁶⁶ that he or she is in possession of the qualifications, skills and abilities, as may be determined by Transport Malta, to be able to carry out the duties of a port worker;

(4) satisfies the Port Workers Board that he or she is a fit and proper person to be a port worker; and

(5) has never been convicted or has never been declared guilty, of theft or fraud or a criminal offence which, in the opinion of Transport Malta, is deemed to be detrimental to the provision of port work (Reg. 11(3) of the Port Workers Regulations).

In addition, Transport Malta mentions the requirement to possess a driver's licence.

1344. Transport Malta cancels the registration of a person in the Port Workers Register if:

(1) he attains the age of 63 or such lower age as may be prescribed; or

(2) in the opinion of the Port Workers Board, he is no longer a fit and proper person to be a port worker for any cause whatsoever; or

(3) in the opinion of the Port Workers Board, he has absented himself from port work without reasonable cause for such number of days and within such period as may be

¹⁶⁶⁵ See *supra*, para 1339.

¹⁶⁶⁶ On the Port Workers Board, see *infra*, para 1362.

determined in the approved conditions of employment (Art. 14 of the Port Workers Ordinance).

1345. Upon registration in the Port Workers Register, Transport Malta issues a certificate of registration and a personal identity card to the port worker (Reg. 18(1) of the Port Workers Regulations).

1346. The Port Workers Ordinance sets out a number of basic obligations incumbent on registered port workers. Firstly, every port worker shall, on registration, "be conclusively deemed to have accepted to abide by the conditions of employment" and by further determinations made under the Ordinance. Secondly, every port worker has to report for work at such time and such places as he may be required by the employer or the Authority on the employer's behalf. Thirdly, every port worker shall abide by all such laws and regulations as may apply to the place or to the type of work on which he is engaged. Fourthly, every port worker shall notify the Authority of his absence from work on any day on which he absents himself from work due to injury or sickness and shall forward to the Authority a medical certificate issued by a medical doctor. Fifthly, a port worker shall, saving cases of incapacity through injury or sickness, be at all times available for port work and may not engage in any work or employment which may interfere with this obligation. Finally, in order to ensure safety, increase in efficiency and develop flexibility, it shall be the duty of port workers to undergo periodic training programmes as is considered necessary (Art. 4 of the Port Workers Ordinance).

Registered port workers due for work have to remain available near the offices of Transport Malta until they are allocated work or released. (Art. 10(1) of the Sixth Schedule to the Port Workers Regulations).

Port workers shall work with the tools and equipment provided by their employer (Reg. 8(1) of the Port Workers Regulations).

The terminal operators and other employers of port workers shall provide appropriate insurance cover to hold the port workers not liable for damage to property and third parties provided that such damage is not a result of gross negligence on the part of the port workers (Reg. 21A(7) of the Port Workers Regulations).

1347. The Port Workers Regulations provide for the establishment of a specific register for prospective port workers, called the Prospective Port Workers Register (Reg. 9(1) of the Port Workers Regulations).

The Port Workers Board shall register on the Prospective Port Workers Register any person who requests to be so registered and who satisfies the requirements of the Port Workers Regulations with regard to his eligibility to be so registered (Reg. 9(2) of the Port Workers Register).

Registration in the Prospective Port Workers Register shall lapse if it is not renewed in person at the Authority in the month of January of each year (Reg. 13(5) of the Port Workers Regulations).

1348. Transport Malta indeed maintains another register of those persons who are eligible to become prospective port workers in terms of the Port Workers Regulations. Persons registered on the latter register have to renew their registration, in person, during January of every year (Reg. 9(3) of the Port Workers Regulations).

1349. Vacancies in the complement of port workers occurring through the death or retirement of a port worker shall be filled by the recruitment of port workers from the Prospective Port Workers Register and, if no prospective port workers are available in the said register, existing vacancies shall then be filled through a public call for applications (Reg. 11(1) and Reg. 15(2) of the Port Workers Regulations).

1350. The Maltese rules on port labour set out various priority rights for relatives of registered port workers¹⁶⁶⁷.

First of all, eligibility to fill vacancies from the Prospective Port Workers Register shall be limited to the son or daughter, or to the elder from among the sons or daughters, of a port worker who was registered as such on 17 September 1990, and who retires or who is medically boarded out under the provisions of the Port Workers Regulations or who dies, provided that such son or daughter satisfies the Port Workers Board that:

- (1) he or she is a person eligible to fill a vacancy¹⁶⁶⁸;
- (2) if he or she is an adopted son or daughter, was not over the age of 6 years when adopted;
- (3) he or she has applied to Transport Malta for port work prior to the date on which the vacancy occurs and has renewed in person such registration during the month of January of each successive year¹⁶⁶⁹;

¹⁶⁶⁷ See also Regs. 41 and 42 of the Port Workers Regulations on retirement and pension rights which we shall however not discuss in the present study.

¹⁶⁶⁸ See *supra*, para 1343.

¹⁶⁶⁹ See also Regulation 13(5).

provided further that in the absence of a son or daughter of a retired or deceased port worker who was a port worker in the general cargo stevedores or port labourers section on 10 June 1975, eligibility to fill a vacancy is limited to the brother or sister or to the elder from among the brothers or sisters of such port worker, provided such brother or sister satisfies the Board that he or she is a person eligible to fill a vacancy (see further Reg. 13(1) of the Port Workers Regulations).

The order in which vacancies shall be filled shall be determined by the chronological order of the retirement or medical boarding out or death, but any person being the son or daughter or brother or sister of a port worker who was so registered as on 10 June 1975, and who is registered in the Prospective Port Workers Register and who is still so registered on the day immediately prior to his or her 45th birthday shall on that day be registered in the Port Workers Register, without affecting the rights of other persons registered in the Prospective Port Workers Register (see further Reg. 13(4) of the Port Workers Regulations).

1351. The Port Workers Regulations further provide for the registration in the Prospective Port Workers of the minor son or daughter of a registered port worker who dies while so registered or who retires from port work on reaching retirement age, provided:

- (1) if such son or daughter is over the age of 16 and under the age of 18 years, such son or daughter applies for registration within 1 month from the death or retirement of his or her father, as the case may be, and thereafter renews such registration;
- (2) if such son or daughter is under the age of 16 years on the death or retirement of his or her father, as the case may be, such son or daughter applies for registration within 1 month of attaining the age of 16 years, and thereafter renews such registration;
- (3) the registration of such son or daughter in the Prospective Port Workers Register shall not entitle him or her to compete for the filling of vacancies until such time as he or she reaches 18 years of age and he or she shall, for the purpose of the order in which vacancies are filled, be placed after the person then appearing last on that Register (Reg. 13(6) of the Port Workers Regulations).

A son or a daughter of a port worker who dies as a result of injuries sustained while performing port work or of a port worker between the age of 45 and 55 who is certified to be medically unfit for port work and whose licence is cancelled for this reason, shall be registered in the Port Workers Register, provided that this son or daughter is a person eligible to be so registered (Reg. 16 of the Port Workers Regulations).

A port worker who is over 50 years of age may apply to the Port Workers Board to have his registration cancelled in favour of his son or daughter, and if the port worker was licensed on 10 June 1975, in favour of his son or daughter or brother or sister, provided:

- (a) that the port worker forfeits all rights to a pension or gratuity; and
- (b) the son or daughter is a person eligible to be a port worker (Reg. 17 of the Port Workers Regulations).

However, the Port Workers Regulations also provide that no port worker who is registered in the Port Workers Register shall, on death or retirement or on being medically boarded out, be replaced by a son or daughter or brother or sister as the case may be, provided that:

- (1) port workers who prior to 10 June 1975 were licensed to work in the general cargo stevedores or in the lightermen or in the port labourers section, shall continue to be replaced by a son or daughter or a brother or sister, subject to the provisions of these regulations;
- (2) port workers who were so licensed as on 23 October 1992, shall be replaced by a son or daughter subject to the provisions of these regulations (Reg. 14 of the Port Workers Regulations).

1352. When Transport Malta determines that a vacancy shall be filled the Board shall, upon the production of such documents and certificates as it may require, register as a port worker in the Port Workers Register a person (1) who is registered on the Prospective Port Workers Register; and (2) who satisfies the requirements of the Port Workers Regulations with regard to his or her eligibility to be so registered, provided that:

- (1) if no prospective port workers are available to fill the existing vacancies from the list of persons whose names appear in the Prospective Port Workers Register, the Authority shall refer to the Board the person whose name appears on the register of persons eligible to become a prospective port worker upon the retirement or death of the eldest registered port worker and the date of registration of such person as a port worker shall be anticipated accordingly;
- (2) such person satisfies the requirements of the Port Workers Regulations with regard to his or her eligibility to be so registered (Reg. 15(1) of the Port Workers Regulations).

1353. The Port Workers Register also contains a section indicating the names of persons, other than prospective port workers, eligible to become port workers (Reg. 10).

1354. When the complement of registered port workers is insufficient to meet the requirements of employers, the latter may employ prospective port workers and eligible port workers for the provision of services of a temporary nature involving transport of cargoes within a port area. In the event that the number of prospective and eligible port workers is insufficient, employers of port workers may employ auxiliary port workers, provided that an agreement to that effect exists in the Service Level Agreement between the representatives of port workers and any respective employer of port workers (Reg. 15A(1) of the Port Workers Regulations).

Auxiliary port workers must be in possession of a pertinent training qualification in the provision of port work, obtained from a training institution recognised by Transport Malta (Reg. 15A(2) and Reg. 15B(1) of the Port Workers Regulations). The Malta College for Arts, Sciences

and Technology (MCAST) has been recognised under this provision. Transport Malta keeps a specific register of persons in possession of a training qualification (Reg. 15B(2)).

The payments due to auxiliary port workers are borne by the registered port workers and shall not be over and above the official tariffs (Reg. 15A(3) of the Port Workers Regulations).

1355. Transport Malta has the overall control of all port work, including the supply of port workers for port work (Art. 8(g) of the Authority for Transport in Malta Act; Reg. 4 of the Port Workers Regulations).

The supply of registered port workers for particular port work or to particular employers takes place through Transport Malta (Art. 9(1) of the Port Workers Ordinance).

Further, Transport Malta has the following tasks:

- (1) except where otherwise provided in a Service Level Agreement, supply port workers to any port work authorised by Transport Malta in such numbers, order and priority as may be determined by Transport Malta;
- (2) ascertain the amount of fees due by employers of port workers in accordance with the tariff made under the Port Workers Ordinance¹⁶⁷⁰, collect such fees from the person responsible for their payment and pay to the port workers such fees as shall be due to them;
- (3) collect from employers of port workers and from port workers any contributions due for the purposes of the Social Security Act;
- (4) maintain and supply records of employment and earnings;
- (5) record attendances and absences of port workers;
- (6) furnish returns and statistics in connection with the employment of port workers;
- (7) ascertain and collect an administrative surcharge;
- (8) carry out such other functions as may be prescribed (Art. 9(2) of the Port Workers Ordinance).

Orders for labour are to be made to the Authority in all cases (Par. 2 of the Sixth Schedule to the Port Workers Regulations).

The order in which port workers shall be supplied to employers of port workers and, or terminal operators shall, save as otherwise provided, be the working priority of the ship as submitted by the employers of port workers and, or terminal operators (Par. 3 of the Sixth Schedule to the Port Workers Regulations). The Port Workers Regulations further specify *inter alia* when and how orders must be made (Par. 4) and cancelled (Par. 12) and entitles Transport Malta to take into account priority of mail (Par. 6(1)).

The number of port workers inclusive of drivers, winchmen and/or signalmen, where applicable, to be allocated for an operation and the approximate time necessary to complete the operation,

¹⁶⁷⁰ On these tariffs, see *infra* para 1359.

shall be determined jointly by two representatives of Transport Malta and a representative of the port workers. The decision reached shall be final, provided that:

- (1) the employer of port workers may, while the operation is in progress, request a revision of the decision;
- (2) if a dispute arises, the matter shall be brought for the consideration of the Port Workers Board, without the stopping of port work, unless in case of evident danger (Par. 6(2) of the Sixth Schedule to the Port Workers Regulations).

Transport Malta shall supply port workers in the order in which they appear on the roster. All port workers, engaged on a shift basis, shall be allocated to a particular ship or operation at the same time and in the order in which they are registered on the roster. Port workers who are requested to perform part of a shift shall be considered as if they have worked a whole shift (Par. 7 of the Sixth Schedule to the Port Workers Regulations).

When port workers have been allocated to a ship or to an operation, no increase or decrease in the number of port workers shall be allowed, save as provided for in the Schedule (Par. 8 of the Sixth Schedule to the Port Workers Regulations).

Next, the Port Workers Regulations provide that the number of port workers allocated port work on Deep Water Quays "shall be deemed to include at least one driver for mechanical handling equipment other than forklift trucks and cranes" (Par. 14 of the Sixth Schedule) and that leakages on board ship shall be gathered and packed or bagged by port workers (Par. 15).

Finally, the use of one or more signallers is compulsory under the Dock Safety Regulations (Reg. 43)¹⁶⁷¹.

In Malta, pool workers are not hired in hiring halls.

1356. Pursuant to the Port Workers Ordinance, Transport Malta, after consultation with the Port Workers Board and with the approval of the competent Minister shall levy an administrative surcharge on employers of port workers calculated as a percentage of the gross wages of these workers (Art. 9(3)). Port Circular No. 03/07 of 2 July 2007¹⁶⁷² mentions, however, that the administrative surcharge is abolished. Nevertheless, the employer still has to pay a contribution to the Pension and Contingency Fund of 0.63 EUR per ton of cargo loaded or unloaded. A number of goods, including locally manufactured goods, or locally produced agricultural goods, loaded on a ship for export, as well as transshipment cargo, bulk cereals and accompanied commercial vehicles of a cargo capacity of more than 10 tons are exempt however (see the Seventh Schedule to the Port Workers Regulations).

¹⁶⁷¹ On these Regulations, see *infra*, para 1385.

¹⁶⁷² On this Circular, see *supra*, para 1333.

1357. Since 1992¹⁶⁷³, all registered port workers have been amalgamated into one homogenous group and perform all work from hold to truck, stacking ground or warehouse or vice-versa (Reg. 12(1)). The same year, a shift system was introduced to cover 24 hours a day 7 days a week (Fifth Schedule to the Port Workers Regulations).

1358. As we have mentioned before¹⁶⁷⁴, the registered port workers are self-employed.

Responsibility for the payment of fees due for the employment of port workers shall be vested in the person by whom or on whose behalf such port workers are employed (Art. 6(1) of the Port Workers Ordinance).

With regard to tariffs, a distinction is made between, on the one hand, import and export cargo and, on the other hand, transshipment cargo. In respect of import and export cargoes and related services, the tariffs may not exceed the maximum established under the Port Workers Regulations. Tariffs for transshipment operations and related services are freely negotiated between the employer of port workers and the representatives of port workers (see Reg. 21A(5) of the Port Workers Regulations).

Employers of port workers shall effect payment for port work to Transport Malta in accordance with the tariffs of fees and rates set out in the Second Schedule to the Port Workers Regulations, and in accordance with the contribution set out in the Seventh Schedule (Reg. 25(1) of the Port Workers Regulations). The tariff of the handling of transshipment cargo and related services shall be established following negotiations between the employers of port workers and port workers. The agreement reached shall be communicated to Transport Malta, provided that when both parties fail to reach an agreement, either of the parties may refer the dispute to Transport Malta which shall determine the tariff based on:

- (1) the service to be provided;
- (2) the latest tariff negotiated between the parties;
- (3) any published tariff;
- (4) the cost of labour; and
- (5) the volume of cargo and nature of services involved;

provided further that either party may appeal the decision taken by Transport Malta, in respect of the establishment of a transshipment tariff, to the Port Work Appeals Board (Reg. 25(2) of the Port Workers Regulations).

Transport Malta shall, on receipt of payment of bills by employers of port workers, deposit in a port workers' wages account the monies due to port workers in accordance with the tariffs of fees and notes set out in the Second Schedule to the Port Workers Regulations (Reg. 26 of the Port Workers Regulations).

As they are self-employed, pool workers receive no unemployment benefit.

¹⁶⁷³ See already *supra*, para 1321.

¹⁶⁷⁴ See *supra*, para 1334.

1359. The table below shows fees payable to port workers for the handling of general cargo.

Table 77. Fees payable to port workers for the handling of general cargo in Maltese ports (source: Part I of the Second Schedule to the Port Workers Regulations)

	Nature of cargo	Total payable by employers of port workers in respect of the whole operation
a.	Cement - in big bags or on pallets - per ton	2.70 EUR*
	Cement - in 50kg bags - per ton	4.94 EUR*
b.	Soda, sulphur and coal - in bags - per ton	2.80 EUR*
c.	Onions, carobs, oats, pollard, cotton seed, oil cake, barley, bran, coke and malt - in bags - per ton	3.47 EUR*
d.	Potatoes - per ton	2.63 EUR*
e.	Iron joists, beams, girders, rails, metal rods including angle iron and sheets, ingots - per ton	2.91 EUR*
f.	Refrigerated cargo: fruit in cases or cartons - per ton	3.73 EUR*
	Refrigerated cargo: other cargo - per ton	3.31 EUR*
g.	Fruit in cases or cartons (not refrigerated) - per ton	2.47 EUR*
h.	Scrap metal (other than aluminium) - loose per ton	3.24 EUR*
i.	Scrap aluminium – loose per ton	5.75 EUR*
j.	Motor and aviation spirit in cans or drums, and explosives including ammunition and pyrotechnics - per ton	2.12 EUR*
k.	Chairs, loose or in bundles - each	0.09 EUR
	Willows, canes <i>et similia</i> , in bundles - per bundle	0.09 EUR
	Empty drums of a capacity of 40 gallons and over - each	0.09 EUR
l.	Empty wine and beer casks - each	0.65 EUR
m.	All other cargo other than cargo in bulk - per ton	2.45 EUR*
<p>* Where denoted by an asterisk, tariff figures are subject to an additional overall payment of 5 per cent. The fees shown above include all remuneration due for the carrying of cargo necessary for the performance of the whole operation.</p>		

The third table provides an overview of fees payable to port workers for the handling of unitised cargo¹⁶⁷⁵.

¹⁶⁷⁵ Art. 2 of the Port Workers Ordinance contains the following definition:

"unit load" or "unitised cargo" means -

(a) *a quantity of cargo unitised to form a single load in or on -*

(i) roll on/roll off units which may be on wheels integral to the transport unit or which may be towed or pushed or otherwise moved by other mechanical equipment;

(ii) vehicles or trailers rolled on or off a ship;

(iii) Lancashire flats, that is, platforms, with or without ends, on which the goods are stacked;

(iv) freight containers being articles of equipment having an overall volume of not less than 8 cubic metres either rigid or collapsible, suitable for repeated use in the carriage of goods in bulk or package form and capable of transfer to or from one or more forms of transport;

(b) *liquid in bulk in containers with a minimum capacity of 2273 litres integrated in vehicles to form bowsers;*

(c) *vehicles and empty trailers of all kinds rolled on or off a ship;*

(d) *any other goods on wheels rolled on or off a ship;*

(e) *cargo on expendable or returnable pallets, provided such cargo is handled between ship and shore or vice-versa entirely by mechanical means through points of access to or from a ship other than conventional hatchways;*

(f) *empty containers;*

(g) *empty road transport vehicles and bowsers rolled off a ship to load cargo for eventual shipment as unitised cargo or rolled on a ship after having brought into Malta unitised cargo by means of the roll on/roll off method;*

(h) *seacraft or floating objects which are loaded on or a port:*

but does not include -

(i) unit loads of any description handled between ship and shore or vice-versa by conventional means, other than containers lifted on or off a ship; or

(ii) heavy indivisible loads, except when carried on a vehicle or trailer which is rolled on or off a ship.

Table 78. Fees payable to port workers for the handling of unitised cargo in Maltese ports (source: Part II of the Second Schedule to the Port Workers Regulations)

	Nature of work	Rate
(a)	Unloading or loading of unitised cargo	1.28 EUR/ton
(b)	Shifting of unitised cargo	0.58 EUR/ton for each operation
(c)	Loading or unloading of empty containers	12.46 EUR/unit
(d)	Loading or unloading of empty trailers	1.16 EUR/unit
(e)	Loading or unloading of empty containers on trailers	13.28 EUR/unit
(f)	Road transport vehicles and bowser (excluding ship's equipment used to tow, push carry or move unitised cargo) rolled on or off a RORO ship to load or unload cargo	5.82 EUR/unit in addition to the fees in respect of cargo carried
(g)	Folding or collapsible containers loaded or unloaded interlocked into one another	1.28 EUR/ton of 1000 kilogrammes
(h)	Loading and unloading of accompanied commercial vehicles with a cargo capacity of over 10 tons:	
	Chassis cab trucks or trailers of 20 ft	26.00 EUR/unit
	Articulated trucks or trailers of 40 ft	58.00 EUR/unit
	Articulated trucks or trailers of over 40 ft	74.00 EUR/unit
	Empty accompanied commercial vehicles	12.46 EUR/unit
	Port workers shall be paid these fees if they have provided port work during the loading and unloading of the specified cargo	

Further tables of fees apply to the handling of bulk cargo (Part III of the Second Schedule to the Port Workers Regulations) and for the handling of goods from shed or stack to transport (Part IV of the Second Schedule to the Port Workers Regulations).

Furthermore, specific provisions entitle port workers employed as a winchman, heavy plant driver or signalman for any one operation, to a fee of €9.32 per hour, subject to a minimum period of 4 hours (Par. 1 of Part V of the Second Schedule to the Port Workers Regulations). Port workers employed to perform the following port work in enclosed port areas, with regard to the handling of unitised cargo, that is -

- (a) the packing and unpacking of containers;
- (b) the loading and unloading of trailers;
- (c) the dismantling of other unit loads on quay or in warehouse or stacking ground;
- (d) the sorting of cargo so handled according to main bill of lading marks and the stacking of such cargo on quay or in warehouse; and
- (e) the consolidation of unit loads for loading on board a ship;

shall be paid a fee of €9.32 per hour, subject to a minimum period of work of 4 hours (*ibid.*, Par. 2).

Further provisions deal with, *inter alia*, the case where the actual weight landed exceeds the weight shown in the bill of lading (see Par. 7.1 *et seq.* of the Third Schedule to the Port Workers Regulations).

1360. The representatives of registered port workers and employers of port workers must enter into a Service Level Agreement in connection with the provision of services by port workers (Reg. 21A(1) of the Port Workers Regulations).

A Service Level Agreement may include, amongst other provisions, the following:

- (1) a description of the services to be provided, including the resources to be made available, the number of workers and the service levels / targets to be met by the parties to the agreement;
- (2) the services that are required to be provided by the port workers;
- (3) dispute resolution;
- (4) the hours of work, including shift systems allocation;
- (5) the ordering procedure when filing requests for the provision of port workers;
- (6) disciplinary procedure including, but not limited to, the non-attainment of agreed minimum service levels (see Reg. 21A(3) of the Port Workers Regulations).

The Port Workers Regulations reiterate that workers allocated to employers of port workers under a Service Level Agreement have to be fit and able to perform the work to which they are assigned (Reg. 21A(2)).

In order to ensure consistency between the various service level agreements, especially with regard to disciplinary procedures and dispute resolution, these agreements are communicated to Transport Malta (Reg. 21A(6)). Yet, Transport Malta considers these agreements confidential¹⁶⁷⁶.

1361. The hours of work, leave and public holidays are regulated in the Fifth Schedule to the Port Workers Regulations (Art. 29 of the Port Workers Regulations).

The working hours for the provision of port work in ports shall be 24 hours, 7 days a week (Par. 1 of the Fifth Schedule to the Port Workers Regulations). The Port Workers Regulations set out working hours, shift patterns and extra fees for work during night shifts, on Sundays and on holidays (Par. 2 and 3 of the Fifth Schedule). These conditions of work may however be varied through the Service Level Agreement that every employer of port worker or terminal operator and the representatives of port workers shall enter into (Par. 4).

¹⁶⁷⁶ See *supra*, para 1320.

1362. The Port Workers Ordinance establishes a Port Workers Board (Art. 10(1)).

This Board consists of a Chairman appointed by the Minister, two members nominated by the employers of port workers, two members nominated by the port workers and a secretary with no voting powers appointed by the Minister (Art. 10(2)).

The Port Workers Board has the following functions:

- (1) the discipline of port workers other than disciplinary measures foreseen in the relative Service Level Agreements¹⁶⁷⁷;
- (2) the review of the complement of port workers required by employers of port workers to satisfy the demands of industry¹⁶⁷⁸;
- (3) the selection of persons eligible to fill a vacancy for a port worker in accordance with regulations issued under the Ordinance;
- (4) to determine:
 - (i) the conditions of employment of port workers including tariffs related thereto;
 - (ii) the system under which port workers shall be supplied to employers of port workers for any port work;
 - (iii) the organisation of port workers¹⁶⁷⁹;
- (5) to advise Transport Malta on matters relating to labour in the port;
- (6) to make recommendations to Transport Malta concerning the deregistration from the Port Workers Register of persons working at a port;
- (7) to perform such other functions as may be prescribed (Art. 11(1)).

The conclusions of the Board relative to matters under items (4) and (5) above shall be by agreement between the representatives of employers of port workers and of the port workers on the Board (Art. 11(3)). All other decisions shall be taken by majority vote (Art. 11(5)).

Any conclusion of the Board relating to any tariff or to the conditions of employment of port workers or to the supply of port workers and any other matter which in the opinion of the Chairman of the Board involves principles of importance, shall be submitted to the Minister for approval and when approved by him shall be published by order in the Gazette and shall be binding on all employers of port workers and on port workers from the date of publication as may be appointed by the Minister, provided (1) that the Minister may delegate the powers

¹⁶⁷⁷ Serious offences are dealt with by the Port Workers Board whereas a procedure for minor offences may be included in the service level agreements. Art. 11(2) of the Port Workers Ordinance stipulates that in the event that a person is convicted of theft committed during or in connection with port work or contravenes or fails to comply with the provisions of the Ordinance, or grossly misbehaves or misconducts himself in the course of or in connection with his port work, then the Board may (1) suspend him from work for a period not exceeding three months; or (2) give him a fortnight's notice of cancellation of his registration; or (3) cancel his registration forthwith. In an older case, the Board cancelled the registration of a port worker who committed theft of monies pertaining to the port workers' scheme. The First Hall of the Civil Court held that it may not substitute the discretion of the Board in such matter (Civil Court First Hall, 10 June 1987, Joseph Farrugia vs. Emanuel Cilia Debono).

¹⁶⁷⁸ See already *supra*, para 1342.

¹⁶⁷⁹ However, the Board does not exercise the latter functions where employers of port workers and port workers have agreed on different arrangements.

conferred upon him to a public officer or to an officer in the Authority and (2) that the Minister may recall for his own determination on any matter that may be pending before the Board (Art. 11(6) of the Port Workers Ordinance).

The Port Workers Board also decides on a number of specific disputes which may arise between port workers and their employers (see Art. 12 of the Port Workers Ordinance).

1363. The Port Workers Ordinance also establishes a Port Work Appeals Board (Art. 7(1)) with the following functions:

- (1) to hear appeals by employers of port workers or port workers for a review of any decision or directive taken by Transport Malta with regard to the tariffs for transshipment operations;
- (2) to decide upon any dispute as may be referred to it by the Minister regarding transshipment tariffs (Art. 8(1)).

In arriving at a decision on an appeal, the Port Work Appeals Board must seek to balance the application of the following principles:

- (1) tariffs charged are based on sound economic and commercial facts, including consideration of the interests of consumers and industry in general and other parties involved in port activity, including, where applicable, the rate of inflation since the charges were last revised, and any other relevant unexpected economic circumstances;
- (2) tariffs are reasonably related to costs, including depreciation and a return on capital employed;
- (3) port operators, or other persons involved in port activity, are to be encouraged to invest in port facilities to meet demand;
- (4) tariffs are comparable to those levied at other ports competing with Malta;
- (5) the achievement of service standards especially those applicable internationally (Art. 8(4)).

1364. The Port Workers Ordinance establishes criminal fines on any person who contravenes or fails to comply with its provisions¹⁶⁸⁰.

Where any employer disputes any bill for port work or fails to pay any such bill, Transport Malta shall, unless the matter is settled, refrain from supplying port workers to an employer failing to pay any bill for port work if, after giving the employer an opportunity of making representations, it so instructs (Art. 20(2) of the Port Workers Regulations).

¹⁶⁸⁰ More in particular the Article mentions infringements of Art. 3(1) or (4), Art. 5(1), Art 6 and Art 9(1) or (2) (and also of requests made under Art. 9(5)(a) which does however not exist).

The Port Disputes Board may award compensation to port workers if the roster in which the latter are organised was wilfully or negligently disrupted by an employer of port workers, or by a person acting on behalf of such employer (see Reg. 22 of the Port Workers Regulations).

1365. The Port Workers Regulations contain detailed provisions on the establishment and management of a specific Pension and Contingency Fund to which employers are obliged to contribute (Art. 31 *et seq.*)¹⁶⁸¹.

1366. As we have mentioned before¹⁶⁸², Maltese port labour law identifies foremen as a specific category of port workers.

A foreman is defined as "any person who, on his own behalf or on behalf of another person, employs port workers" (Art. 2 of the Port Workers Ordinance). However, the specific rules on foremen do not apply to contractors (Art. 5(6) of the Port Workers Ordinance).

The Port Workers Ordinance stipulates that no person shall act as foreman (1) if he is a port worker; (2) unless he is licensed as such by the Authority (Art. 5(1)).

The licence may be subject to specific conditions and shall expire on the 31st of December in each year but may be renewed from year to year, provided that the licence shall automatically expire if the foreman is convicted of theft committed during or in connection with port work (Art. 5(2)).

If any foreman contravenes or fails to comply with the provisions of this Ordinance, or grossly misbehaves or misconducts himself in the course of or in connection with his work, then Transport Malta may (1) reprimand him; (2) suspend his licence for such period as the Authority may deem appropriate; or (3) cancel his licence (Art. 5(3)).

Transport Malta may, in its discretion and subject to the provisions of the Ordinance, issue a licence to any person to act as a foreman of port workers (Reg. 6(1) of the Port Workers Regulations).

The Authority shall not issue a licence unless it is satisfied that the person applying for a licence:

- (1) is over the age of 25 years;
- (2) has had adequate experience of cargo handling operations;
- (3) is a fit and proper person to be licensed;

¹⁶⁸¹ See already *supra*, paras 1321, 1329, 1330, 1332, 1333 and 1356. The Minister may authorise the payment out of the Fund of a cost of living increase or bonus or of any other increase in the wages of port workers (see Reg. 47(1) of the Port Workers Regulations).

¹⁶⁸² See *supra*, para 1334.

(4) is below the statutory pension age; and
(5) in the case of a person who did not hold a licence on 30 December 2007, is in possession of a valid certificate of competence in the provision of foremen duties issued by a training institution approved by Transport Malta (Reg. 6(2) of the Port Workers Regulations)¹⁶⁸³.

The complement of foremen is established by Transport Malta, taking into consideration the requirements of employers of port workers (Reg. 6(4) of the Port Workers Regulations).

Foremen shall be paid in accordance with the tariffs of fees and the rates thereto set in the First Schedule to the Port Workers Regulations, provided that fees and rates for transshipment cargo may be as negotiated between foremen and employers of port workers. In the case of a dispute between the foremen and the employers of port workers about the fees payable to foremen, Transport Malta shall determine fair and reasonable transshipment fees and rates which shall be binding on both parties (Reg. 24 of the Port Workers Regulations).

The table below shows the fees which are payable to foremen of port workers engaged in the supervision of the handling of cargo.

¹⁶⁸³ See also *infra*, para 1378.

Table 79. Fees payable to foremen of port workers engaged in the supervision of the handling of cargo in Maltese ports (source: First Schedule to the Port Workers Regulations)

Item	Description	Fee
1.0	To foremen engaged in the supervision of the handling of unitised cargo:	
1.1	Loading of unitised cargo	
1.1.1	Locally manufactured goods, per ton	0.29,9 EUR
1.1.2	Other unitised cargo, per ton	0.32,9 EUR
1.2	Unloading of unitised cargo, per ton	0.36,9 EUR
1.3	Loading and unloading of empty containers and trailers, per unit	2.00,0 EUR
2.0	To foremen engaged in the supervision of the handling of general cargo, per ton	0.39,9 EUR
3.0	To foremen engaged in the supervision of the handling of the following bulk cargo:	
3.1	Wheat, per ton	0.12,0 EUR
3.2	Barley, maize and corn, per ton	0.16,0 EUR
3.3	Soya and alfalfa, per ton	0.35,0 EUR
3.4	Pellets and seeds, per ton	0.35,0 EUR
3.5	Cement, per ton	0.23,9 EUR
3.6	Other bulk cargo, per ton	0.39,9 EUR
4.0	Handling of accompanied commercial vehicles with a cargo capacity of more than 10 tons:	
4.1	Chassis cab trucks or trailers of 20ft, per unit	5.80,5 EUR
4.2	Articulated trucks or trailers of 40ft, per unit	11.58,5 EUR
4.3	Articulated trucks or trailers of over 40ft, per unit	17.03,0 EUR
4.4	Empty accompanied commercial vehicles, per unit	2.00,0 EUR
5.0	Shifting of cargo:	
5.1	Shifting of cargo, per ton	0.15,0
5.2	Shifting and restowing of cargo, per ton	0.30,0

1367. The foremen and the employers of port workers are obliged to enter into a Service Level Agreement which may, amongst other matters, include the following:

- (1) a description of the services to be provided, including the resources to be made available and the service performance levels to be met by the parties to the agreement;
- (2) the services that are required to be provided by foremen;
- (3) the mechanisms for dispute resolution in case of disagreement between the parties;
- (4) the hours of work, including shift systems allocation;
- (5) the ordering procedure;

(6) the disciplinary procedures that may be taken including, but not limited to, the non-attainment of agreed minimum service performance¹⁶⁸⁴ (see Reg. 7(1) of the Port Workers Regulations).

1368. The Tallying of Goods Regulations provide that the terminal operator is responsible to ensure that no goods are discharged from or loaded on a ship unless such goods are tallied by him or under his instructions in accordance with the provisions of these regulations. However, compulsory tally does not apply to:

- (1) ship stores, equipment, fittings and furniture discharged from or loaded on to a ship on which such stores, equipment, fittings or furniture have been or may be used;
- (2) goods carried between the islands of Malta, Gozo and Comino;
- (3) goods carried in bulk;
- (4) live animals;
- (5) fish discharged from or loaded on fishing vessels; or
- (6) any other type of goods which the Minister may exempt from tallying (Reg. 3).

The Comptroller of Customs or the Authority may require any terminal operator taking or causing to be taken a tally of goods under the provisions of these regulations to produce signed copies of tally sheets (see Reg. 4).

Infringements are criminally sanctioned (Reg. 6-7)

1369. The Ports (Handling of Baggage) Regulations provides that unless a person is authorised by the Transport Malta to act as a baggage handling operator such person shall not be allowed to take charge of passengers' baggage or to board ships or enter port enclosed areas for the purpose of handling passengers' baggage (Reg. 3(1)). The word "person" includes a person or a body or association of persons, whether such body or association is corporated or unincorporated (Reg. 2).

A baggage handling operator shall carry out his duties either as prescribed by the Ports (Handling of Baggage) Regulations or in terms of procedures established by an operator of passenger facilities and approved by the Authority. An operator must use "the greatest care" in the handling of baggage and "the utmost respect" towards passengers; he shall have no fixed hours for his work and shall be available to render service at any time of the day and night, not engage in any business or trading activity whatsoever when doing duty as baggage handling either within the port enclosed areas or on the quays, or on any ship; he shall wear a uniform as may be fixed by an operator of passengers facilities or by Transport Malta, not smoke during work, and not ask for tips (Reg. 4). The tariff for baggage handling services provided by an operator of passenger facilities is fixed by the Regulation, but an operator of passenger

¹⁶⁸⁴ More serious offences are dealt with by the Port Workers Board.

facilities may enter into special agreements in respect of baggage handling services and charge lower rates (Reg. 5).

1370. Yet another regulated profession in the Maltese ports is this of the *burdnar*.

The Cargo Clearance and Forwarding Agents' (*Burdnara*) Employees Wages Council Wage Regulation Order of 19 April 1976¹⁶⁸⁵, which sets the minimum wage for employees of a *burdnar*, defines the *burdnar* as any person whose business is or includes all or any of the following:

- (a) the clearing through the Customs Department of documents relating to cargo;
- (b) the withdrawal of cargo from any customs shed, bonded store, warehouse, verandah, quay or other place of deposit and the transport of such cargo therefrom to a place of consignment;
- (c) the withdrawal of cargo from any factory, warehouse or other premises and the transport of such cargo therefrom to a quay or other place of deposit for shipment (Art. 1).

The *burdnar* – in practice, a company, not an individual – is licensed by the Customs Department as a Cargo Clearing and Forwarding Agent and is licensed to transport goods to and from the port customs area. The number of licences for these road hauliers is limited (*numerus clausus*) and the licensees possess a special port security pass which allows them and only them to transport cargo. Reportedly, the groupage depot at Hal Far is the main livelihood of the smaller *burdnara*. *Burdnara* can be members of the General Retailers and Traders Union (GRTU). Regarding work on a commission basis, the latter organisation acts as a trade union. Reportedly, *burdnar* licences are inherited. In 2008, there were still 111 *burdnara* active in Maltese ports (upon accession to the EU, there were 133 licences, 2 of which have since been revoked)¹⁶⁸⁶. We were unable to obtain updated data for 2012.

1371. The Maltese Mutual Recognition of Qualifications Act of 2002¹⁶⁸⁷ applies to the regulated professions and the regulated professional activities listed in the Schedule to the Act (Art. 2), which include 'port worker' and 'foreman of port worker'.

¹⁶⁸⁵ Legal Notice 45 of 1976.

¹⁶⁸⁶ See Depasquale, I., "Negotiations closed on Transport", *Aggornat* November 2001, Special Edition No. 5, http://www.meusac.gov.mt/Portals/FME/Documents/AGGSE05e_Transport.pdf, item 2.2.1; X., "FOI and GWU agree that changes are needed at Malta's ports", *The Malta Financial and Business Times* 14 August 2002, <http://www.businesstoday.com.mt/2002/08/14/focus.html>; X., "GRTU achieves agreement on burdnara issues", *Times of Malta* 3 March 2003, <http://www.timesofmalta.com/articles/view/20030303/local/grtu-achieves-agreement-on-burdnara-issues.155339>; *Parliamentary Documents*, Oral Question by Mr Vincent Galea to Minister Tonio Fenech of 29 May 2008, No. XI 652, www.pg.gov.mt.

¹⁶⁸⁷ Act XVIII of 2002 Relating to the Mutual Recognition of Qualifications (Chapter 451 of the Laws of Malta).

Table 80. Excerpt from the Schedule to the Maltese Mutual Recognition of Qualifications Act

Regulated Profession / Professional Activity	Designated Authority	Legislation
Port Worker Foreman of port worker	Port Workers Board	Port Workers Ordinance, Cap. 171

According to the Act, no applicant from another EU Member State¹⁶⁸⁸ is entitled to practise a regulated profession or a regulated professional activity unless he fulfils the conditions for the taking up or pursuit of that profession or activity in accordance with the provisions of the Act or of any enactment listed in the Schedule (Art. 3).

The designated authority – apparently, the Port Workers Board in the case of port work – shall consider any request submitted by an applicant as soon as it is reasonably practicable, and shall notify the applicant of its decision together with the reasons upon which it is based within four months of receipt of all the relevant documents (Art. 4).

The Act also provides for the establishment of a Malta Qualifications Recognition Information Centre (Art. 6) and of a Mutual Recognition of Qualifications Appeals Board (Art. 7).

1372. Regulations issued by individual terminals may expressly refer to official requirements on contractors and workers to be registered or licensed.

For example, Valletta Gateway Terminals' 'Occupational & Environmental Health and Safety – Contractor's Obligations and Duties'¹⁶⁸⁹ state that the contractor must ensure that where a portion of the work may only lawfully be carried out by persons holding a particular certificate or licence, that the portion will only be carried out by persons holding that certificate or licence, and that he also must make available at the working area for inspection by the operator any such certificates or licences required, whether before or after commencement of work on the Site (Art. 6.0).

1373. Rules on the organisation of port labour are enforced by the public prosecutor, the national employment agencies and Transport Malta. According to the latter, enforcement is adequate.

¹⁶⁸⁸ The Act states "Agreement State".

¹⁶⁸⁹ http://www.vgt.com.mt/Portals/27/docs/HS_Contractors%20Obligations.pdf.

- *Facts and figures*

1374. According to Transport Malta, there are today 8 terminal operators who use port workers both from the pool and their own employees.

Valletta Gateway Terminals (VGT) is responsible for the handling of containers, trailers, break bulk, vehicles and other cargoes at the port of Valletta. Valletta Cruise Port, a private consortium of local enterprises and several international companies, operates the passenger handling facilities¹⁶⁹⁰.

Today, Malta Freeport Terminals is the single operator of the container terminals and warehousing facilities in the Freeport zone¹⁶⁹¹.

1375. According to Transport Malta, there are currently 379 licensed port workers, 21 foremen and about 700 workers who are directly employed by terminal operators.

The table below shows the evolution of the number of port workers and foremen.

¹⁶⁹⁰ See <http://www.transport.gov.mt/ports-marinas/ports-in-malta/port-of-valletta/cargo-and-passenger-handling>.

¹⁶⁹¹ In 2004, a concession to operate and develop Malta Freeport Terminals was granted to CMA CGM. In February 2008, the Government of Malta granted CMA CGM an extension of the concession for Malta Freeport Terminals from 30 years to a total of 65 years. In November 2011, CMA CGM transferred half of its shares in Malta Freeport Terminals to the Yildirim Group of Turkey (see <http://www.maltafreeport.com.mt/freeport/content.aspx?id=125391>).

Table 81. Number of registered port workers and foremen in Maltese ports, 1996-2012 (source: Parliamentary Questions and Answers¹⁶⁹² and Transport Malta)

Year	Number of registered port workers	Number of registered foremen
1996	398	29
1997	392	29
1998	391	29
1999	388	29
2000	381	28
2001	376	33
2002	373	33
2003	373	33
2004	373	33
2005	371	33
2006	359	29
2007	353	29
2008	367	24
2009	369	19
2010	369	20
2011	367	20
2012	379	21

1376. Transport Malta states that all port workers are members of a union, either the Malta Dockers Union (MDU), the General Workers' Union (GWU) or Union Haddiema Maghqudin (UHM, aka Malta Workers' Union or Union of United Workers). The General Workers' Union (GWU) is affiliated to the European Transport Workers' Federation (ETF), whereas the Malta Dockers' Union (MDU) is a member of the International Dockworkers Council (IDC)¹⁶⁹³.

The MDU was founded in 2006 when over 300 registered port workers resigned from GWU to establish a new union. The new situation gave rise to a fierce dispute between GWU and MDU over their respective representativeness. In 2009, the Malta Maritime Authority (now Transport Malta) stated that its records showed that MDU represents the majority of port workers. A verification process conducted by the Department of Industrial and Employment Relations (DIER) in the same year confirmed that the majority of licensed port workers indeed back MDU. The ambiguity with regard to trade union representation may stem from the fact that port

¹⁶⁹² *Parliamentary Documents*, Oral Questions by Mr Jason Azzopardi to Minister Ćensu Galea of 14 September 2005, Nos. X 14075 and X 14077, www.pq.gov.mt.

¹⁶⁹³ See also X., "MDU gets international support in fight with GWU", *Times of Malta* 2 April 2009, <http://www.timesofmalta.com/articles/view/20090402/local/mdu-gets-international-support-in-fight-with-gwu.251329>.

workers can be registered simultaneously in two trade unions¹⁶⁹⁴. MDU was also joined by the tally clerks, but not by the delivery clerks.

Union Haddiema Maghqudin represents a considerable share of the workers directly employed by Malta Freeport Terminals¹⁶⁹⁵.

9.14.4. Qualifications and training

1377. The Occupational Health and Safety Authority Act obliges all employers to provide such information, instruction, training and supervision as is required to ensure occupational health and safety (Art. 6(3)).

As we have mentioned above¹⁶⁹⁶, the Port Workers Ordinance stipulates that in order to ensure safety, increase efficiency and develop flexibility, port workers are under a duty to undergo periodic training programmes, as is considered necessary (Art. 4(6)).

1378. The Port Workers Regulations stipulate that possession of a training certificate training is a prerequisite to obtain a licence as a foreman (Reg. 6(2))¹⁶⁹⁷, to be employed as an auxiliary port worker or to fill any vacancy (see Reg. 15A(2) and 15B(1)).

¹⁶⁹⁴ See Debono, M. and Farrugia, C., "Union dispute in the wake of port restructuring", *Eironline* 30 October 2006, <http://www.eurofound.europa.eu/eiro/2006/09/articles/mt0609039i.htm>; Borg, A., "Dispute escalates over port workers' union representation", *Eironline* 1 July 2009, <http://www.eurofound.europa.eu/eiro/2009/04/articles/mt0904039i.htm> and X., "Editorial. A spring of industrial discontent", *Times of Malta* 20 April 2009, <http://www.timesofmalta.com/articles/view/20090420/editorial/editorial.253591>; Rizzo, S., "Malta: EIRO Annual Review - 2009", *Eironline* 11 January 2011, <http://www.eurofound.europa.eu/eiro/studies/tn1004019s/mt1004019q.htm>; Rizzo, S., "Trade union strategies to recruit new groups of workers - Malta", *Eironline* 17 May 2010, <http://www.eurofound.europa.eu/eiro/studies/tn0901028s/mt0901029q.htm>; Schembri, K., "Port reforms will substantially reduce costs, Galea announces", *Business Today* 6 June 2007, 1, <http://www.businesstoday.com.mt/2007/06/06/focus.html>; Xuereb, M., "MDU accuses GWU of harassing port workers", *Times of Malta* 30 April 2009, <http://www.timesofmalta.com/articles/view/20090430/local/mdu-accuses-gwu-of-harassing-port-workers.254907>; X., "MDU gets international support in fight with GWU", *Times of Malta* 2 April 2009, <http://www.timesofmalta.com/articles/view/20090402/local/mdu-gets-international-support-in-fight-with-gwu.251329>; X., "Dispute escalates over port workers' union representation", http://www.labourlawnetwork.eu/national_labour_law/legislative_developments/prm/109/v_detail/id_726/category_24/size_1/index.html. See also ETF's letter to Prime Minister L. Gonzi of 10 April 2009 on <http://sitestudio.altanova.com.mt/library/images/gwu/news%20pics/support%20letter%20general%20workers%20union.pdf>.

¹⁶⁹⁵ In 2004, 500 Freeport workers were reported to be members of UHM (see Debono, M., "Freeport workers demand higher wages", *Eironline* 5 October 2004, <http://www.eurofound.europa.eu/eiro/2004/10/inbrief/mt0410101n.htm>).

¹⁶⁹⁶ See *supra*, para 1346.

¹⁶⁹⁷ See already *supra*, para 1366.

1379. The registered port workers' Pension and Contingency Fund finances a special Training Fund for port workers. This training, "without which one can't become a port worker"¹⁶⁹⁸, is provided by the MDU and the Malta College of Arts, Science and Technology (MCAST). More in particular, MCAST offers a Port Work Induction Course (52 contact hours spread over 3 weeks)¹⁶⁹⁹.

1380. Replying to our questionnaire, Transport Malta confirmed that in Malta, compulsory induction courses for new entrants and specialist courses for certain categories of port workers such as crane drivers, container equipment operators, forklift drivers and signalmen are offered. However, no curricula for training of port workers exist.

Transport Malta points out that in 2007, a Certificate of Competence was introduced. Transport Malta issues this certificate to persons who want to be registered as a port worker. Candidates have to follow a theoretical course which contains an introduction to the different types of port work as well as to health and safety topics.

1381. Workers directly employed by the terminal operators receive job-specific training at the terminal. Malta Freeport Terminals for example has its own Freeport Training Centre, which is responsible for training of all Freeport personnel and operates in close collaboration with the Port of Rotterdam College for Transport and Shipping¹⁷⁰⁰.

Malta Freeport Terminals states that the training programmes are instrumental in developing a multi-skilled workforce capable of operating flexibly across different work functions; this ensures that all employees perform to job requirements and further prepares them for an enlarged job scope and greater responsibilities. Training programmes are also organised for the trainers¹⁷⁰¹.

Malta Freeport Terminals' Safety and Environmental Rules and Regulations for Users of the Terminal¹⁷⁰² state that workers engaged by Contractors to carry out work at the Terminal are to attend Health and Safety Familiarization training before work commences on site. Training sessions are delivered by Safety Department trainers at the Freeport premises. It is the Contractor's responsibility to make arrangements for this training. Contractors are responsible to assess the risks prior to starting a job and for ensuring all of their employees are aware of

¹⁶⁹⁸ See Fenech, N., "Dock-side reformers", *Times of Malta* 15 September 2007, <http://www.timesofmalta.com/articles/view/20070915/local/dock-side-reformers.5038>.

¹⁶⁹⁹ See http://www.mcast.edu.mt/courses_parttime.asp.

¹⁷⁰⁰ Emmanuel Mallia & Associates (Advocates), *The Malta Freeport*, <http://www.emadvocates.com/mallia/OnlineLibrary/THE%20MALTA%20FREEPORT.pdf>, 9.

¹⁷⁰¹ See <http://www.maltafreeport.com.mt/freeport/content.aspx?id=111340>.

¹⁷⁰² <http://www.maltafreeport.com.mt/freeport/content.aspx?id=324340>.

all work activities, operations, safety regulations and where safety equipment and/or personal protective clothing is required. A copy of the risk assessment is to be provided to the Malta Freeport Department that contracted out the work. Work on site cannot commence without the permission of the relevant Freeport Official who ordered the work (Art. 7.1 a), b) and c)).

1382. Valletta Gateway Terminals' 'Occupational & Environmental Health and Safety – Contractor's Obligations and Duties'¹⁷⁰³ states *inter alia* that all crane drivers should be medically fit to operate lifting plant and equipment (Art. 5.3) and that the contractor must ensure that the Contractor's Staff will have all appropriate skills and training before undertaking work on VGT terminals (Art. 6.0). Where the Contractor provides its own cranes/trucks or other lifting facilities, the Contractor must provide all crane operators and or drivers and other personnel necessary to carry out the task, and those operators / drivers must be qualified, authorised and accredited to undertake the lifting work /driving in accordance with applicable law (Art. 7.1).

9.14.5. Health and safety

- Regulatory set-up

1383. First of all, work in ports and on board ships in Maltese ports is governed by the general Occupational Health and Safety Authority Act, 2001¹⁷⁰⁴ which sets out general duties on employers to ensure the health and safety of all persons who may be affected by the work being carried out and to comply with general principles of prevention (see in particular Art. 6). Conversely, it shall be the duty of every worker to safeguard personal health and safety and that of other people who could be affected by reason of the work which is carried out (Art. 7(1)).

1384. Other relevant laws and regulations of a general nature include, *inter alia*:

- the Factories (Hoists and Lifts) Regulations, 1964¹⁷⁰⁵;
- the Factories (Health, Safety and Welfare) Regulations, 1986¹⁷⁰⁶;

¹⁷⁰³ http://www.vgt.com.mt/Portals/27/docs/HS_Contractors%20Obligations.pdf.

¹⁷⁰⁴ Act XXVIII of 2000 to provide for the establishment of an Authority to be known as the Occupational Health and Safety Authority, an Occupational Health and Safety Appeals Board, and for the exercise by or on behalf of that Authority of regulatory functions regarding resources relating to Occupational Health and Safety and to make provision with respect to matters connected therewith or ancillary thereto.

¹⁷⁰⁵ Legal Notice 47 of 1964.

- the Work Equipment (Minimum Safety and Health Requirements) Regulations, 2002¹⁷⁰⁷.

1385. Health and safety in ports is further governed by the Dock Safety Regulations, 1953¹⁷⁰⁸ which were adopted under the (since repealed) Factories Ordinance.

These Regulations set out duties of persons having the general management and control of a dock, wharf or quay and regulates *inter alia* approaches over dock, wharf or quay, access to ships and the testing and examination of lifting machinery.

Although the Occupational Health and Safety Authority Act envisages the adoption of Codes of Practice (Section 9(2)(e)), no such Codes have been issued so far for port labour.

1386. According to the Port Workers Regulations, port workers are not required to handle manually the following goods:

- (a) cement the temperature of which at any time exceeds 51.7°C;
- (b) caustic soda in bags of any type in loose form;
- (c) any package the weight of which exceeds 55 kilograms (Reg. 5).

1387. In its reply to the questionnaire, Transport Malta reported that it enforces the rules on health and safety together with the Labour Ministry and the terminal operators.

1388. Malta Freeport Terminals' own Safety and Environmental Rules and Regulations for Users of the Terminal¹⁷⁰⁹ are complementary to the requirements and standards set in the relevant local occupational health and safety regulations (Art. 1.0). These Rules and Regulations contain provisions on, *inter alia*, the requirement to obtain an entry pass issued by the Freeport Authority, personal protection equipment, traffic rules and regulations, the entry and certification of equipment belonging to third parties and the training of workers engaged by contractors.

Valletta Gateway Terminals has issued a similar document entitled 'Occupational & Environmental Health and Safety – Contractor's Obligations and Duties'¹⁷¹⁰.

¹⁷⁰⁶ Legal Notice 52 of 1986.

¹⁷⁰⁷ Legal Notice 282 of 2004.

¹⁷⁰⁸ Government Notice 497 of 1953.

¹⁷⁰⁹ <http://www.maltafreeport.com.mt/freeport/content.aspx?id=324340>.

¹⁷¹⁰ http://www.vgt.com.mt/Portals/27/docs/HS_Contractors%20Obligations.pdf.

- *Facts and figures*

1389. According to Transport Malta, no statistics on the number, type and causes of occupational accidents and occupational diseases involving port workers are maintained. All cases are reported to the National Occupational Health and Safety Authority (OHSA) who, however, only maintain statistics at an aggregate level and are consequently unable to provide specific figures on port work. The National Statistics Office was not able to provide us with relevant data either.

1390. Valletta Gateway Terminals has its own Accident / Incident Report Form¹⁷¹¹ as well as an Accident Notification Form¹⁷¹². However, the company was unable to provide statistical data.

1391. Malta Freeport Terminals' Safety and Environmental Rules and Regulations for Users of the Terminal¹⁷¹³ stipulate that all accidents, close calls or unsafe situations should be promptly reported to the nearest Freeport Official or to the Security Office who will respond immediately to any accident (Art. 3.2).

Malta Freeport informed us that in 2011, no fatalities occurred and that its injury rate is in line with the ICHCA 2011 Container Terminal Accident benchmark scheme figure for Europe which was 2.7 accidents causing an injured person to be absent from work for more than 1 day for every 100,000 TEUs handled. The company also provide the following figures on types of accidents:

¹⁷¹¹ See <http://www.vgt.com.mt/Portals/27/docs/Accident%20Report.xls>

¹⁷¹² See <http://www.vgt.com.mt/Portals/27/docs/ACCIDENT%20NOTIFICATION%20FORM.doc>.

¹⁷¹³ <http://www.maltafreeport.com.mt/freeport/content.aspx?id=324340>.

Table 82. Types of occupational accidents with and without injury at Malta Freeport, 2011 (source: Malta Freeport)

Type of accident	Percentage of total accidents
Other accidental injury	23
Injured during lashing	16
Accident during hoisting/lowering (RTG & QC)	14
Tugmaster /trailer hit container in yard	12
Collision RTG -Tugmaster	11
Deckman injured on board vessel	8
Injured during maintenance	7
Collision Tug-Tug	5
Injured ascending/descending equipment	4

9.14.6. Policy and legal issues

- Express duty upon Government to implement EU obligations

1392. Before we outline a number of possible issues, we should point out that the Authority for Transport in Malta Act provides that the Government shall endeavour, through Transport Malta, to standardise practices in the transport sector in Malta in line with international norms and with those of the European Union in particular (Art. 4(2)(h) of the Authority for Transport in Malta Act). Transport Malta is entrusted with the task of implementing "any European Community obligation relating to any matter falling within its functions" (Art. 6(1)(l)).

- Restrictions on employment

1393. It may first be questioned whether the current legal regime genuinely allows for a free, competitive and fully competence-based recruitment of port workers.

First of all, 100 per cent of pool workers are unionised (the national average union density is around 50 per cent¹⁷¹⁴). Even if Transport Malta did not mention any legal or factual obligation

¹⁷¹⁴ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

to join a union, it would appear that the closed shop issue deserves further investigation. A major shipping agent at Valetta confirmed that the unions are very strong.

Next, a number of sons and daughters continue to enjoy priority rights. At the very least, the relevant legal provisions are not always easy to interpret¹⁷¹⁵. As we have explained, the priority for relatives was criticised in the 1999 Development Plan for the Port of Valetta¹⁷¹⁶ and in the run-up to EU accession in 2004¹⁷¹⁷.

Clearly, the legal regime continues to uphold the inheritance scheme, creating a “dynasty of port workers”¹⁷¹⁸. It goes without saying that this system of kin-based recruitment restricts free entrance to the labour market for non-relatives of port workers, who can only be registered if no prospective port workers or persons eligible to become a prospective port worker are available. As a result, a discrimination issue seems to arise.

1394. In relation to the inheritance scheme, a gender discrimination issue has moreover arisen.

In the 2001 *cause célèbre* of *Victoria Cassar v. Malta Maritime Authority* – which we already highlighted in the general chapter on European law above¹⁷¹⁹ – the Maltese Constitutional Court ruled that the port labour regime did not measure up to the requirements of human rights and violated the principle of non-discrimination. At the time, the Port Workers Regulations stipulated that when a port worker retired, his son, or his eldest son if he had more than one son or, in the absence of sons, his brother or his eldest brother, were eligible to be registered to fill the vacancy left by him. Ms Victoria Cassar was the eldest of the children of a retired port worker, but the Port Workers Board refused to register her as a port worker since eligibility to fill the vacancy was limited to sons and brothers thereby excluding daughters. The defendant argued before the First Hall of the Civil Court that this discrimination was objectively justifiable in view of the nature of the work in the port area – its hazardous and strenuous nature. Both the First Hall of the Civil Court and the Constitutional Court, however, found that the provision of the Port Workers Regulations which excluded *a priori* the daughters of retired port workers from filling the vacancy left by their father was in breach of both the Maltese Constitution (Art. 45 on the protection from discrimination on the grounds of, among others, gender) as well as the European Convention on Human Rights (Art. 14 on non-discrimination read in conjunction with Art. 3 on the prohibition on degrading treatment). The Constitutional Court declared the provisions of the relevant Regulations, in so far as they discriminated on the basis of gender, to be null and void, and further ordered the Port Workers Board to register Victoria Cassar as a port worker with retroactive effect. In coming to this conclusion, the Constitutional Court referred to, among others, the European Social Charter and to the Equal Rights Amendment of the Constitution of the United States. At an earlier stage of the

¹⁷¹⁵ See *supra*, para 1350.

¹⁷¹⁶ See *supra*, para 1323.

¹⁷¹⁷ See *supra*, para 1326.

¹⁷¹⁸ See Vella, M., “Port workers get 65c per cargo tonne for their pension fund”, *Business Today* 3 May 2006, <http://www.busetoday.com.mt/2006/05/03/focus.html>.

¹⁷¹⁹ See *supra*, para 230.

proceedings, reference was also made to various other legal instruments such as the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Treaty of Rome, the Equal Pay Directive 75/117, the Equal Treatment Directive 76/207 and the Pregnancy Directive 92/85¹⁷²⁰.

In 2002, the UN Committee on the Elimination of Discrimination against Women found that discriminatory practices continued to exist under the 1993 Port Workers Regulations. At the time of the report, it was envisaged that all legislation which continued to be discriminatory would be abolished by the end of 2002¹⁷²¹, and this is also what happened¹⁷²².

Reportedly, by February 2003, Cassar's name had not yet been included in the Port Workers Register and the Port Workers Regulations had not been amended¹⁷²³, but in 2007 the competent Minister assured Parliament that rights of the handful of registered women were duly protected and would not be affected by the 2007 Act implementing the port labour reform scheme¹⁷²⁴. The case also attracted the attention of an Expert Network on Social Matters and Equal Treatment of the European Commission¹⁷²⁵.

Changes in the Port Workers Regulations were indeed made and the majority of its provisions now refer to both port workers' sons and daughters as well as brothers and sisters. However, one provision continues to refer to port workers' sons only and reads:

A port worker, who, being forty-five years of age or over on his last birthday, has his registration cancelled on being certified to be medically unfit for port work by a medical board appointed by the Minister shall, if he has a son eligible to replace him in accordance with these regulations, receive a pension as follows:

- (a) during such time as such son is not registered in the Port Workers Register - full pension;*
- (b) from the date on which such son is registered in the Port Workers Register until the port worker reaches retiring age - such part of the full pension as the Minister may, on the advice of the Committee, from time to time determine; and*
- (c) on reaching retiring age - full pension (Reg. 41(1)) of the Port Workers Regulations, emphasis added).*

¹⁷²⁰ Qorti Kostituzzjonali, 2 November 2001, No. 5, Rikors Kost. No. 706/99 RCP, Victoria Cassar vc. Awtorita Marittima ta' Malta, www.justiceservices.gov.mt; X., *Questionnaire for the XIVth Congress of the Conference of European Constitutional Courts. "Problems of Legislative Omission in Constitutional Jurisprudence. Response of Malta"*, 13 June 2008.

¹⁷²¹ United Nations. Committee on the Elimination of Discrimination against Women, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. Malta*, CEDAW/C/MLT/1-3, 18 December 2002, 27.

¹⁷²² See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 26-28.

¹⁷²³ Soler C. and Balzan, R., "Legal (un)certainly in Malta", *The Sunday Times* 2 February 2003, <http://www.timesofmalta.com/articles/view/20030202/local/legal-un-certainty-in-malta.157586>.

¹⁷²⁴ *Parliamentary Documents*, Debates, 16 July 2007, 432.

¹⁷²⁵ See Xuereb, P., "Malta", in European Commission / Commission's Network of legal experts in the fields of employment, social affairs and equality between men and women, *Report on Pregnancy, Maternity, Parental and Paternity Rights*, 2007, 88.

1395. Another discrimination issue seems to arise in respect of the legal impossibility for workers over 45 years of age to obtain registration as a port worker¹⁷²⁶. Zammit's thesis, which recalls the prohibitions on age discrimination set out in the Charter of Fundamental Rights and Directive 2000/78/EC¹⁷²⁷, only confirms our observation.

1396. In response to the port labour questionnaire, Transport Malta raised the issue of exclusive rights for certain categories of workers, even it immediately added that this does not have negative competitive effects.

Upon closer scrutiny, various provisions of the currently applicable laws and regulations appear to seriously restrict the freedom of employers to hire and choose workers and to decide on the duration of their employment.

The 2007 reform agreement and the Port Regulations state that a large number of port workers will be paid per hour but always at a minimum equivalent to 4 hours¹⁷²⁸.

As we have explained above, the Port Workers Regulations provide that the number of port workers inclusive of drivers, winchmen and/or signalmen, where applicable, to be allocated for an operation and the approximate time necessary to complete the operation, shall be determined jointly by two representatives of Transport Malta and a representative of the port workers. Their decision shall be final, provided that the employer of port workers may, while the operation is in progress, request a revision of the decision, and that, if a dispute arises, the matter shall be brought for the consideration of the Port Workers Board, without the stopping of port work, except in the case of evident danger¹⁷²⁹.

Next, the workers are allocated in the order in which they appear on the roster, and port workers who are requested to perform part of a shift shall be considered as if they have worked a whole shift¹⁷³⁰.

Furthermore, when port workers have been allocated to a ship or to an operation, no increase or decrease in the number of port workers shall be allowed, save as provided for in the Schedule to the Port Workers Regulations¹⁷³¹.

Also, the number of port workers allocated port work on Deep Water Quays "shall be deemed to include at least one driver for mechanical handling equipment other than forklift trucks and

¹⁷²⁶ See *supra*, para 1343.

¹⁷²⁷ See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 119-121.

¹⁷²⁸ Port Circular No. 03/07 of 2 July 2007, 4; see also *supra*, paras 1333 and 1359.

¹⁷²⁹ See *supra*, para 1355.

¹⁷³⁰ See *supra*, para 1355.

¹⁷³¹ See *supra*, para 1355.

cranes", and leakages on board ship must be gathered and packed or bagged by port workers¹⁷³².

The use of one or more signallers is imposed by the Dock Safety Regulations¹⁷³³.

The Port Rates Regulations mention cases where the use of port cranes is obligatory (see, for example, Par. 2 of Part II of the First Schedule to the Port Rates Regulations; Par. 2 of Part I of the Seventh Schedule).

For many years, a particular bone of contention has been the legal obligation to use tallymen. As we have seen, the Tallying of Goods Regulation still impose compulsory tally¹⁷³⁴. Following reform measures, the tallymen are now employed by Transport Malta, which was supposed to act exclusively as a regulatory body, but is again involved in cargo handling operations, and subcontracts its tally clerks to VGT. The service of tallymen is said to have little added value and outdated, tally clerks often have "nothing to tally", while VGT has been accused of making "a mockery" of tallying by employing students to perform the service¹⁷³⁵.

1397. In 2008, a Maltese Court did not rule out that a foreman's licence did constitute some form of "possession" within the meaning of Article 1 of the First Additional Protocol to the European Convention on Human Rights. It held that the revocation of licences under the reform measures of 2008 had not maintained the balance between public interest and the rights of the foremen¹⁷³⁶.

1398. In 2009, GWU filed a judicial letter against the Maritime Authority (now Transport Malta) demanding that it should not subcontract work to unlicensed people. The Union said it had been insisting on the need for more port workers for months but the Authority replied that when more people were required, it would get terminal operator employees to do the work. Quite remarkably, the union argued that this "was against European guidelines because port services had not been liberalised"¹⁷³⁷.

¹⁷³² See *supra*, para 1355.

¹⁷³³ See *supra*, para 1355.

¹⁷³⁴ See *supra*, para 1368.

¹⁷³⁵ See Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 82-85, 106-109 and 123-124.

¹⁷³⁶ First Hall of the Civil Court, 25 September 2008, *Vicor Spiteri vs. Avukat Generali*, No. 1/2008, discussed in Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 97-106.

¹⁷³⁷ X., "GWU files judicial letter over port work", *Times of Malta* 23 July 2009, <http://www.timesofmalta.com/articles/view/20090723/local/gwu-files-judicial-letter-over-port-work.266339>.

1399. Responding to our questionnaire, Transport Malta mentions a prohibition on self-handling. Even if it added that this restriction has no major impact on the competitive position of the Maltese ports, issues over self-handling regularly arise in the ro-ro sector.

In May 2010, for example, a dispute arose after Viset Malta plc (now Valletta Cruise Port plc) had notified agents and operators that all commercial vehicles on the Malta-Sicily ferry service berthing at its terminals would become subject to a terminal operator fee as well as fees in respect of port workers and their foremen. The port workers' and foremen's overtime and shift allowance was included in the fee and would not be charged extra to the receiver. Shipping line Virtù Ferries had been operating a catamaran service between Malta and Sicily for many years and had been berthing at several berths in Valletta. Its passenger ferries also carried accompanied commercial vehicles that were driven by their owners without the need to involve third parties. In 2001, the quays were passed on to Viset to operate as both a ferry and cruise liner passenger terminal. Virtù Ferries said that since 1998 they had never been charged any fees by Viset in terms of commercial vehicles (RoRo) using the terminals. Fees in respect of port workers and their foremen were imposed by Transport Malta. Virtù Ferries said that apart from being illegal, the new fees would negatively affect their business. Virtù Ferries noted that the fees in question were already being contested in court in a case it had filed against the Transport Ministry and the Malta Maritime Authority (now Transport Malta). The Court issued a provisional order stopping Viset Malta from imposing the new set of fees on commercial vehicles using the passenger terminal¹⁷³⁸. Reportedly, the matter is now the subject of an agreement with the workers. A shipping agent commented that, where self-handling by crew members is tolerated, the port workers must still be paid due to customs of the past¹⁷³⁹.

1400. Although this is not explicitly stated in the port labour legislation, Transport Malta informed us that it is not possible to employ temporary port workers via job recruitment or employment agencies. The Maltese Temporary Agency Workers Regulations¹⁷⁴⁰, which were adopted on 5 December 2011 in order to give effect to the provisions of Directive 2008/104/EC, do not contain specific provisions on port labour. As the Regulations apply, *inter alia*, to public undertakings engaged in economic activities, whether or not they are operating for gain, which perform the same functions as temporary work agencies, whether as a main or as an ancillary function (Reg. 3(1)(b)), one is inclined to conclude that they also cover the activities of

¹⁷³⁸ X., "Terminal operator fees for commercial vehicles at Viset", *The Sunday Times* 9 May 2010, <http://www.timesofmalta.com/articles/view/20100509/business/terminal-operator-fees-for-commercial-vehicles-at-viset.306395>; X., "Judge stops new port fees temporarily", *Times of Malta* 15 May 2010, <http://www.timesofmalta.com/articles/view/20100515/local/judge-stops-new-port-fees-temporarily.307338>.

¹⁷³⁹ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) still states that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

- (a) All longshore activities.
- (b) Exceptions:
 - (1) Opening and closing of hatches, and
 - (2) Rigging of ship's gear.

¹⁷⁴⁰ Legal Notice 461 of 2010.

Transport Malta in its capacity as a provider of port workforce¹⁷⁴¹. A shipping agent said that relying on agency work would be difficult as experience and training are needed.

1401. Transport Malta also informed us that although port workers may be transferred temporarily between employers, this does not happen in practice. However, port workers forming part of the pool may work in any port, therefore it occurs frequently.

1402. In an interview, a major shipping agent at Valletta said that the *burdnara* enjoy a "ridiculous" monopoly. He commented that this monopoly is wrong and that something must be done about it, although, due to vested interests and the relatively small scale of the problem, there is little political pressure.

1403. Finally, issues may arise in respect of piecework tariffs which are solely based on the tonnage handled, regardless of the work actually performed by the workers. Even if the 2007 reform scheme reduced or even abolished a number of tariffs, users are still confronted with lump sum fees which are, to a large extent, Government imposed. The impact of the tariff system is aggravated by the fact that, as a rule, Transport Malta and the unions decide on the number of workers who are needed and, consequently, entitled to a fee. Furthermore, employers are obliged to contribute to the Pension and Contingency Fund of the port workers, with a number of exceptions however, which may perhaps give rise to further discrimination issues.

- Restrictive working practices

1404. Until recently, reports abounded that working practices in Maltese ports are highly restrictive.

During a Parliamentary debate on the efficiency of ports in 2007, Competitiveness Minister Censu Galea declared before the Maltese Parliament that port workers "who thought that they

¹⁷⁴¹ We pass over the issue whether the Temporary Agency Workers Regulations would apply to the supply of self-employed workers. The terminology of the specific laws and regulations on port labour systematically uses the word 'employment'.

could continue following current systems, such as not calling for work because of the village feast or to go hunting, should think again"¹⁷⁴².

Replying to our questionnaire, Transport Malta mentioned the restrictive working practice of unjustified interruptions of work and breaks. The Authority however immediately added that the occasional stoppages are rather minimal and do not affect the real image of the port.

An interviewed shipping agent also drew attention to the rule which allows pool workers to go home as soon as they have completed their task (even if it took them only one hour), which would not apply if they were employed by a terminal operator who of course would move them to another job.

1405. The Port Workers Regulations stipulate that port workers are not obliged to work on five specific public holidays (Para 5 of the Fifth Schedule). However, Transport Malta may on these days authorise port work in emergency situations or, after consultation with the employers and the port workers representatives, for any other port work.

When on 1 May 2011, which is a public holiday, Virtù Ferries wished to load and unload a ship, the Malta Dockers' Union requested the Civil Court to issue an injunction prohibiting the ferry company from loading and unloading large trucks carrying over 10 tonnes. The union argued that, according to Port Workers Regulations, workers could not work on five specific public holidays, including May 1, unless special permission was obtained from Transport Malta. The law states that only licensed port workers can carry out loading and unloading when the merchandise exceeds 10 tonnes. It lays down specific tariffs to be paid to workers, ranging from 23 EUR to 74 EUR per truck, to be shared among them. According to the Regulations, which reflect a practice followed for many years, no loading and unloading can be carried out in the port on Good Friday, May 1, August 15, Christmas Day, New Year's Day, and the afternoons of Christmas and New Year's Eve. Virtù Ferries said the port workers were not necessarily needed to render a service on Sunday. However, the Court upheld the union's request and explained that not doing so would create a precedent that ultimately went against the Regulations¹⁷⁴³.

¹⁷⁴² X., "More port reforms on the way", *Times of Malta* 18 July 2007, <http://www.timesofmalta.com/articles/view/20070718/local/more-port-reforms-on-the-way.10919>; see more in *Parliamentary Documents*, Debates, 17 July 2007, 492.

¹⁷⁴³ Calleja, C., "Court orders May 1 kept as day of rest for port workers", *Times of Malta* 30 April 2011, <http://www.timesofmalta.com/articles/view/20110430/local/Court-orders-May-1-kept-as-day-of-rest-for-port-workers.362929>. The Court reasoned as follows:

In the case in question, it results that the applicant is demanding that the respondent be restrained from loading or unloading in Maltese ports, any commercial vehicles which have a capacity of more than ten tonnes of merchandise, or that merchandise specified by law. The applicant also cites the Regulations relating to port workers, Legal Notice 90/1993 as amended by Legal Notice 226/2007 stating that licensed port workers are to manage the loading or unloading of merchandise from the Catamaran named Jean de la Vallete or any other sea vessel on 1st May 2011 at 8.00am till the following 2nd May at 8.00am.

The applicants submitted that on the basis of the Regulations, it is necessary for certain types of work, for the port workers are present. Usually, this work is done by port workers for 360 days a year, excluding Good Friday, 1st of May, 15th August, the afternoon of 24th

1406. On 3 January 2012, Transport Malta issued a notice to ship owners and operators, ship agents, shippers and terminal operators entitled *Unofficial Payments to Port Workers*. The document reads:

As reiterated on a number of previous occasions, port users – particularly ship agents, ship owners and shippers – should refrain from negotiating with port workers. This practice is illegal.

Port users are reminded that whenever they become aware of a risk in handling of cargo onboard vessels, they are to immediately inform the Terminal Operator and the Authority before the actual cargo handling operation. If this is not possible and the problem arises after port workers have been allocated to the vessel, port users are being instructed to refer the matter to the Port Workers Board as established by the Port Workers Regulations (SL171.02)¹⁷⁴⁴.

- *Discrimination on the basis of the origin of goods and between import / export and transshipment*

1407. The Malta Freeports Act expressly provides that in issuing licences for operations in a Freeport, the Malta Freeports Corporation shall ensure that a Freeport shall be open to all

December, Christmas day, 31st December and 1st January. This results from the Fifth Schedule of the Regulations relating to port workers.

The respondent claimed that it is not necessary for port workers to be present in order to carry out the services. The Court cannot agree with this argument because in order to avoid danger, it is necessary that the work is carried out properly and if port workers are meant to do the work, then the work cannot be carried out otherwise, at the risk of endangering passengers. The respondent stressed the importance that the right must emerge prima facie and that the damage be irremediable. The element of prima facie certainly results because it emerges from the law. The respondent held that the damage would not be irremediable while the applicant referred to the creation of a situation where a precedent will be formed and every operator could work even though the law says otherwise. In the opinion of the court, the damage is irremediable because it will create a precedent which goes against the dictates of the law. A solution could be found either by amending the law or, if it so deems, the Authority for Transport in Malta authorises every work in the port to be carried out in the circumstances provided by law after carrying out the due consultation requested by the said law.

For these reasons, the court accepts the request for the issue of the warrant of prohibitory injunction and orders the issue of a warrant of prohibitory injunction.

(Civil Court, First Hall, 29 April 2011, Malta Dockers' Union (Reg. Number 287) vs. Virtu Ferries Limited (C 11553), translation kindly provided by Maureen Portelli of Camilleri Preziosi law office, Valletta). On other, more fundamental legal proceedings initiated by Virtu Ferries, where the incompatibility of the obligation to use registered port workers with free movement of goods and the prohibition on abuse of a dominant position was raised, see Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 88-92. We are unaware of the outcome of this case.

¹⁷⁴⁴ Transport Malta, *Port Notice No 03/12. Unofficial Payments to Port Workers*, 3 January 2012, <http://www.transport.gov.mt/admin/uploads/media-library/files/Port%20Notice%2003-12.pdf>.

goods, irrespective of their nature, quantity and country of origin, consignment or destination; nor shall there be any limit of time during which goods may be retained in a Freeport (Art. 12(1) of the Malta Freeports Act).

Yet, several provisions of Maltese port laws and regulation seem to overtly discriminate on the basis of the origin or the destination of goods and lay down reduced port rates for locally manufactured goods (see, for example, Par. 1 of Part II of the First Schedule to the Port Rates Regulations; Part II of the Fifth Schedule; Par. 1 of Part II of the Seventh Schedule).

- Qualification and training issues

1408. Replying to our questionnaire, Transport Malta mentions that Maltese port workers lack training. The absence of any requirement for workers to pass or attend any skills test or training was already highlighted in the Development Plan for the port of Valletta of 1999¹⁷⁴⁵. In an interview, a major ship agent at Valletta confirmed that available training programmes focus on health and safety aspects, not on how to become a docker.

- Health and safety issues

1409. In its reply to our questionnaire, Transport Malta mentioned that most of the present health and safety rules are outdated and do not cater for modern cargo handling operations. Furthermore, Transport Malta reports that the rules on health and safety are not properly enforced and that more qualified enforcement personnel is required.

1410. Even if official statistics on accidents in ports are lacking – which may be considered a serious issue in its own right – media reports provide anecdotal evidence suggesting that in Malta, too, port labour can be considered a relatively dangerous profession.

In March 2012, for example, Malta Freeport Terminal was ordered to pay two port workers compensation of over 111,000.00 EUR after a Court ruled that they were injured while unloading a container because of the lack of a safe working process. The accident occurred in 2009 when the men were unlashng merchandise that was being unloaded by a gantry crane. According to the two men, the gantry crane operator could not see them as he was some 10

¹⁷⁴⁵ See *supra*, para 1323.

storeys above the level of the quay. However, there was no radio operator to direct the crane operation from ground level. The accident happened when the crane lifted before the container had been fully unlashd. As a result, the container slipped and hit the two men as they jumped to get out of the way. Both were injured. The Court noted that an internal report by the Freeport had concluded that the accident had occurred as a result of unsafe working practices. The Freeport was therefore held solely responsible for the injuries the two men had suffered¹⁷⁴⁶.

In another judgment from 2012, Malta Freeport Terminal was ordered to pay the heirs of a port worker 80,000.00 EUR. The port worker had died in 1998 after he fell the height of two containers while he was working in the hold of a vessel. In its judgment, the Court concluded that Malta Freeport had failed to provide the port worker with a safe system of work. Although the port worker had been instructed to work at a certain height within the ship's hold, he had not been provided with a safety rope, nor had he been instructed to use a rope. It further resulted that there were patches of oil where the worker was working and this had added to the chances of him slipping and falling from a height. The evidence showed that the worker had slipped on the oil which was on the containers. The Court decided that the Freeport Terminal was responsible despite the fact that the registered worker was not its employee. However, the Court also noted that the worker had been provided with a helmet but had failed to use it. As a result, he was found to carry responsibility for one-fifth of the accident¹⁷⁴⁷.

1411. An interviewed shipping agent said that health and safety discipline among port workers is lax and rare, and that enforcement of applicable regulations remains a very difficult issue.

1412. Malta is still a Party to the outdated ILO Convention No. 32.

9.14.7. Appraisals and outlook

1413. All interested parties hailed the 2007 reform agreement as a major breakthrough¹⁷⁴⁸.

¹⁷⁴⁶ Qorti Civili Prim' Awla, 20 March 2012, No. 1332/2010, Emmanuel Borg and Emmanuel Dingli vs. Malta Freeport Terminals c.s., www.justiceservices.gov.mt; X., "Workers win €111,000 compensation for Freeport accident", *Times of Malta* 21 March 2012, <http://www.timesofmalta.com/articles/view/20120321/local/workers-win-111-000-compensation-for-freeport-accident.412120>.

¹⁷⁴⁷ Qorti Civili Prim' Awla, 7 February 2012, No. 425/2004, Maria Assunta Zerafa c.s. vs. Freeport Terminal (Malta), www.justiceservices.gov.mt; X., "Freeport ordered to pay victim's heirs €80,000", *Times of Malta* 7 February 2012, <http://www.timesofmalta.com/articles/view/20120207/local/freeport-ordered-to-pay-victim-s-heirs.405759>.

¹⁷⁴⁸ Compare, in addition to the appraisals reported below, the report on stakeholders' opinions in Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 88 *et seq.*

First of all, the 2007 agreement on the reform of port labour was welcomed by the Chamber of Industry. Its President said that he was very satisfied with the agreement indicating that there was at last some movement to change work practices that had been ossified for years and to adhere to the fundamental principle that fees need to reflect today's competitive realities and actual services rendered¹⁷⁴⁹.

The Malta Employers' Association said that the 2007 revision in port workers' tariffs was a positive step towards improving Malta's competitiveness¹⁷⁵⁰.

The Grimaldi Group based in Naples, owners of shipping line Malta Motorways of the Sea, were also satisfied with the signing of the port reform. The Chair of the Grimaldi Group, Emanuele Grimaldi, was pleased that the agreement was amicably reached, to the satisfaction of all stakeholders¹⁷⁵¹.

MDU's president Joe Saliba welcomed the 2007 agreement because workers would still be earning the same amount despite some tariff reductions and because, moreover, 72 new jobs had been created and more were expected to become available shortly. On allegations of payments being made to port workers for services not effectively rendered, a media report noted what follows:

Some people think port workers are being paid for work they no longer do. How does he react to this?

"Port workers' tariffs were and are still regulated by law and both tariffs and the law were hardly ever changed. Yet, practices did change. Cement used to be imported in 50 kilogramme sacks, then on pallets, then in jumbo bags and now it is pumped directly into trucks. Yet, our tariff still depended on weight and volume. This has all changed now.

"There have been great reductions in our tariffs in the case of cement and grain. We used to get paid 13c per ton of grain handled and another 65c went into the pensions fund. This part of the tariff has been removed and, had this not happened, it would have made the current increase in grain prices worse. For cement, we now charge Lm1 whereas before we charged Lm2.14. Yet, we have not seen a substantial reduction in prices on the market, so someone must still be pocketing what we gave up.

"Fees for containers have been slashed too. The fee for handling a 20-foot container has gone down by Lm17. One can argue that this is not much and consumers will hardly feel the difference because on merchandise worth, say, Lm10,000, a cut of Lm17 won't make much difference"¹⁷⁵².

¹⁷⁴⁹ Attard Gialanze, S., "Positive reactions from industry on port workers agreement", *Business Today* 4 July 2007, <http://www.businesstoday.com.mt/2007/07/04/focus.html>.

¹⁷⁵⁰ Malta Employers' Association, *Proposals for National Budget 2008*, July 2007, <http://www.maltaemployers.com/Portals/22/Budget%20proposals%20for%20year%202008.pdf>, 5.

¹⁷⁵¹ Farrugia, C. and Debono, M., "New collective agreement for port workers signed", *Eironline* 20 August 2007, <http://www.eurofound.europa.eu/eiro/2007/07/articles/mt0707039i.htm>.

¹⁷⁵² Fenech, N., "Dock-side reformers", *Times of Malta* 15 September 2007, <http://www.timesofmalta.com/articles/view/20070915/local/dock-side-reformers.5038>.

Reportedly, the port workers accepted the changes in their conditions of work to help the newly formed union MDU pass its first crucial test¹⁷⁵³.

The International Dockworkers' Council (IDC) presented the 2007 reform agreement as a model for other countries¹⁷⁵⁴.

Interestingly, the current President of the Republic of Malta, Dr George Abela, who is the son of a registered port worker, acted for 25 years as GWU's legal consultant and represented port workers during the talks leading to the 2007 reform agreement¹⁷⁵⁵. According to information on the President's home page, the 2007 reform "has been hailed by the European Commission as a model in social dialogue to be followed by other member states"¹⁷⁵⁶.

In this respect, it is perhaps difficult to understand why agreements, which must by law be transmitted to the Maltese authorities, impact on the position of prospective service providers and are presented as a model for the whole EU, are not made public.

1414. Responding to our questionnaire, Transport Malta stated that the current port labour regime offers sufficient legal certainty, but that even then it must be considered unsatisfactory as no skills and qualifications required from new entrants to port work have been established and as the health and safety legislation must be adapted to modern cargo techniques.

1415. Further, Transport Malta considers the current relationship between port employers and port workers and their respective organisations good. During the last ten years, the number of work stoppages has been minimal and the privatisation of port terminals has taken place without any industrial disputes. Moreover, throughputs in the ports have increased continuously.

¹⁷⁵³ Debono, M. and S. Rizzo, "Malta: Industrial relations developments in Europe 2007", *Eironline* 23 September 2008, <http://www.eurofound.europa.eu/eiro/studies/tn0803029s/mt0803029g.htm>.

¹⁷⁵⁴ Zammit, R., "Dockers' agreement held as model", *Times of Malta* 14 January 2008, <http://www.timesofmalta.com/articles/view/20080114/local/dockers-agreement-held-as-model.191775>.

¹⁷⁵⁵ Reportedly, George Abela was dismissed from the GWU prior to the 2007 reforms, after he openly declared that he would no longer file court cases he did not believe in (see Debono, M. and Farrugia, C., "Union dispute in the wake of port restructuring", *Eironline* 30 October 2006, <http://www.eurofound.europa.eu/eiro/2006/09/articles/mt0609039i.htm>; Vella, M., "Port workers get 65c per cargo tonne for their pension fund", *Business Today* 3 May 2006, <http://www.businesstoday.com.mt/2006/05/03/focus.html>; X., "We cannot forget past 'problems' with George Abela", *Times of Malta* 19 April 2009, <http://www.timesofmalta.com/articles/view/20090419/local/we-cannot-forget-past-problems-with-george-abela-zarb.253430>.

¹⁷⁵⁶ See Biography of H.E. Dr. George Abela on http://president.gov.mt/biography_dr_george_abela?l=1. This information is confirmed in Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 124.

1416. Still according to Transport Malta, the current port labour regime has a positive impact on the competitive position of the Maltese ports. Terminal operators are allowed to employ port workers of their choice for the handling of cargo handling equipment and to enter into Service Level Agreements with the registered port workers. This regime is said to provide for flexibility in port work and to satisfy the needs of terminal operators.

1417. In his 2009 Masters thesis, Joseph Zammit presented his personal appraisal of the recent reform scheme. Recalling that most of the service providers operated in a monopolistic status – meaning that there was no form of competition for the provision of service in Maltese ports – he concluded that the aim of the Government, which was in line with the European Union stand of eliminating monopolies in the ports by opening this sector to competition, was not achieved, even if this does not mean that the result was a total failure¹⁷⁵⁷.

On the issue of complicated tariffs and archaic working practices, Zammit's authoritative judgment is as follows:

One of the main flaws of the port workers' reform was basically the fact that it centred on the reduction of port costs, ignoring another similarly important aspect that required attention, since it was one of the main complaints of the port users before the reform. Reference is being made to the archaic port work practices which hindered efficiency in the port. In this regard, the Port Workers Regulations (Cap 171.02) had not been amended in such a way as to remove these outdated practices. Although the introduction of the service level agreements might assist in reducing related problems, since they may include provisions for the service provided by the port workers, their duties, the hours of work and the ordering procedure, the regulations themselves still contain complicated procedures on how one can order workers for work during night time, on weekends and public holidays.¹⁹⁶ It is about time that someone in authority understands the fact that ships do delay due to bad weather or delays in the previous port and as such it is not always easy to give an accurate time of arrival. Since the reform, there have been occasions when ships were left idle on a Sunday for a whole day, because the order for workers was not made by Saturday noon. This practice is unacceptable by today's shipping standards. One would have assumed that this problem would have been eliminated in the reform. This could have been achieved by the introduction of a stand by crew of workers on a roster basis. In cases where workers do perform work they get paid the normal rate whereas on the occasions where they are not called for duty they only receive a nominal fee for being on standby. One other radical solution would be to introduce a shift system at Grand Harbour in the same way as that used at Freeport, in which a number of workers would be present at all times during the shifts to work on the vessels in the port. This would present a bigger problem

¹⁷⁵⁷ Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 112.

to negotiate with port workers since it involves the total overhaul of the port workers' system of payment. The port workers have always been paid on the basis of a rate per ton (piecework) since they have been regulated, but it may be the case that the time has come to offer a fair and just wage system irrespective of the nature of the work done. As proposed both in the Hyder report, the consultative committee workshops and even by some of the port users in various media reports, the government may have to offer some form of compensation to the workers in order to make up for the possible loss of income and the new working conditions. The presently licensed workers would still remain in employment albeit with different conditions. Compensation would be higher for those opting to leave. This is not a new concept. It has been used by previous Governments when there was the need to reduce the number of workers (see chapter 1). Today there is a different need, that of making the port more efficient, and this could only be reached by eliminating old practices. Furthermore, sometimes it is better to cut a clean slate and start afresh rather than to try and patch what was originally built on faulty foundations.

The same can be said of tariffs. Port users always complained that the tariffs for port workers were complicated and included charges which they could not understand. By looking at the third schedule of the Regulations,¹⁹⁷ one can immediately see that there are tariffs which are still very complicated and which concern cargoes that are no longer loaded or discharged in our ports. Some examples include tariffs for export and imports, transshipment, different rates for different packaging of goods, shifting, loading or discharging of goods. Some examples of tariffs for cargoes no longer handled in our port are those concerning soda, coke, sulphur, coal, carobs and coal in bags, chairs loose or in bundles, aviation spirit in cans or drums, ammunition, empty wine and beer casks and willows and canes either loose or in bundles. These tariffs are remnants of past times, sometimes dating back to the war. One would have expected that in such a lengthy reform these would be removed. When there is a specific tariff for each and every cargo imported or exported in Malta, it is bound to create complications and mistakes. One easy solution to eliminate such complications would have been to conduct an exercise based on the volumes of each cargo imported or exported in the last three years, and then work out an average tariff encompassing all the general cargo. This means that if the cargo is deemed as general cargo it would be charged one tariff on a per ton basis. This is already being applied in the case of trailers and containers where a fixed rate per unit was agreed upon irrespective of the real weight in any particular container.

One other related problem concerns locally manufactured goods exported from Malta. Previous Governments in the sixties introduced reductions in the rates for exports in order to assist local industry. In today's scenario, with Malta being a member State in the European Union one has to question whether this procedure can be continued since it may be deemed to fall under "state Aid", a concept which runs contrary to EU Law. There is also the question of discrimination since there is a different treatment between cargoes originating from Malta and others which originate from other member states. This may also be in conflict with laws relating to unfair competition. To avoid further complications both as regards difference of tariffs and also in order to avoid a potential

conflict with EU Law it would have been better had the negotiating team agreed on one rate applicable for both imports and exports.

With regards to port costs, it is true that certain tariffs have been reduced for certain cargoes such as cement and gravel. Moreover in the case of another commodity, namely tar, port workers are no longer involved in its loading or discharging operation and the tariff concerning such commodity has now been repealed. The above commodities are used for construction of roads and buildings and given the fact that the construction business is a very important business for Malta one would have assumed that the reductions in the tariff would be reflected in the price for the consumer. From statistics compiled from port workers, some 30,000 tons of cement alone is imported to Malta every month and given the fact that the tariff for such cargo was reduced by half, the saving was substantial. However, this reduction was not reflected in the price for the end consumer and therefore one wonders who effectively benefited from the substantial reductions¹⁷⁵⁸.

1418. In an interview, a shipping agent commented that the 2007 reform only led to a temporary reduction of cost, because shortly afterwards, tariffs were substantially increased. He said that the cost of handling port labour in Malta is "phenomenal" (200 to 250 EUR to handle one container) and that privatisation is urgently needed.

1419. Finally, Transport Malta argues that the best port labour regime would be one where terminal operators are free to employ the personnel of their choice at all levels, provided that the persons employed have the necessary qualification and training. Transport Malta favours the adoption of guidelines on qualifications of port workers and training needs at national and EU level.

¹⁷⁵⁸ Zammit, J., *Port Reform – A Maltese Perspective. The Way Forward*, University of Malta, Faculty of Laws, 2009, 116-119.

9.14.8. Synopsis

1420.		
SYNOPSIS OF PORT LABOUR IN MALTA¹⁷⁵⁹		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 2 main ports • Landlord model • 32m tonnes • 8th in the EU for containers • 37th in the world for containers • 8 employers • Appr. 1,100 port workers • Trade union density: 100% 	<ul style="list-style-type: none"> • <i>Lex specialis</i> (Ordinance of 1962, Regulations of 1993) • Party to ILO C137 • Service Level Agreements and company CBAs • Reform in 2006-2007 • 9 categories of port workers: <ol style="list-style-type: none"> (1) Self-employed pool workers (2) Prospective port workers (3) Eligible port workers (4) Auxiliary port workers (5) Licensed foremen (6) Permanent workers employed by terminals under general labour law (equipment operators) (7) Tallymen (8) Baggage handlers (9) <i>Burdnara</i> (hauliers) • Workers under (1) to (5) are registered and administered by tripartite Board 	<ul style="list-style-type: none"> • Exclusive rights of pool workers, foremen, baggage handlers and <i>burdnara</i> • Closed shop • Remnants of discriminatory inheritance scheme • Remnants of gender discrimination • Age discrimination • Rigid manning levels for pool workers • Ban on self-handling • Ban on temporary agency work • Complicated fixed piecework tariffs for pool workers and foremen • Restrictive working practices • Discriminatory port tariffs
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Training by national college • Training by terminal operator 	<ul style="list-style-type: none"> • Training is required for new port workers and licensed foremen • Certificate of competence since 2007 	<ul style="list-style-type: none"> • Lack of requirements on skills and competences • General lack of training
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No national accident statistics on port labour are maintained • Figures are maintained by Malta Freeport 	<ul style="list-style-type: none"> • Specific Dock Safety Regulations • No Party to ILO C152 	<ul style="list-style-type: none"> • Health and safety rules out-dated • Still Party to outdated ILO C32 • No proper enforcement • Lack of safety discipline

¹⁷⁵⁹ 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.

9.15. Netherlands

9.15.1. Port system¹⁷⁶⁰

1421. The Dutch sector of seaports and related services is dominated by the ports of Rotterdam and Amsterdam. Rotterdam is the largest port in Europe. Strategically situated at the mouth of the Rhine, it handles the largest volume of containers of any European port. Its hinterland covers a large part of continental Europe, focusing on the Rhine valley towards Switzerland and the Ruhr area in Germany.

The port of Amsterdam is the fifth largest port in Europe. Amsterdam is an important cargo generating region in its own right. The port is furthermore oriented eastwards towards Utrecht and Amersfoort and further towards the west of Germany.

Other important Dutch ports include the ports of Flushing (Vlissingen) and Terneuzen (jointly managed by Zeeland Seaports), the ports of Delfzijl and Eemshaven (Groningen Seaports) and the port of Moerdijk.

In 2010, the gross weight of seaborne goods handled in Dutch ports was about 538 million tonnes. As for container handling, Dutch ports ranked 3rd in the EU and 12th in the world in 2010¹⁷⁶¹.

1422. Dutch seaports are landlord ports. All cargo handling services are provided by the private sector. As a rule, the latter hold a land lease *in rem* (erfpacht) granted by the port authority.

1423. In the past decade, several Dutch port authorities underwent reform.

In 2004, the Port of Rotterdam was corporatised, following which the Dutch Government became a minority shareholder in the otherwise municipally-owned port authority.

¹⁷⁶⁰ For general information on Dutch ports, see ECOTEC and ECORYS, *Employment trends in all sectors related to the sea or using sea resources, Country Report – the Netherlands*, European Commission, DG Fisheries and Maritime Affairs, August 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/netherlands_employment_trends_en.pdf, 11-13; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 71-89. For statistics, see http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

¹⁷⁶¹ Container ranking based on UNCTAD, *Review of Maritime Transport 2011*, New York and Geneva, UNCTAD / UN, 2011, http://unctad.org/en/Docs/rmt2011_en.pdf, 201-203.

Zeeland Seaports, the port authority managing the ports of Vlissingen and Terneuzen, was corporatised early 2011. The main difference with Rotterdam is that here the only shareholder is the Joint Agreement Zeeland Seaports, in which the Province of Zeeland and the municipalities of Terneuzen, Vlissingen and Borssele participate. The Dutch Government is not a shareholder.

Currently, both the Port of Amsterdam and Groningen Seaports (the port authority managing the ports of Delfzijl and Eemshaven) are going through a similar corporatisation process.

At the national level, the Dutch Government has *de facto* followed a 'mainport' approach to the advantage of Rotterdam.

9.15.2. Sources of law

1424. Currently, there are no specific laws on either the management of Dutch ports or port labour.

1425. Port labour is subject to general Dutch laws and regulations on health and safety at the workplace. The main instruments are the Labour Conditions Act¹⁷⁶² and the Labour Conditions Regulations¹⁷⁶³.

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 2004¹⁷⁶⁴.

1426. On 14 September 1976, the Netherlands ratified ILO Dock Work Convention No. 137, but on 17 February 2006 it denounced it¹⁷⁶⁵.

¹⁷⁶² Wet van 18 maart 1999, houdende bepalingen ter verbetering van de arbeidsomstandigheden (Arbeidsomstandighedenwet 1998 or Arbowet).

¹⁷⁶³ Besluit van 15 januari 1997, houdende regels in het belang van de veiligheid, de gezondheid en het welzijn in verband met de arbeid (Arbeidsomstandighedenbesluit).

¹⁷⁶⁴ Wet van 15 december 2004, houdende regels ten aanzien van het veilig laden en lossen van zeeschepen (Wet laden en lossen zeeschepen); Regeling, houdende regels ten aanzien van het veilig laden en lossen van bulkschepen (Regeling laden en lossen bulkschepen).

¹⁷⁶⁵ See also Wet van 22 december 2005 tot goedkeuring van het voornemen tot opzegging van het op 25 juni 1973 te Genève totstandgekomen Verdrag betreffende de havenarbeid, 1973 (Verdrag nr. 137, aangenomen door de Internationale Arbeidsconferentie in haar achtenvijftigste zitting; Trb. 1974, 70); Parliamentary Documents, Eerste Kamer der Staten-Generaal, *Goedkeuring van het voornemen tot opzegging van het op 25 juni 1973 te Genève totstandgekomen Verdrag betreffende de havenarbeid, 1973*, 2005-2006, no. 30 007. See also *infra*, para 1438.

The Netherlands is a State Party to ILO Convention No. 152¹⁷⁶⁶. Previously, it was bound by ILO Convention No. 32.

1427. Port labour in the Netherlands is largely governed by collective labour agreements at company level. The main focus of these agreements is on employment (including of temporary workers¹⁷⁶⁷), working time, wages and bonuses, disability, safety management, holidays and dispute settlement. Today, there are no national or port-wide collective agreements.

Normally, collective labour agreements are registered with the Government. In practice, however, not all agreements are registered in a timely manner and some agreements are not registered at all. We were able to consult a number of company agreements which are freely available on the internet.

9.15.3. Labour market

- Historical background

1428. The evolution of the Dutch port labour regime conforms to the typical historical pattern which we have outlined above, with a transition from Ancien Régime corporations over 19th-century liberalisation and 20th-century regulation and decasualisation to recent banalisation, which culminated in the outright abolition of the pool system.

Interestingly, before the French Revolution the porters' guilds in the Dutch Meuse ports of Delfshaven, Maassluis, Rotterdam, Schiedam applied a more or less common system for the allocation of jobs to individual port workers. Whenever a ship arrived at the port, the bell up in the tower of the porters' guild house would toll for a fixed number of minutes. This was all the time the porters of the guild had to turn up and offer their services. Those who made it on time were eligible for recruitment; those who were late were not. Not surprisingly, then, most would hang around all day just in case. If there were too many eligible candidates for a particular job, a throw of the die would ultimately determine who got to work and who not. The guild's house was also used for storing the porters' tools. In Delfshaven, Schiedam¹⁷⁶⁸ and Maassluis the porters' guild houses can still be seen today.

¹⁷⁶⁶ The Convention was automatically approved on the basis of the General Act on the Approval and Publication of Treaties (Rijkswet goedkeuring en bekendmaking verdragen).

¹⁷⁶⁷ See *infra*, para 1446.

¹⁷⁶⁸ Schiedam's guild of sack bearers is already mentioned in 1316. In 1577, the Municipality laid down their tariff. The guild survived French revolutionary liberalisation laws and continued its existence until 1940 when it still had 7 members (see <http://www.anthonisgilde.nl/cms/historie>; X., *Schiedam Historische stadswandeling*, Schiedam, VVV, s.d., 4; X., *Open Monumentendag Schiedam*

As early as the first half of the 15th century, Rotterdam also had a harbour crane. The crane operators and the guild of towers obtained a monopoly for quayside work and especially the towing of certain goods into the city, which resulted in a number of complaints by wine merchants who claimed the right to self-handle. It was also the case that crane fees had to be paid where the cargo had actually been discharged from the ship by the ship's crew. In 1827, a Royal Decree allowed the municipalities to re-establish associations of port workers, but they could no longer claim any monopoly¹⁷⁶⁹; in practice, all monopolies for inner-city transportation were abolished¹⁷⁷⁰.

Zaterdag 11 september 2004, Schiedam, Gemeente Schiedam, 2004, 43; see further background in van der Velden, M., *Hafenarbeit und Tränergilden*, Rotterdam, M. van der Velden, 1998, 13-17).

¹⁷⁶⁹ See *Pandectes belges*, v° Débardeur, paras 3-4.

¹⁷⁷⁰ For a wealth of historic detail, see Krans, R.H., "'De kraen subject'. De Rotterdamse stadskraan in het handelsverkeer tot ca. 1880", *Rotterdams jaarboekje* 1994, Rotterdam, Gemeentelijke Archiefdienst Rotterdam, 1994, 150-208. On the sack bearers of Rotterdam, see Stakenburg, A.J., *Zakkendragers van Rotterdam*, Rotterdam, Donia Pers Producties, s.d., 56 p.

Figure 105. The porters' guild house at Schiedam from 1725. When a ship arrived, the bell called the workers to report at the house, where the work was allocated by the throw of a dice (photo by the author).



Figure 106. The porters' guild house at Maassluis from 1765 (photo by the author).



1429. In 1914, the Dutch Parliament passed the Stevedores Act¹⁷⁷¹, which provided that masters are only allowed to have stevedoring work performed by the ship's crew or by the personnel of a registered stevedoring company. Also, the Act banned child labour from the docks, limited working hours, established safety rules and prohibited hiring and payment of wages in bars¹⁷⁷². The Act established the office of a governmental labour inspector and, to assist him, a joint labour-management safety committee and a more general joint dock labour advisory committee. The Act was implemented by the Stevedoring Safety Regulations¹⁷⁷³. Furthermore, as the First World War reduced international trade and hence jobs in neutral Holland, the Dutch Government created public employment exchanges and provided subsidies to voluntary systems of unemployment insurance based on contributions by union members and employers¹⁷⁷⁴. The first labour pool in the port of Rotterdam was established in 1916. The next year, pools for harbour work and warehousing were founded at Amsterdam¹⁷⁷⁵. After the war, the pools were transformed into a permanent Port Labour Reserve (Havenarbeidsreserve, HAR) for each port, which employed two categories of workers: the semi-regulars (*losvasten*), who enjoyed priority of engagement and a guaranteed minimum wage, sick pay and pension, and the casual workers (*gelegenheidsarbeiders*) who had to report three times a day for work and received unemployment benefit¹⁷⁷⁶. In the following decades, the pool system was further adjusted. From the start, the Dutch Government contributed to the financing of unemployment benefits¹⁷⁷⁷.

1430. After the Second World War Rotterdam's HAR was first transformed into a Central Office for Employment (Centrale voor Arbeidsvoorziening, CVA). The port workers were permanently employed by the pool. In the 1950s, the decasualisation scheme guaranteed the payment of up to 80 per cent of wages in the event of unemployment and a start had been made with schemes for vocational training¹⁷⁷⁸. In 1962, the unemployment benefit was raised to 100 per cent¹⁷⁷⁹. As

¹⁷⁷¹ Wet van 16 oktober 1914 houdende bepalingen in het belang van de personen, werkzaam bij het laden en lossen van zeeschepen (Stuwadoorswet).

¹⁷⁷² See de Boer, M.G., *De haven van Amsterdam en haar verbinding met de zee*, Amsterdam, Gemeente Amsterdam, 1926, 282 *et seq.*; Kagan, R., "How much does law matter? Labor law, competition and waterfront labor relations in Rotterdam and U.S. ports", *Law & Society Review* 1990, (35), 45; Van Der Wind, S., *Inleiding tot de stuwadoorsarbeid, Publicatie ten behoeve van de opleiding van stuwadoorspersoneel*, Rotterdam, 1950, 104-112; Sociaal-Economische Raad, *Advies inzake een partiële wijziging van de stuwadoorswet 1914*, Den Haag, SER, 1977.

¹⁷⁷³ Stuwadoors-Veiligheidsbesluit (Royal Decree of 5 September 1916; full text in Noordraven, T.J. and van der Boom, C.A.G., *Handboek der scheepvaartwetten scheepvaartcontracten en scheepsadministratie*, Amsterdam, Duwaer & Van Ginkel, 1919, 467 *et seq.*).

¹⁷⁷⁴ Kagan, R., "How much does law matter? Labor law, competition and waterfront labor relations in Rotterdam and U.S. ports", *Law & Society Review* 1990, (35), 45.

¹⁷⁷⁵ See de Boer, M.G., *De haven van Amsterdam en haar verbinding met de zee*, Amsterdam, Gemeente Amsterdam, 1926, 290-291.

¹⁷⁷⁶ See de Boer, M.G., *De haven van Amsterdam en haar verbinding met de zee*, Amsterdam, Gemeente Amsterdam, 1926, 293.

¹⁷⁷⁷ For an overview of the history of Government contributions, see *Parliamentary Documents*, Tweede Kamer, 1995-1996, 24 417.

¹⁷⁷⁸ See Koedijk, P., "The evolution of working conditions in Dutch ports", *The International Transport Workers' Journal*, May-June 1950, (27), 28. For a detailed account of labour relations in Rotterdam between 1945 and 1965, see Nijhof, E., 'Gezien de dreigende onrust in de haven...'. *De ontwikkeling van de arbeidsverhoudingen in de Rotterdamse haven 1945-1965*, Amsterdam, Stichting beheer IISG, 1988, 492 p. Nijhof, E., "Undeserving casuals: the Rotterdam dockers and

from 1 January 1968, the labour pool of Rotterdam was corporatised into the Foundation of Cooperating Port Companies (Stichting Samenwerkende Havenbedrijven, SHB). In Amsterdam, an SHB had been established in 1945¹⁷⁸⁰. Companies affiliated to the SHB were obliged to use the latter's services and were all committed to a minimum level of usage.

However, not all port workers were employed by the pool. After WW2, all dock companies raised their numbers of regulars at the expense of the casuals. In the port of Rotterdam, after 1952 the proportion of the regulars definitively exceeded that of the casuals and reached 80 per cent in 1965¹⁷⁸¹.

The following table shows the distribution among pool workers and permanently employed port workers in Amsterdam:

Table 83. Pool workers vs. permanently employed port workers in the port of Amsterdam, 1960-1981 (source: Boot, 2011¹⁷⁸²)

Year	Pool workers (per cent of total)	Permanently employed port workers (per cent of total)	Total
1960	2,875 (50.9 per cent)	2,777 (49.1 per cent)	5,652
1972	1,085 (32.4 per cent)	2,267 (67.6 per cent)	3,352
1981	811 (42.3 per cent)	1,106 (57.7 per cent)	1,917

Rotterdam's container handler ECT refused to take any port workers from the central labour pool, arguing that its new terminal was radically unlike traditional breakbulk cargo handling, requiring new full-time employees specially trained to operate expensive container-handling

their unions, 1880-1965", Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, 405-424.

¹⁷⁷⁹ Ter Hoeven, P.J.A., *Havenarbeiders van Amsterdam en Rotterdam*, Leiden, H.E. Stenfert Kroese, 1963, 25-26.

¹⁷⁸⁰ See Boot, H., *Opstandig volk: neergang en terugkeer van losse havenarbeid*, Amsterdam, Stichting Solidariteit, 2011, 97 et seq.; see also Hoekema, A.J., *Rechtsnormen en sociale feiten. Theorie en empirie rond de kleine havendiefstal*, Rotterdam, Universitaire Pers Rotterdam, 1973, 24-25.

¹⁷⁸¹ Nijhof, E., "Dock-work is a skilled profession. Decasualization and the Rotterdam labour market (1945-1970)" in Loyen, R., Buyst, E. and Devos, G. (eds), *Struggling for leadership: Antwerp-Rotterdam port competition between 1870-2000*, Heidelberg/New York: Physica-Verlag, 2003, (275), 280.

¹⁷⁸² Boot, H., *Opstandig volk: neergang en terugkeer van losse havenarbeid*, Amsterdam, Stichting Solidariteit, 2011, 141. On the port labour regime in the early seventies, see also Blonk, W.A.G., *Handbuch der europäischen Seehäfen. Band IV/V Die Seehäfen in den Niederlanden und in Belgien*, Hamburg, Verlag Weltarchiv, 1974, 58 et seq. (Rotterdam) and 101 et seq. (Amsterdam).

equipment. ECT recruited an entirely new team of workers with whom it signed a separate collective bargaining agreement, providing for higher pay than pool workers and for full-time employment. Also, ECT workers were assigned on rotating basis to four, later five shifts, and were trained to operate a number of different machines and do different jobs, as opposed to the traditional rigid job descriptions¹⁷⁸³.

In the eighties, however, large numbers of workers of the Rotterdam port companies were transferred to the SHB¹⁷⁸⁴.

1431. In the Netherlands, there has never existed a registration scheme for port workers at national level. In Rotterdam, port workers, including permanent workers of individual employers, were registered by the employers' organisation Port Employers' Association Shipping South (Havenwerkgeversvereniging Scheepvaart Zuid) until 1 January 1996, and by the employers' organisation AAVN¹⁷⁸⁵ from 1 January 1996 until 31 December 1999. Registration was necessary for the purpose of implementing social security regulations and controlling compliance with training requirements. Upon registration, the workers received a card (*pasje*) which they needed to enter the port. White collar workers had a similar card. The cards were issued by the employers' association, not by the pool. According to the unions, the card system was a necessary tool to fight illegal employment.

1432. Mid-1993, the Dutch Minister of Social Affairs and Employment announced that he would terminate the funding of the pools in Dutch ports. Following this declaration, the pool system underwent a radical reform. The abolition of government financing of unemployment benefits and a number of transitional aid measures, which lasted until 1997, were laid down in an Act of 20 December 1995¹⁷⁸⁶. The objective was to restructure the SHBs into market-oriented players and also to improve the attitude of workers¹⁷⁸⁷. As a result of these reforms, port workers at Rotterdam were no longer registered as from 1 January 2001, and the card system was abolished.

¹⁷⁸³ Kagan, R., "How much does law matter? Labor law, competition and waterfront labor relations in Rotterdam and U.S. ports", *Law & Society Review* 1990, (35), 54 and footnote 23.

¹⁷⁸⁴ See also van de Berg, F. et al., *Het zal wel doodbloeden. De Rotterdamse stukgoedstaking 1984*, Amsterdam, Pegasus / Vervoersbond FNV, 1984, 87 p.

¹⁷⁸⁵ On this organisation, see *infra*, para 1453.

¹⁷⁸⁶ Wet van 20 december 1995 tot regeling van tijdelijke bijdragen aan havenbedrijven voor herstructurering van de arbeidsvoorziening in havens ter vervanging van hoofdstuk V van de Werkloosheidswet (Wet tijdelijke bijdrage herstructurering arbeidsvoorziening havens). For more background, see especially the Explanatory Memorandum in see *Parliamentary Documents*, Tweede Kamer, 1995-1996, 24 417.

¹⁷⁸⁷ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 33.

1433. As we have explained above¹⁷⁸⁸, the main legal source on the organisation of port labour used to be collective bargaining agreements at port level. In Rotterdam, these agreements contained 'A-Articles', which were relevant to all members of the employers' association, and company-specific 'B-Articles'.

However, collective bargaining policy in Dutch ports was gradually decentralised, which means that sector agreements were replaced by company-specific agreements. A major motivation was the growing difference between the container and breakbulk businesses, which could not be bridged in one single port-based collective bargaining agreement. Trade unions, however, say that the real agenda was to weaken the position of the trade unions¹⁷⁸⁹. Recently, the unions campaigned for the conclusion of six common collective bargaining agreements in Rotterdam, one per subsector: ro-ro, bulk, tanking, container, lashing and temporary work¹⁷⁹⁰. Be that as it may, figures show that in 1970, there were no company agreements in Rotterdam, in 1988 there were 16 and in 2009, 45¹⁷⁹¹.

The exclusive right of the labour pool to supply temporary workers was enshrined in 'Article A9' of the sectoral agreement which was, for that matter, expressly repeated in a number of company agreements and which continues to appear in current agreements regulating the hiring or temporary workers¹⁷⁹².

1434. In 1995, the labour pool of port of Amsterdam was transformed into the private company Labour Pool Amsterdam North Sea Canal Region (Arbeidspool Amsterdam Noordzeekanaalgebied, AAN). The company, however, ran into financial problems and went bankrupt in 1997. At that time, the company employed some 300 port workers¹⁷⁹³. With the

¹⁷⁸⁸ See *supra*, paras 1427 and 1430.

¹⁷⁸⁹ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 45-46.

¹⁷⁹⁰ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 51-52.

¹⁷⁹¹ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 54, based on data provided by N. Stam.

¹⁷⁹² The typical wording was as follows:

De werkgever zal voor het verrichten van werkzaamheden, vallende onder de Collectieve Arbeidsovereenkomst, uitsluitend gebruik maken van werknemers die in haar eigen vaste dienst zijn, dan wel haar door de „SHB Personeelsplanning B.V.” ter beschikking worden gesteld.

Van deze regel kan uitsluitend worden afgeweken, indien hierover tussen partijen overeenstemming is bereikt.

Compare the similar wording in Art. 4 of the Collective Labour Agreement for the General Cargo Sector in the Port of Rotterdam for 1975.

See, for example, Article A9 of the Collective Labour Agreement of Stena Line Stevedoring at Hoek van Holland, 1 January 2009 - 31 December 2010. See also *infra*, para 1446 on currently applicable provisions.

¹⁷⁹³ On the history of labour relations in the port of Amsterdam, see Boot, H., *Opstandig volk: neergang en terugkeer van losse havenarbeid*, Amsterdam, Stichting Solidariteit, 2011.

involvement of the trade union, two foundations (SPAN and SPANO¹⁷⁹⁴) were created to continue the company's activities. In these pools, the trade union took on the unusual role of employer. However, the new pools also faced severe challenges, especially when the policy of no forced redundancies was abandoned and 26 workers were fired. Their dismissal in 1999 gave rise to legal proceedings which lasted until 2011¹⁷⁹⁵. In the meantime, SPANO failed in 2003¹⁷⁹⁶. The remaining workers were integrated into the temporary employment agency SWA¹⁷⁹⁷.

1435. In the late 1990s, SHB's monopoly to provide temporary workers was challenged by a number of terminal operators.

In 1998, two Rotterdam-based cargo handling companies lodged complaints with the Dutch Competition Authority. They argued that the obligation, imposed by collective agreements, to hire all temporary workers from the labour pool SHB, constituted a breach of Dutch competition law. According to the claimants, the pool system was characterised by anti-competitive agreements as well as abuses of a dominant position. Allegedly, SHB's tariffs were excessively high and the trade unions systematically refused to grant derogations, even where these found a basis in express provisions of the collective agreements. Furthermore, in the event of SHB having insufficient workforce, only SHB was entitled to call upon third workforce providers. One claimant even stated that SHB's monopoly had been the direct cause of its bankruptcy. However, the Dutch Competition Authority dismissed the complaints. Relying on the Court of Justice's well-established case law¹⁷⁹⁸, it ruled that the relevant collective agreements were outside the scope of the cartel provisions of the Competition Act, because they had resulted from formal negotiations between the social partners and because their purpose was to improve working conditions. Quite remarkably, the Competition Authority also held that the immunity of the collective agreements concluded between the individual employer and the unions – which obliged the former, in their Article A9, to call on SHB or, in the event of a shortage of workers, and always through the mediation of SHB, on third temporary workforce recognised by the unions (*erkende derden*) – extended to the relationship between the former and the port workers' pool SHB, because this relationship merely implemented the collective agreement, or could be considered an essential component of the collectively agreed labour market arrangements. As regards abuse of a dominant position, the Competition Authority seemed to accept that no immunity of collective agreements can be invoked, but that any excessive level of SHB's tariffs amounting had not been demonstrated and that it was not appropriate for the

¹⁷⁹⁴ SPAN referred to 'Stichting Personeelsvoorziening Amsterdam Noordzeekanaalgebied' or Foundation Workforce Supply North Sea Canal Region Amsterdam; SPANO to 'Stichting Personeelsvoorziening Amsterdam Noordzeekanaalgebied Operationeel' or Operational Foundation Workforce Supply North Sea Canal Region Amsterdam.

¹⁷⁹⁵ On these legal proceedings, see Boot, H., *Opstandig volk: neergang en terugkeer van losse havenarbeid*, Amsterdam, Stichting Solidariteit, 2011, 429 *et seq.* See also <http://www.solidariteit.nl/Dossiers/span.html>.

¹⁷⁹⁶ Boot, H., *Opstandig volk: neergang en terugkeer van losse havenarbeid*, Amsterdam, Stichting Solidariteit, 2011, 456.

¹⁷⁹⁷ See http://www.uitpers.be/artikel_view.php?id=3150 and *infra*, para 1456.

¹⁷⁹⁸ See *supra*, para 176.

Authority to order a formal investigation¹⁷⁹⁹. With regard to the immunity of the collective agreements from the cartel provisions, Monica Wirtz observes that the Competition Authority, in highlighting that the collective agreements were "necessary" to achieve their social purposes, seemed to apply an additional proportionality test, which finds no basis in the ECJ's case law¹⁸⁰⁰. The author also comments that, as the rules on the registration of workers and the recognition of third workforce suppliers closed off access to the market, the set-up was abusive anyway¹⁸⁰¹.

In 1999, Matrans intended to supply temporary workers for general stevedoring work ("multifunctional" work) to container terminal ECT in Rotterdam, using workers supplied by its subsidiary Transcore, an authorised supplier of temporary lashers. Trade union FNV opposed this because it had never recognised Matrans as an additional temporary work provider for the port. It argued that Transcore workers were only allowed to perform lashing and securing, while solely SHB was entitled to supply temporary port workers for general work, and the move would result in the creation of a second pool which would then compete with SHB. The Court at Rotterdam rejected the claim by Matrans to gain access to the market for general stevedoring work because the parties to the applicable collective agreement for the port had clearly intended to reserve the provision of casual workers performing general port work to SHB. In so doing, the Court of course also confirmed FNV's right to refuse recognition of workforce providers¹⁸⁰².

1436. In 2002, lashing companies Matrans and ILS launched an attempt to establish a mooring company in order to compete with age-old monopolist De Eendracht, following which the latter

¹⁷⁹⁹ Decision of the Director-General of the Dutch Competition Authority of 14 December 2000, no. 1012/51, Van Eck Havenservice; Decision of the Director-General of the Dutch Competition Authority of 12 July 2001, no. 1199/35, EMO vs SHB; Decision of the Director-General of the Dutch Competition Authority of 30 October 2001, no. 2320/25, Marine Cargo Services. For a legal analysis, see *supra*, para 176.

¹⁸⁰⁰ Wirtz, M.S., *Collisie tussen CAO's en mededingingsrecht*, doctoral dissertation, Utrecht, Utrecht University, 2006, <http://igitur-archive.library.uu.nl/dissertations/2006-1204-200112/full.pdf>, 211-212. Upon closer scrutiny, the Authority only mentions that the priority right was "necessary" to maintain an agreement on redundancies. It did not apply any supposed necessity test to the second objective of the agreement, which was to "make it possible" that the attractive working conditions were guaranteed.

¹⁸⁰¹ Wirtz, M.S., *Collisie tussen CAO's en mededingingsrecht*, doctoral dissertation, Utrecht, Utrecht University, 2006, <http://igitur-archive.library.uu.nl/dissertations/2006-1204-200112/full.pdf>, 283.

¹⁸⁰² See Court of Rotterdam, 28 January 1999, Matrans Marine Services B.V. and Transcore Rotterdam B.V. vs. FNV Bondgenoten, No. 112155 / KG ZA 99-119, unreported; see also X., "Vervat des duivels op FNV'er Stam", *Nieuwsblad Transport* 30 January 1999, <http://www.nieuwsbladtransport.nl/Archive/Article/tabid/409/ArchiveArticleID/105989/ArticleName/VervatdesduivelsofFNVerStam/Default.aspx#>; X., "Getouwtrek om Transcore tijdens geding om sjorders", *Nieuwsblad Transport* 26 January 1999, <http://www.nieuwsbladtransport.nl/Archive/Article/tabid/409/ArchiveArticleID/105870/ArticleName/GetouwtrekomTranscoretijdensgedingomsjorders/Default.aspx>; X., "SHB houdt monopolie in Rotterdamse haven", *Trouw* 30 January 1999, <http://www.trouw.nl/tr/nl/5009/Archief/archief/article/detail/2705754/1999/01/30/SHB-houdt-monopolie-in-Rotterdamse-haven.dhtml>.

threatened to start up a competing lashing firm. Due to growing unrest in the port and after consultations with the Port Authority, these initiatives were soon abandoned however¹⁸⁰³.

1437. The 2003 report *Labour costs in the transshipment sector. An international comparison of harbours in Northwest European ports*, which was commissioned by the Rotterdam Port Authority, concluded that the level of employment conditions at Rotterdam as compared with those in ports abroad did not explain the loss in Rotterdam's market share in container transshipment. It also noted the stricter legal regulation of port labour in Belgium, France and Germany as well as differences in the level of public financing of the unemployment risk¹⁸⁰⁴.

1438. On 17 February 2006 the Netherlands denounced ILO Convention No. 137.

It had ratified the Convention in 1975 and implemented it through a registration of permanent workers by the employers' organisation and of casual workers by the pool. The pool was set up under sectoral collective bargaining agreements and co-financed under Dutch unemployment legislation. The card system was managed by employers' organisations. In other words, the ratification of the Convention by the Government was based on a collective agreement by the social partners, not on the adoption of legislation.

The reason for the denunciation was that the Convention was *de facto* no longer respected as from 1 January 2000¹⁸⁰⁵. From that date, individual employers refused to register port workers¹⁸⁰⁶ and provisions of collective bargaining agreements on registration had become

¹⁸⁰³ X., "Klanten betreuren opheffing DMS", *Nieuwsblad Transport* 1 February 2002, <http://www.nieuwsbladtransport.nl/Archive/Article/tabid/409/ArchiveArticleID/74339/ArticleName/KlantenbetreurenopheffingDMS/Default.aspx>; X., "Roeiers DMS: kater na mislukt avontuur", *Nieuwsblad Transport* 1 February 2002, <http://www.nieuwsbladtransport.nl/Archive/Article/tabid/409/ArchiveArticleID/74373/ArticleName/RoeiersDMSkaternamisluktavontuur/Default.aspx>.

¹⁸⁰⁴ FNV Bondgenoten and WVM Training & Advies, *Labour costs in the transshipment sector. An international comparison of harbours in Northwest European ports*, Utrecht, 2003. The Dutch version is entitled *Arbeidskosten in de containeroverslag. Een internationale vergelijking van Noordwest Europese havens*.

¹⁸⁰⁵ See *Parliamentary Documents*, Eerste Kamer der Staten-Generaal, Goedkeuring van het voornemen tot opzegging van het op 25 juni 1973 te Genève totstandgekomen Verdrag betreffende de havenarbeid, 1973, Memorie van Toelichting, 2005-2006, 30 007, para 3; see also *Parliamentary Documents*, Eerste Kamer der Staten-Generaal, Nota naar aanleiding van het verslag, 2005-2006, 30 007, para 6) and the report on the oral debate in *Parliamentary Documents*, Tweede Kamer, 31 August 2005, 100-6119 *et seq.*; see further International Labour Office (91st Session, 2003), *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), <http://learning.ilo.org/ilo/jur/en/bibl/91-rep-III-1A-eng.pdf>, 621-622; International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), 93rd Session, 2005, <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-iii-1a.pdf>, 468.

¹⁸⁰⁶ See also X., "Protest havenarbeiders tegen opzegging verdrag", *Trouw* 31 August 2005, <http://www.trouw.nl/tr/nl/4492/Nederland/article/detail/1547205/2005/08/31/Protest-havenarbeiders-tegen-opzegging-verdrag.dhtml>.

inoperative. The Court at The Hague ruled that this situation amounted to a breach of ILO Convention No. 137¹⁸⁰⁷.

Following the refusal of the Rotterdam port employers to continue a registration system in accordance with the requirements of ILO Convention No. 137, Minister A. J. de Geus declared that he was unwilling to introduce national legislation in order to fill the gap left by the collective agreements, because such a measure would be incompatible with current national employment policy:

Creating compartments does not correspond with the ambition to have an open and flexible labour market. Such a policy would conflict with the idea of employability and renders it impossible for employees from other sectors to accept jobs in ports. After all, the existence of social measures accessible to everyone renders a special protection for port workers superfluous¹⁸⁰⁸.

Asked in Parliament why the Government took the exceptional course of denouncing an ILO Convention whilst the European Commission, in its 2004 Ports Package had invited the Member States to ratify Convention No. 137, the Minister drew attention to the limited number of States Parties to the latter in the EU, which furthermore did not include the Netherlands' main competitors, namely Belgium, Germany and the UK. The Minister recalled that ILO Convention No. 137 had been a historic response to automation and mechanisation in the 1970s which had made a large untrained workforce redundant and had led to a restructuring of many port companies, while the port of today is well-functioning, safe and competitive. What is more, since the factual non-observance of the Convention in 2000, hundreds of port workers had found new employment in the port of Rotterdam. The Minister also highlighted the weak phrasing of the European Commission's statement on ILO Convention No. 137 ("*the Commission wishes to invite Member States to ratify [...]*") which certainly did not give rise to any binding legal obligation upon the Netherlands. Next, no other Member State considered accession to the instrument in the near future. As a result, the Convention had not brought about a level playing field and this would not be changed as a result of the Dutch denunciation. Furthermore, the Minister stated that ILO Convention No. 137 does not in itself contribute to the training of port workers and that Dutch legislation on conditions of work would remain fully applicable.

During the parliamentary debate, it was also observed that a registration system within the sense of ILO Convention No. 137 had never been implemented for the ports of Amsterdam, Flushing and Delfzijl¹⁸⁰⁹.

The denunciation of the ILO Convention sparked protests by Rotterdam's port workers who feared that the employers would hire cheap labour from other countries¹⁸¹⁰. In the Dutch

¹⁸⁰⁷ See Rechtbank 's-Gravenhage, 29 September 2004, LJN B13079, 208285, case no. 03-2886, published on <http://www.rechtspraak.nl>.

¹⁸⁰⁸ *Parliamentary Documents*, Eerste Kamer der Staten-Generaal, Goedkeuring van het voornemen tot opzegging van het op 25 juni 1973 te Genève totstandgekomen Verdrag betreffende de havenarbeid, 1973, 2005-2006, no. 30 007, 3.

¹⁸⁰⁹ *Parliamentary Documents*, Tweede Kamer, 31 August 2005, 100-6125.

Parliament the opposition also referred to the threat of self-handling by unqualified and underpaid ship's crews.

1439. SHB, Rotterdam's labour pool, went bankrupt in 2009¹⁸¹¹. Reportedly, during the last years of the pool, employers were reluctant to employ pool workers because this group of workers was considered to be underperforming and less motivated, often refusing to carry out tasks, and it included numerous agitators who were solely interested in influencing the others¹⁸¹². Having reached, on average, an advanced age, the pool workers were also relatively expensive; they were not particularly flexible or even skilled and the level of absenteeism was high¹⁸¹³. Practically speaking, under no circumstances could workers be dismissed (except in the case of theft)¹⁸¹⁴. The best and most loyal workers were directly employed by the companies¹⁸¹⁵.

The end of Rotterdam's SHB is said to have had a negative impact on trade unionism in the port¹⁸¹⁶.

After SHB's bankruptcy a new company was set up under the name of Rotterdam Port Services (RPS). This organisation operates along the lines of an employment agency: people can register with it and may as a result secure work, but they receive nothing from the agency if they are not working. In practice, cargo handling companies are often not allowed to employ temporary port workers via other job recruitment or employment agencies. As a matter of fact, after RPS and trade union FNV had signed a collective agreement on working conditions at the new company, FNV notified individual port companies that it recognised RPS as an 'A company', meaning that RPS, together with the previously recognised Matrans and ILS, enjoyed priority in supplying temporary workers. FNV also informed the employers that where existing collective agreements, especially in their central A9 Article¹⁸¹⁷, mentioned SHB, this now had to

¹⁸¹⁰ See Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 30. See also X., "Protest havenarbeiders tegen opzegging verdrag", *Trouw* 31 August 2005, <http://www.trouw.nl/tr/nl/4492/Nederland/article/detail/1547205/2005/08/31/Protest-havenarbeiders-tegen-opzegging-verdrag.dhtml>.

¹⁸¹¹ See Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 33.

¹⁸¹² See Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 33-34.

¹⁸¹³ See the Decision of the Dutch Competition Authority of 12 July 2001, cited *supra*, para 1435, para 16.

¹⁸¹⁴ De Lange, H., "Elke havenwerknemer moet nu drie beroepen leren", *Trouw* 22 maart 1996, <http://www.trouw.nl/tr/nl/5009/Archief/archief/article/detail/2626219/1996/03/22/Elke-havenwerknemer-moet-nu-drie-beroepen-leren.dhtml>.

¹⁸¹⁵ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 33.

¹⁸¹⁶ See Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 65.

¹⁸¹⁷ See *supra*, para 1433.

be read as a reference to RPS, under the understanding that RPS, Matrans and ILS were equally ranked. Today, several collective bargaining agreements at company level continue to stipulate that the port employer shall only use its permanent port workers or the port workers of a designated employment agency (in particular Rotterdam Port Services) for activities that fall under the collective bargaining agreement¹⁸¹⁸. In 2009, Rotterdam Port Services employed around 300 workers¹⁸¹⁹. Reportedly, about two thirds of its staff is deployed on a regular basis. The company has its own collective labour agreement¹⁸²⁰.

1440. Immediately after SHB's bankruptcy, several commercial companies had proposed to take over the pool. Following the take-over by RPS, Joint Port Staff Holding (JPS), another temporary work agency where some 140 former pool workers had meanwhile registered, assumed that Article A9 of the sectoral agreement, which granted SHB an exclusive right to supply temporary workers, had lapsed, and applied, on that basis, for recognition by FNV as an additional workforce provider in the port of Rotterdam. This recognition never materialised however. CEO Jan Weemering was surprised that he needed permission from trade union FNV to obtain access to the temporary labour market and stated that such a requirement existed in no other sector in the Netherlands¹⁸²¹. Eventually, JPS sought a court order obliging FNV to immediately grant recognition on the usual conditions of the sector. The company based its claim upon an alleged infringement by FNV of Dutch competition law. In 2009, the Court at Utrecht dismissed the claim, essentially because the agreement between FNV and the new commercial pool company RPS had social objectives and could not be tested against the prohibition on anti-competitive agreements. Neither could it be tested against the prohibition to abuse a dominant position, because trade union FNV is not an undertaking and JPS itself had broken off negotiations. Finally, the Court found no indications of any other wrongful behaviour on the part of FNV. The trade union had not acted illegally where, in order to safeguard existing working conditions and employment, and fully within the spirit of Article A9 of the port's collective agreements, it urged companies to give priority to the temporary workers of RPS¹⁸²². A trade union spokesman welcomed the judgment because it prevented a proliferation of temporary work providers in the port¹⁸²³.

Together with the economic crisis, the failure by JPS to gain access to the port labour market in Rotterdam contributed significantly to its own bankruptcy in 2011.

¹⁸¹⁸ See further details *infra*, para 1446.

¹⁸¹⁹ See <http://www.transport-online.nl/site/transportnieuws/index.php?news=5287>.

¹⁸²⁰ See further details *infra*, para 1448.

¹⁸²¹ X., "SHB - JPS meldt zich vergeefs voor doorstart", *Nieuwsblad Transport* 13 January 2009, <http://www.flexnieuws.nl/2009/01/14/shb-jps-uitzendbureau-personeelsinhuur-werknemers/>.

¹⁸²² Court of Utrecht 24 July 2009, LJN BJ3474, 269528 / KG ZA 09-645, www.rechtspraak.nl. JPS lodged appeal but due to a procedural error no appeal judgment was issued (X., "JPS: geen bemiddeling SHB na procedurefout", *Nieuwsblad Transport* 3 October 2009, <http://www.flexnieuws.nl/2009/10/03/jps-geen-bemiddeling-shb-na-procedurefout/>).

¹⁸²³ X.? "FNV hoeft uitzendbureau JPS niet te erkennen", *AD* 24 July 2009, <http://www.ad.nl/ad/nl/1038/Rotterdam/article/detail/2066558/2009/07/24/FNV-hoeft-uitzendbureau-JPS-niet-te-erkennen.dhtml>.

- *Regulatory set-up*

1441. To summarize the current port labour regime in Dutch ports, port workers in the Netherlands are employed by individual cargo handling companies, either on a permanent basis or as temporary workers. Employers are not obliged to join or to contribute to any association or labour pool entity. Port workers are not registered and no hiring halls are used.

Following the winding-up of the labour pools, flexibility in Dutch ports is thus no longer achieved by external means (pool system) but mainly through a flexible labour organisation at company level. A permanent staff of highly qualified workers in core functions (for example crane men) is combined with interim workers. Reportedly, some workers such as women and people of foreign origin actually prefer flexible employment. Distribution among fixed and temporary labour differs according to the traffic pattern that prevails at the individual terminal.

1442. As we have explained¹⁸²⁴, conditions of employment are now mainly governed by collective agreements concluded at company level.

In this respect, a distinction is made between port workers in the narrow sense (who are employed at the ship/shore interface) and warehouse or logistics workers employed within the port. The collective labour agreements at company level focus primarily on the activities of terminal operations properly (stevedoring) and do not deal with warehousing or logistics.

Browsing a number of company-based collective bargaining agreements, we found several provisions on multi-skilling and flexibility but no mandatory rules on the composition of gangs or the allocation of workers to fixed shifts.

1443. Reportedly, employees from terminal operators active in more than one Dutch port are occasionally transferred temporarily to another port. Most employers however have terminals in only one port.

1444. At first sight, it would appear that no restrictions prevail in the port labour market in Dutch ports.

¹⁸²⁴ See *supra*, para 1427.

However, mention must be made of (1) rules on lashing in the Port Regulations of Rotterdam; (2) certain provisions in a number of company-based collective bargaining agreements in Rotterdam (and, to an extent, also Amsterdam and Flushing); and (3) provisions in the collective agreement of RPS.

1445. Interestingly, the Port Regulations of the port of Rotterdam contain provisions on the lashing of containers on board seagoing vessels¹⁸²⁵:

Article 11.4.1 Prohibition of lashing

It is prohibited to lash containers on board seagoing vessels, unless this is carried out:

- a. by the crew of the seagoing vessel concerned insofar as it concerns a seagoing vessel with a maximum length of 170 metres, or;*
- b. by a lasher who is employed by a lashing company which holds a permit.*

Article 11.4.2 Licensing conditions for lashing companies

The Municipal Executive will issue a permit to a lashing company if the lashing company:

- a. offers its services 24 hours per day, 7 days per week and is able to handle at least one seagoing vessel in the time made available by the shipping company or stevedore;*
- b. is in possession of an ISO 9002 certificate or demonstrates that it will have one within the foreseeable future;*
- c. ensures that the lashers working under its responsibility are sufficiently competent, reliable and recognisable in accordance with the provisions of Article 11.4.3, and;*
- d. issues a proof of identity to the lashers which is provided with a passport photo which is a true likeness and which states at least:*
 - 1° the name, place and date of birth of the lasher, and;*
 - 2° the name of the lashing company with whom the lasher is employed.*

Article 11.4.3 Obligations of lashers

- 1. Upon entering the employment of a recognised lashing company a lasher shall possess a certificate of good conduct.*
- 2. The profession of lasher may only be practised by a person who has successfully completed the training course for Port Operations Operative as included in the dossier adopted by the Minister for Education, Culture and Science, with registration code CREBO-93070.*
- 3. During the lashing operations a lasher shall carry the proof of identity referred to in Article 11.4.2, under d.*
- 4. Lashers shall show their proof of identity upon the request of persons or companies who make use of their services.*

¹⁸²⁵ The English translation was provided by the Port Authority.

Currently, ILS and Matrans are authorised to perform lashing services on the basis of the provisions quoted above.

The Port Authority of Rotterdam and FNV clarified that, in accordance with Article 11.4.1(a), containers on smaller vessels are sometimes lashed by the ship's crew. These seafarers are not covered by the port's collective labour agreements.

The above provisions were inserted into the Rotterdam Port Regulations at the demand of the trade unions. The College of Mayor and Aldermen of the City of Rotterdam, which enacted the Regulations, is aware of the fact that other EU ports do not impose similar rules. Yet, the Rotterdam Harbour Master continues to support the insertion of the provisions in the Regulations and highlights their contribution to overall port security¹⁸²⁶.

1446. Secondly, a number of company-based collective bargaining agreements in the port of Rotterdam include provisions to the effect that if temporary workers are needed to meet peak demand, such additional workforce may only be hired from a number of designated or recognised temporary work providers. The examples below were randomly selected. The first three concern major terminal operators at Rotterdam¹⁸²⁷.

At ECT, the collective agreement contains provisions on the hiring of temporary administrative staff (*operationele beambten*) and operatives (*operationele medewerkers*). The latter include various categories of manual workers, crane, forklift and straddle carriers as well as maintenance personnel¹⁸²⁸. With respect to these categories, the agreement provides that, before recourse is had to overtime work, the employer will call upon Matrans, ILS and RPS. The former two companies are authorised lashing companies (who also provide drivers however), while RPS is the commercial remnant of the failed labour pool SHB. The agreement further states that in the event of temporary peaks, workers from these three companies may be hired and that such employment will be based on the lists of functions applicable to the temporary work provider concerned¹⁸²⁹.

At APM Terminals Rotterdam (APMTR), the employer is allowed to hire van carrier drivers from Matrans, ILS and RPS. Next, the collective agreement provides that if these three providers are unable to supply sufficient labour, the parties to the agreement will consult on calling upon

¹⁸²⁶ Letter of Alderman M. Harbers to Commission for Economy, Social Affairs, Environment and Transport of the College of Mayor and Aldermen of 12 June 2008, published online on <http://www.bds.rotterdam.nl/dsresource?objectid=178879>. See also the Letter of Alderman M. Harbers to the Commission for Economy, Social Affairs, Environment and Transport of the College of Mayor and Aldermen of 29 October 2008, published online on <http://www.bds.rotterdam.nl/dsresource?objectid=183084>.

¹⁸²⁷ For a number of companies, we had no access to currently applicable agreements. The only purpose of our overview is to outline a number of characteristic arrangements rather than to describe the details of presently applicable provisions at individual companies.

¹⁸²⁸ See the definitions in Art. 1 of the Agreement as well as the List of functions in its Chapter IV.

¹⁸²⁹ Annex II to the Collective Agreement of ECT, 1 July 2009 - 1 October 2012, version of September 2010.

other undertakings. Temporary workers must meet qualification standards set by APMTR (among other things STC certification)¹⁸³⁰.

At EMO, a major dry bulk terminal, the collective agreement regulates both the calling upon temporary work providers and outsourcing. The former is possible for such port jobs as trimming, cleaning and bulldozer driving (and, as from 2012, also for mechanical shovel driving). The agreement identifies the individual companies that may supply additional workforce. The agreement mentions that a mix of 80 per cent of fixed work and 20 per cent of temporary work would be appropriate but also that temporary work is "a very sensitive issue" and that mutual confidence, consultation and communication are paramount. All temporary workers who may be hired by EMO are registered and receive a pass. Outsourcing may take place for intra-terminal transportation of bulk cargoes by means of lorries and dumpers and maintenance work at the terminal¹⁸³¹.

A collective agreement for DFDS Seaways at Vlaardingen mentions that only fixed personnel and workers supplied by (wound up) SHB may be employed (this should now be interpreted as a reference to RPS, ILS and Matrants). Temporary workers must be proficient in Dutch, and deployment of these workers is limited to a maximum of 20 per cent on a weekly basis¹⁸³². The agreement precludes the use of fixed manning scales¹⁸³³.

Finally, it should be recalled that the previously applicable pool regime comprised a system under which third companies eligible to supply temporary workers had to be recognised by the trade unions¹⁸³⁴. It would appear that in essence this restriction still prevails at a number of important port companies.

1447. In addition to the limitations on market access for lashing companies in the Rotterdam Port Regulations and the priority rights of authorised companies in the collective bargaining agreements of terminal operators, the authorised lashing firms' own collective agreements impose further restrictions on the hiring of temporary workforce.

Matrants Marine Services, for example, is only allowed to rely on ILS, RPS, Unilash and Transcore in the event of temporary peak demand. Outsourcing between members of the

¹⁸³⁰ Annex 3 to the Collective Agreement for Terminal Operators, Gate Inspectors and Mechanics of APM Terminals Rotterdam, 1 July 2009 - 30 September 2011.

¹⁸³¹ Annex B I to the Collective Bargaining Agreements of EMO, 1 January 2009 - 1 January 2011 and 1 January 2011 - 1 January 2013.

¹⁸³² Art. 9 of the Collective Agreement of DFDS Seaways at Vlaardingen, 1 January 2011 - 31 December 2011. Remarkably, the Agreement still refers to SHB.

¹⁸³³ See Art. C7.

¹⁸³⁴ See already *supra*, paras 1435, 1439 and 1440; see further Decision of the Director-General of the Dutch Competition Authority of 14 December 2000, no. 1012/51, Van Eck Havenservice, para 28. Comp. also, on Amsterdam, Boot, H., *Opstandig volk: neergang en terugkeer van losse havenarbeid*, Amsterdam, Stichting Solidariteit, 2011, 290.

employers' association is also possible, but there are limitations on the number and the duration of outsourcing contracts¹⁸³⁵.

International Lashing Service (ILS) shall rely on, in order of priority:

- (1) its own employees;
- (2) workers supplied by other lashing companies (*collegiale inhuur* or 'fraternal' hiring);
- (3) workers supplied by "preferred supplier" Transcore Rotterdam;
- (4) workers supplied by RPS.

If demand is still not met, workers can be hired from other port companies, or tasks can be outsourced, but the latter is subject to limitations on the number and the duration of contracts¹⁸³⁶.

1448. The collective agreement for RPS provides that the company may only engage workers not employed by the former port labour pool SHB with the consent of the trade unions FNV and CNV. Interestingly, 20 per cent of the profits of RPS is reserved for its employees¹⁸³⁷.

1449. In the port of Amsterdam, since the collapse of the pool, all stevedores mainly employ permanent staff. In addition, they all maintain a list of temporary workers whom they can rely on. A small number of pool workers is now employed by a temporary work agency¹⁸³⁸.

Under the collective agreement of IGMA, a major dry bulk terminal at Amsterdam belonging to the Cargill group, employment of temporary workers is limited to a maximum of 25 per cent of the fixed labour force. The parties agree to consult further on the concrete conditions¹⁸³⁹.

1450. At the ports of Flushing and Terneuzen (managed by Zeeland Seaports), the organisation of port labour is characterised by a high degree of flexibility. People with the right qualifications have access to the profession of port worker. The high degree of flexibility is also reflected in the recruitment of casual port workers, the deployment of multi-skilled dockworkers (exchange of workers between different terminals during a shift), the composition of the gangs, *etc.* Cargo handling companies largely rely on permanent port workers paid according to collective bargaining agreements at company level. Wage differentiation is based on three elements: qualifications, seniority and bonuses/surcharges. The peaks in port demand

¹⁸³⁵ See Annex II to the Collective Agreement of Matrans Marine Services, 1 July 2009 - 30 September 2012.

¹⁸³⁶ See Art. A9 and Annex I to the Collective Agreement of International Lashing Services, 1 July 2009 - 31 December 2011; see also .

¹⁸³⁷ See Annexes IV and V of the Collective Agreement of Rotterdam Port Services, 2009 - 2011.

¹⁸³⁸ See *supra*, para 1434 and *infra*, para 1456.

¹⁸³⁹ Art. A9 of Collective Agreement of IGMA, 1 April 2009 - 31 March 2011;

can be absorbed through casual workers made available via temporary labour offices. Casual workers sign contracts with these labour offices and work according to the conditions contained therein (hourly wage, working hours, leave, allowances, *etc.*). The terms and provisions of the contracts between the casual worker and the temporary labour office apply (such as the start of a shift or shift duration)¹⁸⁴⁰.

A number of temporary work agencies in the ports of Zeeland are controlled by the terminal operators (for example, C-Port¹⁸⁴¹ is partly owned by Kloosterboer). These terminal operators have a limited workforce of their own and rely largely on the services of the specialised temporary work agencies, which ensures considerable flexibility. Interviewed terminal operators confirmed that loading and unloading operations can start immediately after the ship has docked. There are neither fixed shifts, nor mandatory manning scales. As a result, ports in Zeeland enjoy a competitive advantage over their competitors in Belgium, and succeeded in attracting considerable flows of in particular paper pulp traffic which used to be handled in Antwerp, which is located further upstream the River Scheldt.

The (expired¹⁸⁴²) collective bargaining agreement at Verbrugge Terminals in the Province of Zeeland (ports of Flushing and Terneuzen) contained provisions on the hiring of manned harbour cranes and of temporary workers. It stated that temporary workers are needed to respond to the unwillingness of fixed workers to perform overtime work and to meet demands of the clients, particularly to ensure compliance with arrangements for the turnaround of ships, but that the policy of the employer is not to reduce the level of fixed in-house workers. It also mentioned that fixed workers may be exchanged between terminals and Flushing and Terneuzen. Temporary workers must be certified and shall be informed on safety matters. Preferably, they will be hired from fixed providers. Temporary workers shall meet the following criteria:

- (1) minimum age of 18;
- (2) acceptable proficiency in Dutch;
- (3) expertise in port work;
- (4) possession of a safety helmet, gloves and safety boots provided by the labour agency.

The agreement further stipulates that priority shall be given to temporary work agencies which have an agreement to which the trade union FNV is also a party. If this does not result in a sufficient supply, workers may be hired from other providers, subject to prior consultation. The hiring of temporary workers is monitored by a special joint commission established within the company. For certain categories of workers (crane driver and controllers), the hiring of temporary workers is prohibited¹⁸⁴³.

¹⁸⁴⁰ Notteboom, T., *Dock labour and port-related employment in the European seaport system. Key factors to port competitiveness and reform*, ESPO / ITMMA, 2010, www.porteconomics.eu, 76.

¹⁸⁴¹ See www.c-port.nl.

¹⁸⁴² Reportedly, negotiations on a new agreement are still ongoing.

¹⁸⁴³ See p. 17 and Annex IV of the Collective Agreement of Verbrugge Terminals, 2008 - 2010.

1451. As a rule, unemployed port workers are entitled to unemployment benefit.

- *Facts and figures*

1452. In the absence of a national identification and demarcation of port labour as a socio-economic sector in its own right or, for that matter, as a separate policy domain or as the subject-matter of a specific legal framework, no nation-wide statistics on the number of port employers and workers in the Netherlands are available. Estimating the total number of port employers and workers is complicated further by the increasing reliance upon temporary agency and part-time workers.

1453. Official data on the number of employers of port workers in Dutch ports are not available.

In the port of Rotterdam, there are between 40 to 50 cargo handling companies, which are grouped in two different organisations. The first one is Deltalinqs, which represents the common interests of all logistics and industrial companies in the Rotterdam port and industrial area (about 600 companies and associations)¹⁸⁴⁴. The second organisation is the General Association of Dutch Employers (Algemene Werkgeversvereniging VNO-NCW¹⁸⁴⁵, AWWN). AWWN, a general employers' association representing over 850 companies, 700 business units and some 65 institutions from many branches of industry, the services sector and the world of harbours, transportation and logistics¹⁸⁴⁶. AWWN has members in Rotterdam, but also in Delfzijl, Amsterdam and Zeeland. Not all port employers are members of AWWN, but there is no competing association. In the ports managed by Groningen Seaports, port workers are employed by between 10 and 20 companies.

AWWN assists individual companies during collective bargaining processes. The association is however not mandated to sign collective bargaining agreements¹⁸⁴⁷. In the port sector, AWWN assists between 30 to 40 companies.

¹⁸⁴⁴ See <http://www.deltalinqs.nl>.

¹⁸⁴⁵ VNO-NCW stands for 'Verbond van Nederlandse Ondernemingen - Nederlands Christelijk Werkgeversverbond'.

¹⁸⁴⁶ See <http://www.awvn.nl>. Before 1995, the port employers of Rotterdam were grouped in the Shipping Association South (Scheepvaartvereniging Zuid, SVZ) (see briefly Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 45). In Amsterdam, employers were united in the Shipping Association North (Scheepvaartvereniging Noord, SVN).

¹⁸⁴⁷ See also Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 45.

On this basis, we would estimate the total number of employers of port workers in Dutch seaports at between 85 and 105.

1454. Rough estimates of the number of permanent workers, including the fixed staff of providers of temporary workforce in Rotterdam (ILS, Matrans, RPS and Transcore) kindly provided by trade union FNV, are as follows: 6,100 in Rotterdam (including Steinweg), 700 at Amsterdam, between 300 and 350 in Zeeland Seaports, almost 100 at Dordrecht and Moerdijk and around 50 in Groningen¹⁸⁴⁸. This would result in a nation-wide total of approximately 7,275 regularly employed port workers in The Netherlands.

1455. According to the Rotterdam Port Authority, there are currently approximately 6,000 port workers in the port of Rotterdam.

Since 1990, the number of port workers in Rotterdam evolved as follows:

Table 84. Number of port workers and labour productivity in Rotterdam, 1990-2008 (source: Poot and Luijsterburg, 2009¹⁸⁴⁹)

	1990	2000	2008	Increase of productivity 1990-2008 (throughput / number of workers), in per cent
Dry bulk	2,373	1,321	1,031	130
Containers and ro-ro	3,326	3,352	3,903	128
General cargo (including labour pool)	3,273	1,881	962	128
Total	8,972	6,554	5,896	

¹⁸⁴⁸ These estimates were kindly provided by Niek Stam of trade union FNV. In its reply to the questionnaire, the trade union FNV mentioned an estimated 6,300 dockworkers, 1,400 office staff and 600 other workers (including 400 tugboat crew) employed in Dutch ports.

¹⁸⁴⁹ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 41.

1456. In the port of Amsterdam, the temporary work agency SWA¹⁸⁵⁰ currently employs some 30 port workers under a contract for an indefinite term, who were taken over from the former pool organisation SPANO.

1457. The Port Authority of Rotterdam estimates that approximately 50 to 60 per cent of Rotterdam's port workers are members of a trade union. Two trade unions are active in the ports: the Dutch Trade Union Federation (FNV Bondgenoten¹⁸⁵¹, FNV) with a share of approximately 80 per cent and the National Federation of Christian Trade Unions (CNV Vakmensen¹⁸⁵², CNV) with a share of approximately 20 per cent.

According to the employers' organisation AAVN, about 70 per cent of the port workers in the port of Rotterdam are members of a trade union (65 per cent is said to be a member of FNV and 5 per cent is a member of CNV). In some companies union membership is high (above 90 per cent) whereas in other companies fewer than half the workers are members of a union. Generally speaking, it is no longer considered self-evident that a port worker joins a union.

According to trade union FNV, at national level 80 per cent of port workers, staff and tugboat crew are members of a trade union. In an interview, it specified that trade union density in the port of Rotterdam can be estimated at between 54 and 58 per cent, with 45 to 47 per cent of the port workers being a member of FNV¹⁸⁵³.

The average union density in the container sector is reportedly about 10 per cent lower than in the break bulk sector¹⁸⁵⁴.

Even so, trade union membership among port workers reaches a higher level than in the Dutch economy as a whole, where it stands at about 25 per cent¹⁸⁵⁵.

¹⁸⁵⁰ See <http://www.weetvanwerken.nl/werknemers/specialismen1/havens-and-logistiek.html>.

¹⁸⁵¹ FNV stands for 'Federatie Nederlandse Vakbeweging'. 'Bondgenoten' means Confederates.

¹⁸⁵² CNV refers to 'Christelijk Nationaal Vakverbond' (Christian National Trade Union). 'Vakmensen' means Professionals.

¹⁸⁵³ Another source mentions between 60 and 75 per cent of trade union members (see and compare Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 50 and Lei, L., *Industrial relations in the port of Rotterdam, 1990-2008*, diss. Universiteit Tilburg, 2009, 19).

¹⁸⁵⁴ Lei, L., *Industrial relations in the port of Rotterdam, 1990-2008*, diss. Universiteit Tilburg, 2009, 19.

¹⁸⁵⁵ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

9.15.4. Qualifications and training

- *Regulatory set-up*

1458. Current Dutch law does not provide for any national qualification standards for port workers (an omission which was criticised in the Dutch Parliament upon denunciation of ILO Convention No. 137¹⁸⁵⁶).

1459. Collective labour agreements at company level make certain types of training compulsory.

Pursuant to the collective agreement of EMO, for example, all temporary workers will be trained in-house. The programme includes issues such as the history and the current situation of the employer, safety, environment and specific instructions for trimmers and drivers. Following an examination, trainees will receive a company training certificate¹⁸⁵⁷.

- *Facts and figures*

1460. The Port Vocational School (Haven Vakschool), a school for port vocational training, was founded in 1949, when it was a worldwide innovation. Initially, the school offered voluntary training for dockworkers in the age of 18-30. Later, it also trained crane-drivers, overseers and bosses and even offered training for school-leavers age 14 to 18. Because most employers wanted to keep the training of their regular personnel in their own hands, most trainees of the Port Vocational School were casual workers¹⁸⁵⁸.

¹⁸⁵⁶ Parliamentary Documents, Tweede Kamer, 31 August 2005, 100-6123.

¹⁸⁵⁷ Annex B I to the Collective Bargaining Agreement of EMO, 1 January 2009 - 1 January 2011; idem in the Agreement for 1 January 2011 - 1 January 2013.

¹⁸⁵⁸ Nijhof, E., "Dock-work is a skilled profession. Decasualization and the Rotterdam labour market (1945-1970)" in Loyen, R., Buyst, E. and Devos, G. (eds), *Struggling for leadership: Antwerp-Rotterdam port competition between 1870-2000*, Heidelberg/New York, Physica-Verlag, 2003, (275), 281. See also Koedijk, P., "The evolution of working conditions in Dutch ports", *The International Transport Workers' Journal*, May-June 1950 (27), 28; Laan, M.R., "La formation professionnelle des dockers", in Kühne, K. and Ledeganck, A.J. (Eds.), *La productivité dans les ports*, Paris, Organisation européenne de coopération économique, 1959, (67), 74-80.

1461. Currently, training of port workers in the Netherlands is organised by the Shipping and Transport College (Scheepvaart en Transport College, STC) at Rotterdam¹⁸⁵⁹, the Port College (Haven College) at Amsterdam¹⁸⁶⁰, the Foundation for Vocational Training Transport and Logistics (Stichting Vakopleiding Transport en Logistiek, VTL)¹⁸⁶¹ and Regional Education Centres (Regionale opleidingencentra, ROC).

STC offers training for, among others, drivers of forklifts, ship cranes, tugmasters and drivers of reach stackers, empty container handlers and straddle carriers. STC is assisted by an advisory committee composed of representatives of both employers and unions. A 2008 report mentions that nearly all Rotterdam port companies buy training at the Shipping and Transport College, with some of these courses being organised within the company¹⁸⁶².

VTL develops competence profiles (*beroepscompetentieprofielen*) for different functions in ports¹⁸⁶³. These profiles are used by STC for the organisation of its training courses.

1462. In response to our questionnaire, the following types of formal training were reported to be available for port workers in the Netherlands:

- specialised training as part of a regular educational programme (secondary school);
- continued or advanced training after a regular educational programme;
- induction courses for new entrants;
- courses for the established port worker;
- training in safety and first aid;
- specialist courses for certain categories of port workers such as crane; forklift, container handling equipment, tugmaster operators, lashing and securing personnel, tallymen, signalmen and reefer technicians;
- training aimed at the availability of multi-skilled or all-round port workers;
- retraining of injured and redundant port workers.

1463. A 2008 report on developments in port companies in Rotterdam showed a trend towards multi-skilling of port workers. For example, crane drivers and maintenance staff are now also able to drive forklifts and lorries. This allows for more flexibility, which enables the employer to deploy his staff to other activities in periods of low maritime traffic. Due to automation, port workers need a higher level of training and become 'process operators' who must have knowledge of the entire computerised process but also be able to drive forklifts. Nonetheless, operatives doing manual work with little or no training will always remain in demand.

¹⁸⁵⁹ See <http://www.stc-group.nl> and <http://www.stc-r.nl/mbo/havens/index.htm>.

¹⁸⁶⁰ See <http://www.havencollegeamsterdam.nl/>.

¹⁸⁶¹ See <http://www.vtl.nl> and <http://www.werkenindehaven.nl/>.

¹⁸⁶² Van Wersch, F. and Winthagen, T., *Resultaten onderzoek ontwikkelingen binnen havenbedrijven in Rotterdam*, Tilburg, IVA, 2008, 13. This report is labeled 'confidential' but appears to be widely available and known throughout the port sector, including among trade unions.

¹⁸⁶³ See <http://www.vtl.nl/Scholen/Kwalificatiestructuur/Sector-Havens>.

Interestingly, the report also mentions long travelling times hampering employment of part-time workers at the distant Meuse Plain port area¹⁸⁶⁴.

9.15.5. Health and safety

- Regulatory set-up

1464. In 1995, the Dutch Stevedores Act, which governed health and safety in ports¹⁸⁶⁵, was repealed¹⁸⁶⁶. Relevant rules were incorporated in the general legislation on safety in the workplace.

Today, safety and health on the work floor are governed by the Labour Conditions Act which also applies to port labour¹⁸⁶⁷. The Labour Conditions Act sets out general obligations on employers and employees on how to deal with occupational safety and health, for example to have a written OSH-policy and a risk inventory. The Act gives certain powers to the Labour Inspectorate, for example, obliging the employer to stop the work.

Implementing rules are laid down in the Labour Conditions Regulations. The latter repealed earlier specific Regulations on the Safety of Stevedoring Work¹⁸⁶⁸ and on the Safety of Inland Shipping¹⁸⁶⁹. The current Labour Conditions Regulations continue to contain some specific rules on the loading and unloading, such as the inspection and certification of lifting equipment and lifting gear on board ships (Art. 7.24-7.30).

In the light of this new general legal framework on occupational safety, the Dutch legislator decided to ratify ILO Convention No. 152 without adopting any further national rules for its implementation¹⁸⁷⁰.

1465. According to the Port Authority of Rotterdam, in practice, a VCA Certificate (Dutch *Veiligheid, gezondheid en milieu Checklist Aannemers* or Safety, Health and Environment Checklist for Contractors) is required in order to be employed as a port worker. A VCA

¹⁸⁶⁴ Van Wersch, F. and Winthagen, T., *Resultaten onderzoek ontwikkelingen binnen havenbedrijven in Rotterdam*, Tilburg, IVA, 2008, 7-8.

¹⁸⁶⁵ See *supra*, para 1429.

¹⁸⁶⁶ Art. 12:1 of Wet van 23 november 1995, houdende bepalingen inzake de arbeids- en rusttijden (Arbeidstijdenwet).

¹⁸⁶⁷ See *Parliamentary Documents*, Staten Generaal, 1997-1998, no. 25 888 (R 1607).

¹⁸⁶⁸ Veiligheidsbesluit Stuwadoorsarbeid.

¹⁸⁶⁹ Veiligheidsbesluit Binnenvaart.

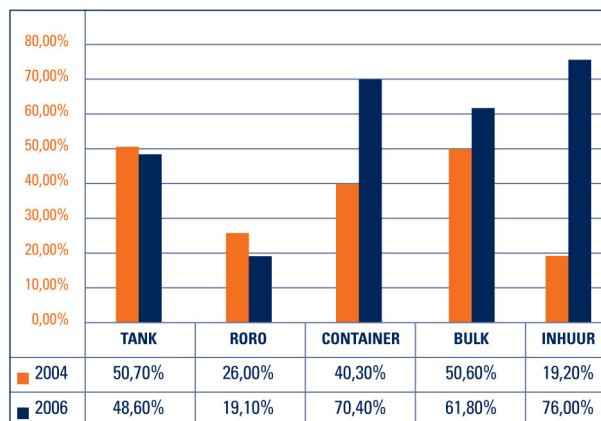
¹⁸⁷⁰ See *Parliamentary Documents*, Staten-Generaal, 1997-1998, 25 888 (R 1607), paras 251 and 1, 2.

Certificate is a safety certificate which is mandatory for operational personnel of sub-contractors deployed at high-risk industrial plants. The VCA system was developed by employers in the petrochemical industry (which is mainly based in port areas). As we will explain below¹⁸⁷¹, AWVN and FNV are currently preparing the introduction of a specific certificate for ports.

- Facts and figures

1466. Between 2004 and 2006, the rate of Dutch port workers possessing a VCA Certificate improved. In 2006, the average was 55.2 per cent. Further details are given in the table below (with 'Inhuur' referring to the hiring of temporary workers). Updated figures are unavailable.

Figure 107. Possession of a VCA Safety Certificate by Dutch port workers, 2004-2006 (source: FNV¹⁸⁷²)



1467. No nation-wide statistics on the number of occupational accidents involving port workers in the Netherlands are available. The Labour Inspectorate explained to us that this is due to the fact that accidents are registered per company and not according to type of activity or location of the workplace and that many cargo handling companies also have activities outside port areas.

¹⁸⁷¹ See *infra*, para 1497.

¹⁸⁷² FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006, 14.

Both AUVN and FNV confirmed that no reliable overall statistics on accidents involving port workers are maintained. Moreover, only severe accidents have to be reported to the Labour Inspectorate. Minor accidents are not registered at all.

1468. The Dutch Labour Inspectorate considers ports a priority sector.

In 2009, the Inspectorate stated that compliance is relatively low in ports and that risks (accidents, health risks) are high.

Inspections are conducted in function of:

- active projects, such as physical strain on port workers;
- accidents including the falling of containers, traffic accidents at terminals, accidents with cranes and at stevedoring work;
- complaints by employees and/or trade unions;
- political requests, such as projects on fumigated containers, or as part of EU-campaigns such as 'Lighten the Load'.

The Inspectorate has a specific port strategy which is based on a triple approach:

- (1) broad surveillance, partially also carried out by other inspectorates in the ports;
- (2) system inspections to stimulate labour condition policies within companies with high accident rates;
- (3) a specific central theme or risk every one or two years.

The figures below give an impression of active inspection initiatives by the Dutch Labour Inspectorate, with the exclusion of reactive inspections following an accident and of activities relating to, for example, fumigation, which are registered on the basis of the importer's address. The Labour Inspectorate does not maintain overall statistics on inspection activities by location.

Table 85. Number of inspections in ports by the Dutch Labour Inspectorate, 2003-2011 (source: Dutch Labour Inspectorate)

2003	2005	2006	2007	2008	2009	2010	2011
186	124	38	153	117	134	23	24

Inspectors focus on aspects such as personal protection measures (especially the use of helmets and safety boots), lashing methods, safe boarding of ships, use of machinery (cranes,

forklifts, straddle carriers), working from heights, emissions from diesel engines, system-level prevention of accidents¹⁸⁷³.

The Dutch Labour Inspectorate is a founding member of the cooperation framework of European port labour inspectorates¹⁸⁷⁴.

1469. In 2004, trade union FNV conducted a survey and published a report on workers' safety among port workers. In 2006, it published a follow-up report¹⁸⁷⁵.

The latter report mentions free movement of workers in the EU and self-handling as two threats to occupational safety in Dutch ports. The authors also complained that ILO Convention No. 152 received insufficient attention in The Netherlands and described cases of illegal employment of cheap Polish labour in Dutch ports¹⁸⁷⁶.

Nevertheless a thorough survey pointed out that since 2004 the overall safety situation in Dutch ports has improved. The safety awareness of temporary workers improved as well. In 2006, 61.8 per cent of temporary workers were reported to be well informed about safety procedures. In the container sector, this figure reached 72.2 per cent (against only 47.6 per cent in 2004).

Overall results on safety levels in Dutch ports are summarised in the graph below:

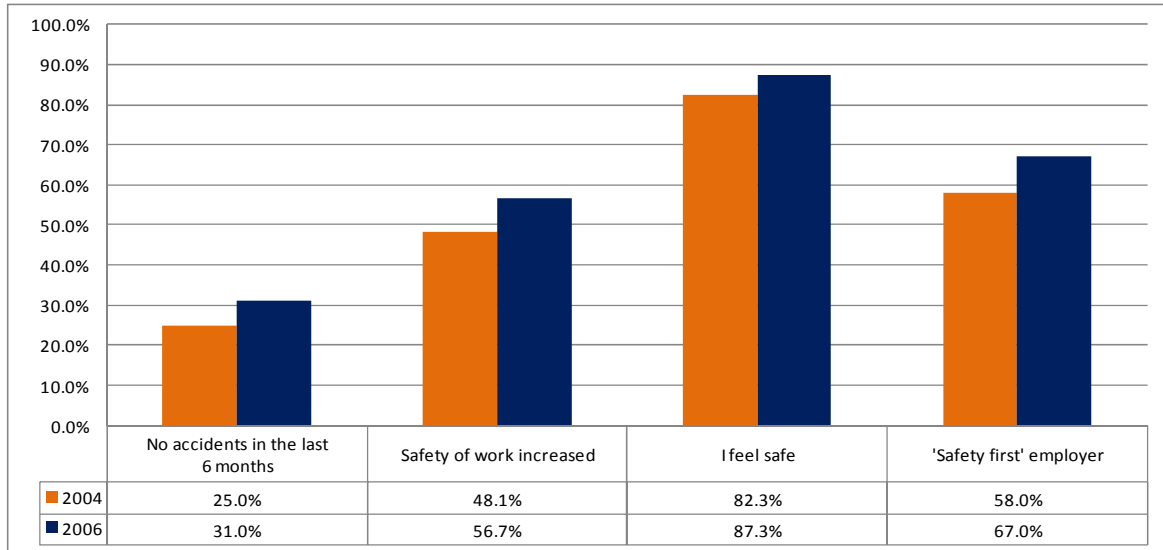
¹⁸⁷³ Labour Inspectorate (Netherlands), *Meeting European Port Inspectors Rotterdam 2009. Evaluation Report*, <http://www.hamburg.de/contentblob/2547432/data/d501-portinsp-2009-rotterdam.pdf>, 10-11.

¹⁸⁷⁴ See *supra*, para 260.

¹⁸⁷⁵ FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006.

¹⁸⁷⁶ FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006, 4-7.

Figure 108. Overall safety indicator in Dutch ports, 2004-2006 (source: FNV¹⁸⁷⁷)



On the other hand, the survey also confirms that ports continue to be a particularly dangerous sector of the industry.

Time pressures continue to be high as well:

Table 86. Percentage of employees working always or mostly under pressure of time in Dutch ports, 2006 (source: FNV¹⁸⁷⁸)

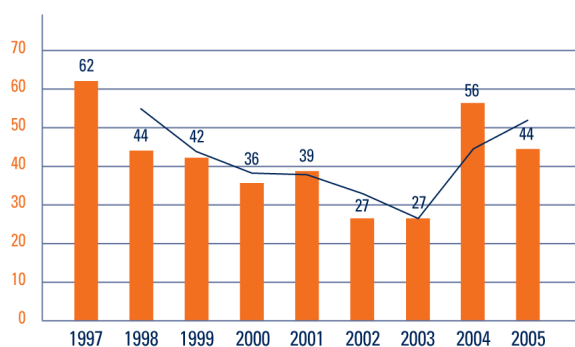
Tanking	40.7
Roro	57.2
Containers	46.4
Bulk	32.9
Temporary work	44.2
General cargo (breakbulk)	48.5
Controlling	45.6
Total	44.4

¹⁸⁷⁷ FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006, 11.

¹⁸⁷⁸ FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006, 12.

Statistics maintained by the Dutch Labour Inspection suggested that the safety situation had *not* improved. Between 1997 and 2005, the number of accidents requiring notification¹⁸⁷⁹ in the ports of Rotterdam evolved as follows:

Figure 109. Evolution of the number of reported serious accidents in the ports of Rotterdam (including airports), 1997-2005 (source: Dutch Labour Inspectorate and FNV¹⁸⁸⁰)



It must be mentioned, however, that the latter statistics are far from accurate, because they do not include all the accidents which occur in the port, while, on the other hand, they include groundhandling at airports as well. This only confirms that adequate statistics on accidents in Dutch sea ports are unavailable. Even then, the Labour Inspectorate mentions a high risk of collisions at port terminals as well as risks involved in the driving of heavy machinery and working at heights¹⁸⁸¹.

Finally, the authors of the 2006 FNV report formulated the following recommendations:

- safety in port work should be addressed at sectoral level;
- employees and trade unions should be more actively involved in safety matters;
- best practices in the field of safety should be elaborated into a sector-specific target-based occupational safety Code of Practice (*arbocatalogus*) implementing ILO Convention No. 152 and the accompanying ILO Guidelines;
- a reliable system for the registration of accidents should be developed at sectoral level;
- employees and employers should work on the development and the implementation of a Port Safety Certificate¹⁸⁸²;
- port workers should receive a port card (Dutch *havenpas*) as a proof of their technical skills, but also for safety and security purposes;
- preventive investigations should be undertaken;

¹⁸⁷⁹ The term 'industrial accidents requiring notification' applies to accidents resulting in permanent physical injury, hospitalisation or death.

¹⁸⁸⁰ FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006, 22.

¹⁸⁸¹ FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006, 22.

¹⁸⁸² On the safety certificate for ports, see *infra*, para 1497.

- concrete action plans should be adopted on time pressure, collision risks, dangerous goods and safety communication;
- the fundamental right to a safe workplace should be safeguarded in a solid Occupational Safety Act¹⁸⁸³.

Yet another issue brought to the fore by FNV is that enforcement of the Working Conditions Act is only partly possible because there are many self-employed workers on ships engaged in inland navigation. As a result, a lot of dangerous and unsafe situations remain invisible and unreported¹⁸⁸⁴.

1470. Also in 2006, the Dutch Labour Inspectorate published a report on an investigation of safety issues in cargo handling at ports, which concluded that the accident rate in the port sector remains considerably higher than the average. The Inspection explains that, almost every year, it carries out special inspection programmes in ports. In 2005, 65 per cent of inspected companies were found to be in breach of applicable safety legislation. A major concern was the carcinogenic exhaust of diesel engines in enclosed workplaces. The Inspection also noted insufficient measures for the prevention of falls and many cases of non-use of personal protection means such as helmets. The Inspection insisted upon the need for employers to make efforts to fundamentally change the safety attitude of workers.¹⁸⁸⁵

1471. In its 2007 report on the Port Safety Certificate, trade union FNV reported on a survey among safety and prevention officers at port companies on *inter alia* the causes of unsafe situations. These causes include lack of professionalism (39 per cent), culture and behaviour (including machismo) (32 per cent) and selectivity of safety awareness in certain situations, for example routine jobs (29 per cent)¹⁸⁸⁶.

1472. In 2007, the Dutch Labour Inspection focused its attention on physical strain caused by stacking, lashing, trimming and manual breakbulk activities in ports. It found cases of serious

¹⁸⁸³ FNV Bondgenoten, *Veiligheidscertificaat Havens, wie neemt het voortouw?*, Rotterdam, FNV Bondgenoten, 2007, 23-24.

¹⁸⁸⁴ See International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), 99th Session, 2010, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_123424.pdf, 752, with further references to a 2005 report by the Labour Inspectorate.

¹⁸⁸⁵ Arbeidsinspectie, *Projectrapportage Inspectieproject Overslag Havens 2005 - A697*, Utrecht, 2006, http://docs.minszw.nl/pdf/38/2006/38_2006_6_15615.pdf; International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), 99th Session, 2010, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_123424.pdf, 752.

¹⁸⁸⁶ FNV Bondgenoten, *Veiligheidscertificaat Havens, wie neemt het voortouw?*, Rotterdam, FNV Bondgenoten, 2007, 24.

physical overstrain at more than one third (37.3 per cent) of inspected companies, with approximately one half of companies not taking sufficient measures and many workers applying a macho approach to safety issues. Port employers were concerned about the lack of an EU level playing field and distortions of competition. The Inspectorate stated that in the light of shortages on the labour market, investments in safety prevention are of the utmost economic importance and that issues deserving priority attention include machismo among port workers and physical overstrain among temporary workers and foreign crews¹⁸⁸⁷.

1473. In 2008, the Dutch Labour Inspection reported on inspections of the handling of fumigated containers. At no fewer than 85 per cent of companies, enforcement proceedings had to be launched. Many employers only took action after substantial media coverage of safety issues¹⁸⁸⁸.

1474. Publicly available information shows that fatal accidents do occur in Dutch ports. In April 2007, for example, a port worker died in the port of Rotterdam after being crushed between the ship's hull and an excavator which the worker was loading on board ship¹⁸⁸⁹. In April 2010, a worker died in the port of Amsterdam after being run over by a reach stacker¹⁸⁹⁰. In February 2012, a port worker died after being run over by a crane in the port of Flushing¹⁸⁹¹. The same month, a worker died in the port of Rotterdam after being crushed by a roll of paper weighing several hundreds of kilos¹⁸⁹².

1475. In 2008, the trade unions established the Foundation for a Safer Port (Dutch *Stichting Veilige Haven*)¹⁸⁹³. The Foundation monitors the developments in the field of safety in Dutch seaports and will register (near-)accidents and unsafe situations in the port. Reportedly, EMO and Vopak have joined the Foundation.

¹⁸⁸⁷ See Arbeidsinspectie, *Fysieke belasting bij havenarbeid*, 2007, http://www.inspectieszw.nl/Images/Havenarbeid_tcm335-312330.pdf; see also <http://osha.europa.eu/fop/netherlands/nl/euweek/2007/vvlerken.pdf>.

¹⁸⁸⁸ See Arbeidsinspectie, *Project Gegaste Containers. Rapportage A870*, http://docs.minszw.nl/pdf/38/2009/38_2009_6_19023.pdf.

¹⁸⁸⁹ See X., "Dood door werk", 14 May 2011, http://zembla.vara.nl/Afleveringen.1973.0.html?tx_ttnews%5Btt_news%5D=43584&cHash=375c1e5e80dbb12642feb949e8c789bd.

¹⁸⁹⁰ Althoff, M., "Dodelijk heftruckongeval bij Ter Haak Group", *Logistiek* 17 August 2010, <http://www.logistiek.nl/nieuws/nid10545-dodelijk-heftruckongeval-bij-ter-haak-group.html>.

¹⁸⁹¹ X., "Dodelijk bedrijfsongeval bij Verbrugge in Vlissingen-Oost", *PZC* 24 February 2012, <http://www.pzc.nl/regio/zeeland/10533459/Dodelijk-bedrijfsongeval-bij-Verbrugge-in-Vlissingen-Oost.ece>.

¹⁸⁹² X., "Man overleden na bedrijfsongeval", *NOS* 23 February 2012, <http://nos.nl/artikel/344147-man-overleden-na-bedrijfsongeval.html>.

¹⁸⁹³ See <http://www.stichtingveiligehaven.nl/>.

1476. In 2009 it was reported that the Dutch Labour Inspection had found 69 out of 134 port employers in Amsterdam to be in breach of safety regulations. Lashing of containers and manual stuffing and stripping of containers were mentioned among the most strenuous jobs. Machismo among port workers was again identified as a major safety issue¹⁸⁹⁴.

1477. In 2010, the Dutch Labour Inspection published an information brochure on landside collision risks at port terminals, which were termed "the main occupational risk at ports"¹⁸⁹⁵. It reiterated that physical strains imposed on port workers were still unacceptable. The Inspection again pointed to continuing accidents and machismo among workers. FNV stated that a VCH Certificate would be a better solution than the adoption of a Code of Practice which would have no teeth¹⁸⁹⁶.

1478. In the port of Rotterdam, a Group of Safety Managers (Dutch *Kring van veiligheidsfunctionarissen voor de haven van Rotterdam*) was established. This group is composed of safety experts from large companies in the port¹⁸⁹⁷ and meets six times a year to discuss safety matters in ports¹⁸⁹⁸.

9.15.6. Policy and legal issues

1479. Contrary to initial indications, the Rotterdam Port Authority, the Amsterdam Port Authority and the trade union FNV confirmed that, in the absence of establishment, service providers from other EU countries are allowed to offer port services in the port. Employers' organisation AWWN stated however that the unions would never accept service providers entering the market from other countries. Be that as it may, we have no knowledge of Dutch laws or regulations which restrict access to the market of port services for other EU providers.

¹⁸⁹⁴ See <http://www.iedereenisondernemer.nl/sectoren/havens---logistiek/stuwadoors/actueel/arbeidsinspectie--havenwerkers-doen-veel-te-zwaar-werk.htm?stelID=1&itmID=52968>.

¹⁸⁹⁵ Arbeidsinspectie, *Aanrijdgevaar: het belangrijkste arbeidsrisico op haventerreinen*, http://docs.minszw.nl/pdf/38/2006/38_2006_6_15615.pdf.

¹⁸⁹⁶ See <http://www.arboonline.nl/artikelen/havenwerk-veiligheidscertificaat-of-arbocatalogus.28498.lynkx?thema=Home>.

¹⁸⁹⁷ FNV Bondgenoten, *Veiligheidscertificaat Havens, wie neemt het voortouw?*, Rotterdam, FNV Bondgenoten, 2007, 16.

¹⁸⁹⁸ See http://www.steppingstonesproject.nl/docs/Bijlage_II_interviews.pdf.

1480. The restrictions on the hiring of temporary workers identified above¹⁸⁹⁹ suggest that the labour market in the port of Rotterdam has not been fully opened up to temporary work agencies.

According to a 2009 university thesis, port employers increasingly rely on their own fixed workers or temporary work providers other than RPS, the successor to the SHB pool. AAVN is of the opinion that today there is no need whatsoever to have a specific temporary work agency for the port. The trade unions can only impose the use of services by RPS on the basis of power, not sound arguments. Practice shows that the port continues to function properly and safely when companies use other work agencies, provided these agencies inform workers about safety rules¹⁹⁰⁰.

AAVN confirmed that in practice the unions try to force employers to continue hiring temporary workers from RPS. For example, one ro-ro operator is reportedly forced to call upon RPS, while its main competitor is allowed to hire workers from Randstad.

One interviewee stated that the market for temporary labour port of Rotterdam is closed off to real competition, because temporary work providers RPS, Matrants and Transcore all belong to the same owner; it is rumoured that the latter also has stakes in ILS (we were unable to verify this). Two entrepreneurs, with the support of FNV, were said to have divided up the market between themselves. For this reason, the person we spoke to termed the port of Rotterdam a 'clique' and a 'Mafia'. He went on to say that the employers' association does not complain about the current situation because the SHB, which had a negative image and was unable to supply workers fit for the job yet had to be financed by the employers, has disappeared and because the risk of unemployment at RPS is now largely borne by the State budget.

Another company offering subcontracting and manpower services in Rotterdam, Flushing and Moerdijk confirmed that RPS, ILS and Matrants are all controlled by the same entrepreneur who, in cooperation with trade union FNV and its continuous threat of industrial action, is blocking market access for outsiders and influencing high level public decision-making on unemployment benefits. Our interviewee concluded that the system is "a stinking cesspool of corruption" and added that numerous smaller players are concerned about the present concentration of market power. He also insisted that all his workers are highly skilled and possess a VCA certificate and in addition attended at least 1 or 2 company training programmes.

We were unable to confront all the companies concerned with these accusations. However, a representative of ILS confirmed that the system of preferred temporary workforce suppliers exists but said that it is widely accepted in the port, even if not all operators rely on these suppliers. He had no information that his company was controlled by the same owner as Matrants.

¹⁸⁹⁹ See *supra*, para 1446.

¹⁹⁰⁰ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 34.

In another interview, a manager at a major dry bulk operator in Rotterdam confirmed that, according to the company agreement, temporary workers may only be hired from recognised suppliers. Even if the employer has no access to the free market, the system works reasonably well. The employer and the suppliers reached agreement on the training of the workers. One main issue is that some workforce suppliers who focused on the dry bulk sector may get into serious trouble in times of low demand. Our interviewee also said that manning levels on the terminals are entirely a matter for management and that no fixed rules have been established. Finally, he said that his company wholeheartedly supports the introduction of the special VCH certificate on safety of port work.

The General Federation of Dutch Temporary Work Agencies (Algemene Bond Uitzendondernemingen, ABU) informed us that when they screened collective agreements on the presence of restrictions on the use of work agencies, they had not identified any such restriction in the port sector. Neither has ABU received any complaints about these restrictions from their members. No restrictions in the port sector were mentioned in the preliminary review by the bipartite Dutch Labour Foundation¹⁹⁰¹ or in the official review of prohibitions and restrictions which the Dutch Government submitted to the European Commission in compliance with Directive 2008/104/EC¹⁹⁰².

Allegedly, a number of port firms and authorised workforce providers rely on cheap workers supplied by dubious third party agencies¹⁹⁰³. The Dutch authorities have set up a Fraudulent Employment Agencies Reporting Centre¹⁹⁰⁴ which does not specifically target situations in the port sector however.

1481. In Rotterdam, self-handling by ship's crews is reported not to be an issue at all. It takes place at several ro-ro terminals. Other examples are the unlashings of containers at sea and the handling of project cargo. In Amsterdam as well, ro-ro cargo is lashed by ship's crews. FNV complains that seafarers take away jobs from the local workers. AAVN commented that, overall, self-handling by the crew remains a rare phenomenon¹⁹⁰⁵.

¹⁹⁰¹ Stichting van de Arbeid, *Analyse van de Stichting van de Arbeid ten behoeve van de heroverweging met betrekking tot beperkingen en verbodsbepalingen op de inzet van uitzendarbeid in cao's*, http://www.stvda.nl/~media/Files/Stvda/Nota/2010_2019/2011/20111207_heroverweging_cao.ashx.

¹⁹⁰² Letter of the Ministerie van Sociale Zaken en Werkgelegenheid to the European Commission of 5 December 2011, ref. AV/AR/2011/21970.

¹⁹⁰³ See discussions on the internet forum <http://havencafe.nl> (password needed).

¹⁹⁰⁴ See http://www.inspectieszw.nl/english/fraudulent_employment_agencies_reporting_centre/.

¹⁹⁰⁵ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) states that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) All longshore activities.

(b) Exception: Regular crew activities on board ship, including operation of cargo-related equipment, opening and closing of hatches, and rigging of ship's gear.

1482. In 2011, the Dutch Labour Inspection identified the reduction of accidents, including collisions, at port terminals, physical strain in container lashing and risks of the opening of fumigated containers as priority issues¹⁹⁰⁶.

1483. According to FNV, the following sub-standard or otherwise unacceptable labour conditions exist in Dutch ports:

- job insecurity;
- temporary unemployment;
- unhealthy working conditions;
- unsafe working conditions.

FNV complains that port labour has become unregulated and that only free market principles apply, with downward competition on wages, health and safety and training levels.

1484. In this respect, several observers first of all signal a certain malaise in industrial relations within the port of Rotterdam.

The trade union FNV complains that in an attempt to dissuade port workers to join a trade union, employers give young employees successive temporary contracts, the underlying message being that if these workers want to keep their job, they had better not join the union. FNV also regrets that, since sector-specific SVZ was replaced by nationwide AWWN as the employers' representative, the port sector is not taking up its responsibility for the financing of training, safety and attractive labour conditions in the port as a whole.

However, individual employers clearly state that they do not want sectoral negotiations, because they believe that trade unions should not interfere with safety, employment and training issues at all, and because safety is not a matter for negotiations anyway. After all, employers have an incentive of their own to provide proper training, because they do not want their equipment being manned by unskilled workers¹⁹⁰⁷.

To this, FNV responds that it cannot understand why trade unions should have no business discussing training and safety. FNV also denounces the low cost strategy of some employers who would rather hire cheap foreigners.

Even if the employers' association considers the working relationship with FNV good, AWWN believes that the union's main concern is to defend its own power base rather than to advance sound arguments.

¹⁹⁰⁶ See <http://www.evo.nl/site/arbeidsinspectie-arbocatalogus>.

¹⁹⁰⁷ AWWN also commented that SVZ had already left training to the individual employers by the end of the 1980s so that the transition from SVZ to AWWN played no role whatsoever in this respect.

On the issue of sectoral negotiations, the frustration of the unions is also caused by the need to invest considerable time and means in countless company-specific negotiations which often bear on exactly the same matters¹⁹⁰⁸. The trade unions favour port sector-wide bargaining because this would alleviate the considerable burden and inefficiencies of negotiating on agreements employer by employer and would give the union time to focus on the real issues such as health and safety and training. Other stakeholders state that the unions advocate sectoral bargaining in order to extend their power base. The employers also favour company-based collective bargaining because under such a model port workers tend to be more committed to their employer.

Whatever the case, over the past 20 years the impact of trade unionism in the port of Rotterdam has waned¹⁹⁰⁹. Yet, the typical dock worker's subculture is said to persist, with a militant and leftist union under charismatic leadership which is suspicious of both management and outsiders¹⁹¹⁰.

In this respect, several of our interviewees added that the membership of the unions is ageing and that the power of the unions has also eroded in other sectors of the economy. Reportedly, the position of the unions in ports such as Flushing and Groningen is less strong than in Rotterdam.

1485. In 2007, the trade union FNV organised a survey among safety and prevention officers of port companies. One of the questions related to the expected impact of liberalisation of the port labour market. The response was as follows:

¹⁹⁰⁸ See also Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 56 and 61.

¹⁹⁰⁹ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 66.

¹⁹¹⁰ Poot, E and Luijsterburg R., *Arbeidsverhoudingen in de Rotterdamse haven: Is de syndicalistische onderstroom nog steeds aanwezig in de periode 1990-2009 ?*, diss. Universiteit Tilburg, 2009, 69.

Table 87. Opinions of safety and prevention officers at Dutch port companies on the expected impact of liberalisation on professional skills (source: FNV¹⁹¹¹)

Liberalisation...	Percentage of respondents agreeing	Comment
Will be detrimental to professional skills	26	Large companies will continue to comply with safety rules. But how will the small ones behave ?
Will possibly be detrimental to professional skills	63	It depends on how employers will react. Some interviewees wonder whether the workers will accept it.
I don't know	11	I have not considered this sufficiently.
Will not be detrimental to professional skills	0	

These results suggest that almost 90 per cent of interviewees believed that a liberalisation of the port labour market would impact negatively on professional skills. To our knowledge, no data are available which would allow a verification of these assertions. FNV informed us that its 2007 study has not been updated since.

1486. According to FNV, rules on health and safety in Dutch ports are unsatisfactory. The union notes that, while the more experienced port workers are well trained in safety at work, new port workers lack experience in working safely, are less aware of the risks and need extra training. The union moreover argues that the replacement of older port workers by younger ones may jeopardize health and safety in ports. Furthermore, FNV says that applicable rules on health and safety are not properly enforced¹⁹¹².

Other interviewees categorically denied these statements and considered them a case of typical union rhetoric. In their responses to our questionnaire, the Port Authorities of Amsterdam and Rotterdam confirmed that health and safety rules are adequately enforced.

¹⁹¹¹ FNV Bondgenoten, *Veiligheidscertificaat Havens, wie neemt het voortouw?*, Rotterdam, FNV Bondgenoten, 2007, 22.

¹⁹¹² See also the interview with Niek Stam in *GNT Bulletin* December 2011, <http://www.itfglobal.org/files/extranet/-/1/32597/Dec%20GNT%20English.pdf>.

Yet, mention should again be made of a number of serious health and safety issues which emerged over the past decade and which were addressed in official reports by the Dutch Labour Inspectorate¹⁹¹³.

1487. FNV's 2006 report on port safety highlighted that no accurate statistics on occupational accidents in Dutch ports are available. According to this report, the Dutch Labour Inspectorate admitted its inability to carry out investigations into the causes of these accidents, which is due to insufficiency of staff and resources¹⁹¹⁴. AAVN confirmed that no accurate statistics on port labour accidents are available.

1488. In 2007, FNV also stated that the worst cases of substandard port labour can be found on board vessels in port, where foreign crew remain in most cases unprotected by Dutch labour legislation¹⁹¹⁵.

1489. FNV also drew attention to two specific occupational risks in connection with container handling in ports. The first one is created by the presence of fumigation gases inside containers which may endanger the health of port workers. The second one relates to incorrectly stuffed containers which may bring trucks out of balance and cause accidents. To solve these problems, gases inside containers are now measured immediately and weigh bridges identify imbalances¹⁹¹⁶. Both issues were also addressed by the Dutch Labour Inspectorate¹⁹¹⁷.

9.15.7. Appraisals and outlook

1490. First of all, we should again recall that the Dutch Government sees no need for any specific legal regulation of port labour, because it wishes to encourage flexibility in the labour

¹⁹¹³ See *supra*, para 1470 *et seq.*

¹⁹¹⁴ FNV Bondgenoten, *Havenwerk, steeds veiliger? Arbeidsveiligheidsonderzoek FNV Bondgenoten 2006*, Rotterdam, FNV Bondgenoten, 2006, 22.

¹⁹¹⁵ FNV Bondgenoten, *Veiligheidscertificaat Havens, wie neemt het voortouw?*, Rotterdam, FNV Bondgenoten, 2007, 17.

¹⁹¹⁶ <http://www.nieuwsbladtransport.nl/Video/tabid/68/YearMonth/201102/ItemID/550/Default.aspx?Title=FNVpaktgas%C3%A9nonbalansincontainersaan>.

¹⁹¹⁷ See *supra*, para 1473. See also the fact sheet of the Labour Inspectorate on gases in import containers http://www.inspectieszw.nl/Images/Gassen%20in%20importcontainers_tcm335-312231.pdf.

market and it moreover notes a general trend towards permanent employment across the port sector in the EU and a declining reliance on pool workers¹⁹¹⁸.

1491. The abovementioned¹⁹¹⁹ 2008 report on recent developments within port companies at Rotterdam highlights the impact of globalisation on the regime of port labour, with US or China (Hong Kong)-based parent companies wishing to introduce their own management style and to focus on greater efficiency and productivity. In short, globalisation should open the door for a liberalisation of the labour market. Practically speaking, this would entail an influx of staff of the parent companies into the port of Rotterdam. Yet, opposing factors are at work. The employers complain about "a locally enclosed labour market" (*een lokaal omsloten arbeidsmarkt*) and say that trade unions wish to reinstate a closed shop system inspired by an American or Australian model¹⁹²⁰.

The report also mentions that since the 1970s, the number of port employees has dwindled from 20,000 to 6,000. On the other hand, work in the port is still well-paid and there are no influx restrictions caused by training requirements. A major problem identified by the employers is the ageing of the workforce. Unless the labour market is liberalised at EU level, the port companies expect a fight for qualified Dutch youngsters. Some employers would like to recruit employees from other EU countries, provided this does not give rise to competition on the basis of labour conditions and that workers possess the necessary documents including safety certificates. Next, all interviewees mentioned the problem of the wrong image of port labour as physically hard, monotonous and dirty work performed in grim circumstances, while the real picture is one of varied, hightech and multiskilled work with employers offering many training opportunities¹⁹²¹.

On training, the report states that the official scheme for learning at work (BeroepsBegeleidende Leerweg, BBL) is not geared to the real needs and that students have to receive additional training within the company. The employers would welcome the creation of a specific BBL-education for port-based technical maintenance staff. Next, employers are aware that each company has developed its own training methods and agreements. A common port training system would have advantages and be conducive to multi-skilling, a reduction of costs and an exchange of experiences with training (multiplier effect)¹⁹²². In an interview, an FNV representative said that the apprentices employed under the BBL scheme can be compared to "modern slaves". AWVN commented that this is totally wrong since the Shipping and Transport College is responsible for the scheme and would certainly never tolerate abuses.

¹⁹¹⁸ See already *supra*, para 1438 and further, *inter alia*, *Parliamentary Documents*, Eerste Kamer der Staten-Generaal, 2003-2004, 29 200 XII, no. 142, 3.

¹⁹¹⁹ See *supra*, para 1463.

¹⁹²⁰ Van Wersch, F. and Winthagen, T., *Resultaten onderzoek ontwikkelingen binnen havenbedrijven in Rotterdam*, Tilburg, IVA, 2008, 9-10.

¹⁹²¹ Van Wersch, F. and Winthagen, T., *Resultaten onderzoek ontwikkelingen binnen havenbedrijven in Rotterdam*, Tilburg, IVA, 2008, 11-12.

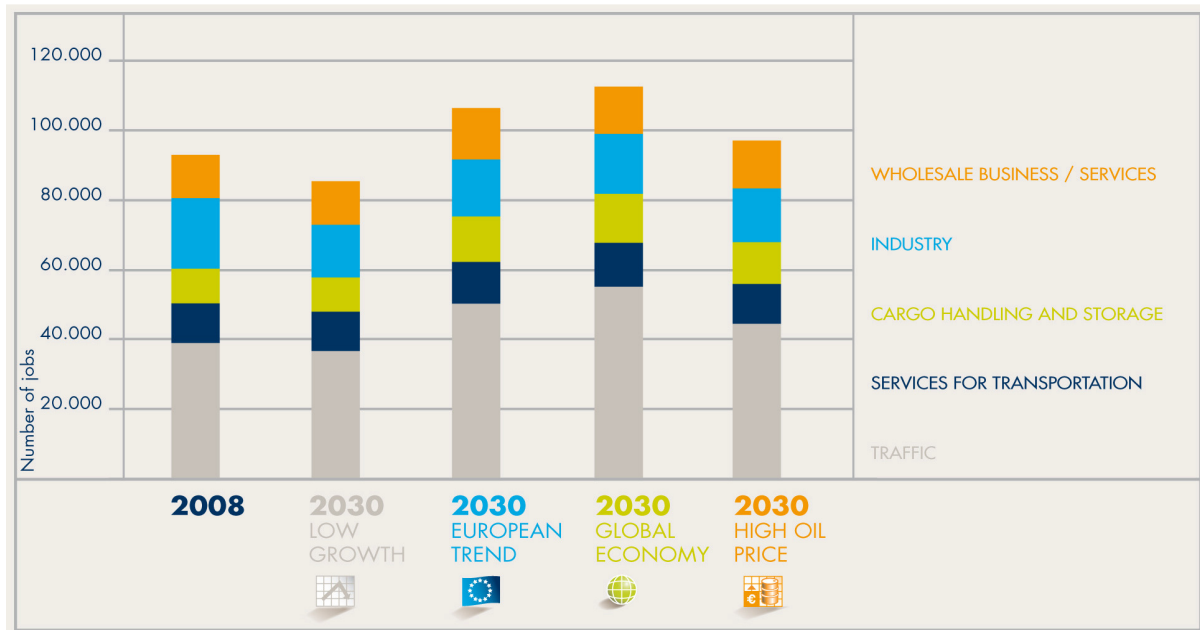
¹⁹²² Van Wersch, F. and Winthagen, T., *Resultaten onderzoek ontwikkelingen binnen havenbedrijven in Rotterdam*, Tilburg, IVA, 2008, 13.

As regards safety, the employers note discrepancies between rules and guidance provided by the employer and the attitude of employees which is characterised by a mentality of personal carelessness and the force of habit. A requirement that all workers possess a VCA Safety Certificate is desirable, but the exams would have to be organised by an independent institution, and trade unions have no role to play in the establishment of safety standards within the company. The interviewees also mentioned some issues regarding the identification of the parties having competence to adopt a Code of Practice on safe work (*arbocatalogus*). A majority of employers rejects the proposal by the trade unions to introduce a safety pass for all port workers¹⁹²³.

1492. In 2011, the port of Rotterdam published its long term vision in a strategic document entitled Port Vision 2030. It sets out Rotterdam's ambition that in 2030, businesses operating in the port can attract skilled personnel at all levels, work in the port will be popular and education well aligned with demand. Businesses must be able to offer competitive conditions to attract skilled personnel. This is quite a challenge because the port of the future will have more jobs for the highly educated. There will also be more demand for logistics and technical personnel at MBO-4 level (highest level of intermediate vocational education). Work will be carried out behind screens and from a distance. This may apply to process operators, but also, for example, to crane drivers. English will become even more important than today. Labour productivity in the port will increase as a result of ongoing automation and technological developments: per tonne or per container fewer people will be needed to transfer and transport freight. It is expected that employment will continue to grow because of increasing freight volumes, however there is not a linear relation between the two.

¹⁹²³ Van Wersch, F. and Winthagen, T., *Resultaten onderzoek ontwikkelingen binnen havenbedrijven in Rotterdam*, Tilburg, IVA, 2008, 14-15.

Figure 110. Scenarios for the development of jobs in the port of Rotterdam, 2008-2030 (source: Rotterdam Port Authority¹⁹²⁴)



For the Rotterdam Port Authority, priority actions include:

1. Increasing the number of technical and logistics graduates

Students need to be encouraged to take an interest in the port from a young age, at all educational levels. Businesses are involved in the curriculum for this reason, to ensure that it is well-aligned with the kind of jobs available in the port, and to guarantee enough attractive trainee posts. Long-term work-study programmes focusing on technical and logistics skills are essential. Another point that is high on the agenda is to help people who have trained in other disciplines to adapt their skills. By handing responsibility for coordination and implementation to one single party, initiatives are no longer fragmented.

2. Getting young people interested

It is a challenge to increase awareness of the port and the various jobs it offers, and to improve their popularity. Successful projects, such as the special port education curriculum, guest lectures, the 'Ideal Port' lectureship and port excursions for pupils will be continued. Young people living in the region, in particular, will be informed frequently about the prospects of working in the port. The FutureLand information centre on the Maasvlakte will remain open, even after completion of the first stage of

¹⁹²⁴ Port of Rotterdam Authority, *Port Vision 2030*, 15 December 2011, <http://www.portofrotterdam.com/en/Port/port-in-general/port-vision-2030/Documents/Port-Vision-2030.pdf>, 65.

the construction of Maasvlakte 2. Its success will be perpetuated by informing a wide audience about the port and its activities.

3. Up-to-date human resources policy

Modern HR policies will be indispensable in the port in the coming decades. This involves policies geared towards enthusing and recruiting specific target groups, policies that are in line with the wishes of a new generation of young people, women, immigrants and older employees. To young people, for instance, responsibility, variety and a horizontal organisation are important; women find a safe social working environment important, and flexible working hours are important to everyone. Another essential requirement is ongoing training for existing employees, in order to promote internal mobility within the organisation. Specific attention needs to be paid to the match between jobseekers at the lower end of the employment market and jobs in the port.

4. Strengthening facilities in the port

The quality of the working environment is an import aspect when it comes to retaining staff in the port. Besides paying continuous attention to the visual quality, that is the physical appearance of the port and industrial area, it is also important to provide comprehensive clusters of facilities at easily accessible locations. Clusters of, for instance, hotels and restaurants, supermarkets and meeting places, combined with good facilities for truck drivers, will contribute to a pleasant working environment¹⁹²⁵.

1493. According to the Rotterdam Port Authority, the current relationship between port employers and port workers is satisfactory and "instrumental". The Port Authority confirms that the current port labour system impacts positively on the competitive position of the port of Rotterdam. Multi-skilled labour is considered to enhance productivity as well as market shares.

Recent reforms notwithstanding, it appears that the wage level for port workers continues to be above the average in other sectors. The Port Authority of Rotterdam reported, for example, that forklift drivers in ports are paid one-third more than their peers outside the port area¹⁹²⁶.

1494. The Port Authority of Amsterdam states that port labour is satisfactorily organised, that relations between employers and unions are good and that, generally, port labour is not a competitive issue for the port.

¹⁹²⁵ See Port of Rotterdam Authority, *Work in the port: a battle for talent*, <http://portcompass2030.com/files/downloads/pdf/201101ID-FS002-E-Employees.pdf>; Port of Rotterdam Authority, *Port Vision 2030*, 15 December 2011, <http://www.portofrotterdam.com/en/Port/port-in-general/port-vision-2030/Documents/Port-Vision-2030.pdf>, 64-65.

¹⁹²⁶ Turnbull, P., and V. Wass, "Defending dock workers – Globalization and labor relations in the world's ports", *Industrial Relations* 2007, (582), 605.

1495. AAVN notes that the port sector increasingly resembles other sectors and in this regard refers to a process of ‘demystification’ of the port sector. The distinction between blue and white collar workers has faded. Generally speaking, wages and secondary conditions of work are excellent and many people would like to join the sector. AAVN considers the current Dutch port labour model a best practice because it acknowledges the importance of flexibility, productivity and customer demands.

1496. As we have already mentioned¹⁹²⁷, the trade union FNV does not consider the current port labour regime satisfactory and argues that employers “do not have to follow any rules at all”. In the opinion of FNV, the current regime does not offer legal certainty. Moreover, the system impacts negatively on the competitive position of Dutch ports. However, FNV is of the opinion that other elements, for example port dues, have more impact on cargo flows than the port labour regime¹⁹²⁸. FNV also denounces the fact that employers try to attract youngsters to the port while almost 450 former SHB pool workers remain unemployed¹⁹²⁹.

FNV considers the Belgian and the Hamburg port labour regimes best practices.

FNV does not understand why port employers oppose collective bargaining at sectoral level while sectoral collective agreements are concluded in many other sectors of the Dutch economy including agriculture, construction, banks, super markets and metal works. FNV also complains that AAVN staff are not properly mandated to represent employers at negotiations.

1497. Following the rejection of the proposal for an EU Port Services Directive in 2003, FNV demanded that a national Port Labour Act be introduced¹⁹³⁰.

In 2004, however, FNV launched an initiative on a Safety Certificate for Ports (Veiligheidscertificaat haven, VCH)¹⁹³¹. The proposed certificate has a focus on port-related risks and is intended to complement the existing VCA Certificate¹⁹³². The trade union believes that the certificate is a means to prevent unqualified personnel and organisations from performing labour in ports. FNV suggest that certification be conducted jointly by employers’

¹⁹²⁷ See *supra*, para 1483 *et seq.*

¹⁹²⁸ See also FNV Bondgenoten and WVM Training & Advies, *Labour costs in the transshipment sector. An international comparison of harbours in Northwest European Ports*, study conducted on behalf of the Port of Rotterdam, 2003, 5.

¹⁹²⁹ See http://www.fnvhavens.nl/images/Documenten/013DscRwe_brf_Tweede_Kamer_alle_fracties.pdf.

¹⁹³⁰ Stam, N., "Liberalisering havens geblokkeerd - indrukken uit Rotterdam en Amsterdam. Werk voor professionals", http://www.solidariteit.nl/nummers/117/Werk_voor_professionals.html.

¹⁹³¹ See <http://www.stichtingveiligehaven.nl>.

¹⁹³² On the latter, see *supra*, paras 1465 and 1469.

and employees' organisations¹⁹³³. A separate VCH could also be introduced for the company as such. The proposed VCH certification scheme has not yet been implemented.

Reportedly, the Group of Safety Managers for the port of Rotterdam is working on a certification similar to FNV's safety certificate for ports¹⁹³⁴.

In addition, AWVN is working on safety certification as well. However, the organisation is of the opinion that VCH certification should be conducted by an independent institute. In this respect, it refers to Foundation Cooperating for Safety (Stichting Samenwerken voor Veiligheid, SSVV) (Cooperating for Safety Foundation) which also manages VCA certification. VCH certification would also apply to temporary work providers (and serve as a condition to have access to the market).

In connection with the Port Safety Certificate, there is some reluctance from the employers' side who fear that the certificate could be used by the trade unions as a labour-market instrument and pave the way for a closed-shop system.

FNV recently informed us that the VCH is now set to be developed by the Safe Port Foundation as an e-learning application.

1498. The Foundation for a Safer Port, an organisation established by trade unions, favours the idea of a sector-wide collective labour agreement on safety, rather than adopting a Code of Practice (Arbocatalogus) on safe work in ports which many employers would immediately shelve¹⁹³⁵. Of course, a sector-wide collective agreement would depart from the current practice of signing collective agreements at company level.

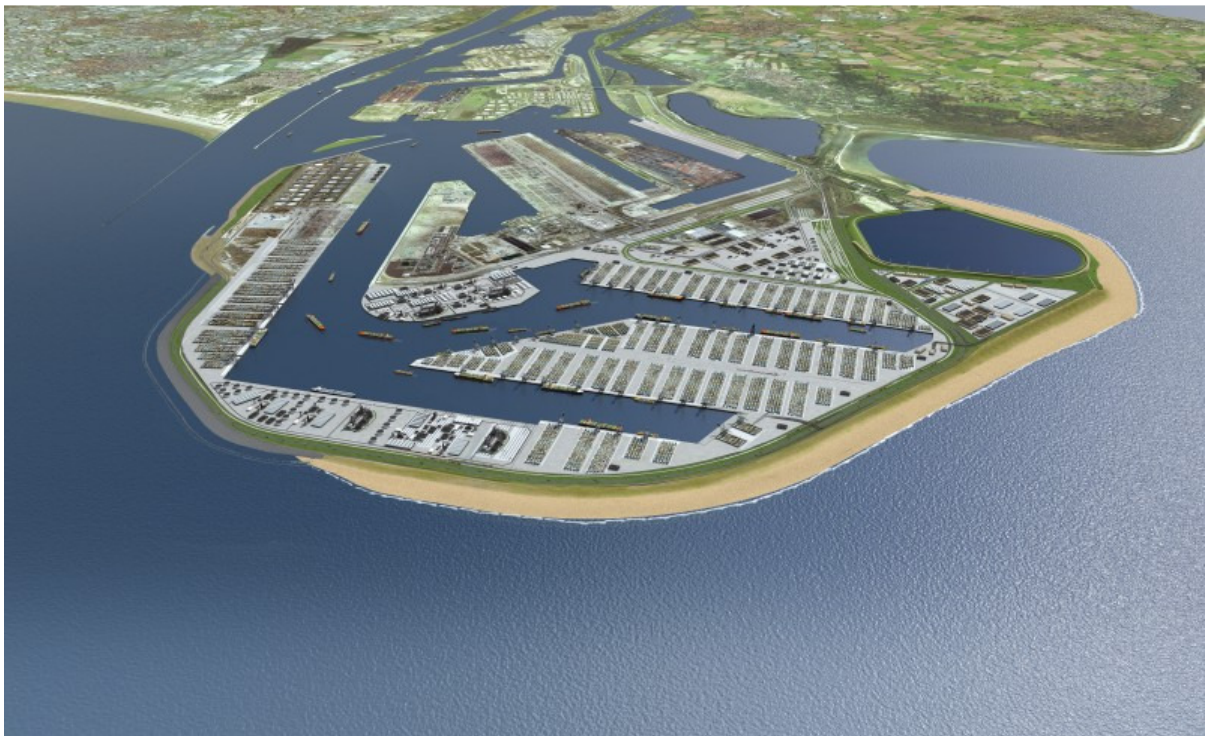
1499. The first terminals at Rotterdam's 2000-hectare port expansion area of Maasvlakte 2 ('Second Meuse Plain') are set to open in 2013.

¹⁹³³ FNV Bondgenoten, *Veiligheidscertificaat Havens, wie neemt het voortouw?*, Rotterdam, FNV Bondgenoten, 2007, 16.

¹⁹³⁴ FNV Bondgenoten, *Veiligheidscertificaat Havens, wie neemt het voortouw?*, Rotterdam, FNV Bondgenoten, 2007, 16.

¹⁹³⁵ See <http://www.stichtingveiligehaven.nl/projecten/arbo-cao.html>.

Figure 111. Artist's impression of the Maasvlakte 2 expansion area in Rotterdam which is due to open in 2013. Trade union FNV voiced concerns over the impact on employment at existing terminals, labour conditions at the new facilities and the introduction of new technologies (source: Rotterdam Port Authority)



Trade union FNV expressed concerns about the impact of the additional terminal capacity on labour conditions at the present container terminals at the port area of Maasvlakte 1, with an expected use of new technologies, surpluses of workers, competition on the basis of labour conditions, increased risk of accidents, proliferation of temporary work due to the absence of collective labour agreements and social unrest. FNV advocated the adoption of a sector-wide collective agreement and the establishment of a labour pool for container terminal workers, the conclusion of contracts with the authorised lashing companies and the requirement to possess a VCH Certificate.

1500. The Port Authority of Rotterdam sees no clear need for a regulatory framework on port labour at EU level. It would not oppose such an initiative, but it is certainly not considered a priority issue for the port sector. The Port Authority of Amsterdam sees no reason for any EU intervention either.

1501. AWVN sees no need for any EU legislation on port labour whatsoever, and is mainly concerned that the liberalisation achieved in the Netherlands should not be reversed.

1502. A stevedoring company complaining about collective market dominance by RPS, Matrans, ILS and trade union FNV said that he had been fighting a losing battle for many years and that EU action to open the market would be very welcome.

1503. FNV believes that there is a need to create a legal framework on port labour at EU level. Such a framework should define the concepts of 'dock work', 'dock worker' and 'port area'. A combination of a legal framework with permanent employment would be conducive to a good mix of job security and labour flexibility. Furthermore, FNV favours a registration of dockworkers that ensures priority of employment.

One FNV representative also advocated the adoption of an EU-wide ban on self-handling by ship's crews in order to safeguard employment of European workers. Liberalisation measures for the port labour market are a waste of time because the cost of a port call is absolutely negligible and has no impact whatsoever on the end price of a product. As a result, it would not serve the interests of consumers or the economy at all.

9.15.8. Synopsis

1504.		
SYNOPSIS OF PORT LABOUR IN THE NETHERLANDS¹⁹³⁶		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 7 main ports • Landlord model • 538m tonnes • 3rd in the EU for containers • 12th in the world for containers • 85-105 employers • Appr. 7,275 port workers • Trade union density: 50-80% 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • ILO C137 denounced • Company CBAs, but not everywhere • Abolition of Rotterdam and Amsterdam pools in the 1990s • All permanent and temporary workers employed under general labour law • Local licensing system for lashing companies in Rotterdam • Company CBAs reserve temporary work for recognised providers • Successor of pool RPS may only engage non-former pool workers with consent of union • No mandatory manning scales 	<ul style="list-style-type: none"> • Provision of temporary workers largely controlled by small number of preferred companies • Factual restrictions on market access for subcontractors and temporary work agencies • Factual but no absolute ban on self-handling • Union concerns over job insecurity and refusal by some employers to conclude CBAs • Malaise in industrial relations • Uncertain effect on employment of opening of new port area Maasvlakte 2 (2013)
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Training by Shipping and Transport College and various other institutions 	<ul style="list-style-type: none"> • No national requirements on skills and competences • Some training compulsory under company CBAs • CBAs encourage multi-skilling 	<ul style="list-style-type: none"> • No specific issues
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No specific national accident statistics 	<ul style="list-style-type: none"> • No specific laws or regulations • Party to ILO C152 • VCA Safety Certificate required at Rotterdam and Amsterdam 	<ul style="list-style-type: none"> • Lack of statistics • Concerns over safety level despite indications of improvement • Introduction of specific Port Safety Certificate expected soon

¹⁹³⁶ 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.

9.16. Poland

9.16.1. Port system¹⁹³⁷

1505. There are 55 ports and harbours in Poland. The three largest Polish ports by total volume are Gdańsk, Szczecin / Świnoujście and Gdynia.

In 2011, the gross weight of seaborne goods handled in Polish ports was about 65 million tonnes, in which Gdańsk, Szczecin / Świnoujście and Gdynia had shares of 42, 32 and 23 per cent respectively. For container traffic, Polish ports were 13th in the EU and 54th in the world in 2010¹⁹³⁸.

1506. Most Polish commercial ports are governed by port authorities in the form of a joint stock company. Regardless of minimum shareholdership rules laid down by law, the State Treasury currently owns between 85 and 99.5 per cent of the shares in the port authorities of Gdańsk, Gdynia and Szczecin-Świnoujście, the rest being distributed among municipalities and employees¹⁹³⁹.

Polish ports operate under a landlord model. Port operating services are performed by private businesses. However, a number of cargo handling companies are still controlled by the port authority. In recent years, a number of such publicly-owned terminal companies have been privatised. Today, this privatisation process is still ongoing. Also, some new commercial cargo handling companies were established. In several cases, the privatisation process attracted foreign capital.

¹⁹³⁷ For general information on Polish ports, see ECOTEC, *Employment trends in all sectors related to the sea or using sea resources, Country Report – Poland*, European Commission. DG Fisheries and Maritime Affairs, August 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/poland_employment_trends_en.pdf, 11-12; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 377-388. A wealth of statistical data is published in Central Statistical Office, *Statistical Yearbook of Maritime Economy 2011*, Warsaw / Szczecin, 2011, www.stat.gov.pl, 423 p.; for statistics on throughput, see also *Polish Ports shipping and logistics. Special supplement of Namiary na Morze i Handel*, April 2012, 6-7; see also http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

¹⁹³⁸ Container ranking based on UNCTAD, *Review of Maritime Transport 2011*, New York and Geneva, UNCTAD / UN, 2011, http://unctad.org/en/Docs/rmt2011_en.pdf, 201-203.

¹⁹³⁹ Exact percentages are:

- in Gdańsk: 85.71 per cent State Treasury; 2.08 per cent Municipality; 12.21 per cent employees;
- in Gdynia: 99.4830 per cent State Treasury; 0.0436 per cent Municipality; 0.4734 per cent employees;
- in Szczecin-Świnoujście: 86.05 per cent State Treasury; 0.155 per cent Municipality of Szczecin; 0.155 per cent Municipality of Świnoujście; 13.64 per cent employees.

9.16.2. Sources of law

1507. The legal status and powers of port authorities and the regime of port land are governed by the Act on Ports and Harbours of 20 December 1996¹⁹⁴⁰ which, however, does not contain any specific provisions on port labour.

1508. Port labour in Poland is governed by the Labour Code¹⁹⁴¹ (Act of 26 June 1974), which does not appear to contain any port-specific provisions.

1509. Occupational health and safety are regulated by Chapter 10 of the Labour Code and by the National Labour Inspectorate Act of 13 April 2007¹⁹⁴².

The main specific legal instrument on port labour is the Regulation of the Minister of Transport and Maritime Economy on health and safety at work in sea and inland ports of 6 July 1993¹⁹⁴³.

A Ministerial Decree of 2 July 2001 determines the territorial competence and the headquarters of port health inspectors¹⁹⁴⁴.

Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers was transposed through several consecutive legal instruments¹⁹⁴⁵.

¹⁹⁴⁰ Ustawa z dnia 20 grudnia 1996 r. o portach i przystaniach morskich. A consolidated version was published by Proclamation of the Speaker of the Parliament of the Republic of Poland of 9 February 2010.

¹⁹⁴¹ Kodeks pracy.

¹⁹⁴² Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy.

¹⁹⁴³ Rozporządzenie Ministra Transportu i Gospodarki Morskiej z dnia 6 lipca 1993 r. w sprawie bezpieczeństwa i higieny pracy w portach morskich i śródlądowych.

¹⁹⁴⁴ Rozporządzenie Ministra Zdrowia z dnia 2 lipca 2001 r. w sprawie terytorialnego zakresu działania oraz siedzib portowych inspektorów sanitarnych.

¹⁹⁴⁵ Zarządzenie Nr 19 Dyrektora Urzędu Morskiego w Gdyni z dnia 16 grudnia 2004 r. zmieniające zarządzenie w sprawie dodatkowych wymagań i procedur dotyczących bezpieczeństwa załadunku i wyładunku masowców; Ustawa z dnia 18 września 2001 r. Kodeks morski; Zarządzenie Nr 9 Dyrektora Urzędu Morskiego w Gdyni z dnia 29 kwietnia 2004 r. w sprawie dodatkowych wymagań i procedur dotyczących bezpieczeństwa załadunku i wyładunku masowców; Zarządzenie Nr 1 Dyrektora Urzędu Morskiego w Szczecinie z dnia 5 kwietnia 2004 r. w sprawie dodatkowych wymagań i procedur dotyczących bezpieczeństwa załadunku i wyładunku masowców; Zarządzenie Nr 1 Dyrektora Urzędu Morskiego w Słupsku z dnia 29 kwietnia 2004 r. w sprawie dodatkowych wymagań i procedur dotyczących bezpieczeństwa załadunku i wyładunku masowców; Zarządzenie Nr 3 Dyrektora Urzędu Morskiego w Słupsku z dnia 22 grudnia 2004 r. zmieniające zarządzenie w sprawie dodatkowych wymagań i procedur dotyczących bezpieczeństwa załadunku i wyładunku masowców; Zarządzenie nr 5 Dyrektora Urzędu Morskiego w Szczecinie z dnia 29 grudnia 2004 r. zmieniające zarządzenie w sprawie dodatkowych wymagań i procedur dotyczących bezpieczeństwa załadunku i wyładunku masowców.

1510. Poland ratified ILO Convention No. 137¹⁹⁴⁶ but is not a Party to ILO Conventions No. 32 or 152.

1511. Finally, specific aspects of port labour are governed by local port regulations¹⁹⁴⁷.

1512. In Polish ports, only company-specific collective labour agreements apply. However, it would appear that such agreements are not in place at every individual company. Especially in recently set up or privatised firms, no collective agreement may be available, but employment conditions are laid down by the employer in Work Regulations, after consultation with the employee's elected representative.

9.16.3. Labour market

- Historical background

1513. In Poland, too, port labour arrangements appear to have a long tradition. In the port of Szczecin, for example, a porters' guild was already in operation in the 14th century¹⁹⁴⁸. In the port of Gdańsk, port work (e.g. transshipment, weighing, packing) in the 16th and 17th century was performed by municipal civil servants, appointed by the major or alderman and benefiting in this respect from a monopoly¹⁹⁴⁹. These civil servants were entitled to levy a tax for their services¹⁹⁵⁰.

The current port labour arrangements in Poland are characterised by the recent transition from a State-controlled to a private market structure.

Since the end of the Second World War the main Polish ports had been managed by dedicated State Companies which were acting as executive branches of the Ministry of Transport. The port ownership and management structure was thus strictly centralised. Polish ports operated

¹⁹⁴⁶ The Convention was published on 22 May 1975 and entered into force on 22 February 1980.

¹⁹⁴⁷ For an example, see *infra*, para 1529.

¹⁹⁴⁸ van der Velden, M., *Hafenarbeit und Trägergilden*, Rotterdam, M. van der Velden, 1998, 11-13.

¹⁹⁴⁹ Cieslak, E., "Le fonctionnement du port de Gdansk comparé à celui des autres ports baltiques - XVIe-XVIIIe siècles", in S. Cavaciocchi, *I porti come impresa economica*, s.l., Le Monnier, 1988, (569), 575.

¹⁹⁵⁰ Cieslak, E., "Le fonctionnement du port de Gdansk comparé à celui des autres ports baltiques - XVIe-XVIIIe siècles", in S. Cavaciocchi, *I porti come impresa economica*, s.l., Le Monnier, 1988, (569), 576.

mainly on behalf of the national economy and as transit points for cargoes from Czechoslovakia and Hungary, within the COMECON framework. Port workers were employed by the State on a regular basis and allocated to different berths as needed, and workers not required for work in connection with a ship were employed for other duties¹⁹⁵¹. Ports also employed occasional workers who were however not deployed on board ships or for other dangerous jobs. The latter were entitled to attendance money but were allowed to exercise another profession¹⁹⁵².

Between May and November 1992, the Polish State port enterprises were transformed into joint stock companies under the Act of 13 July 1990 on Privatization of State Owned Enterprises¹⁹⁵³.

In 1996, upon adoption of the Polish Ports and Harbours Act which laid the foundations for a transition from a full-service to a landlord model, the World Bank still noted a situation of excessive employment in the Polish port sector. Also, it reported that, while most operating units were formally separated from the port authorities, real competition between port service providers was still very much in its infancy¹⁹⁵⁴.

Simultaneously with its establishment as a joint-stock company, the Port Authority of Gdańsk had formed 28 limited liability companies out of former departments of the port enterprise. At a first stage, the Port Authority kept 45 per cent of the shares of these companies, the other 55 per cent being owned by the workers. In 1993, the Port Authority transferred its 45 per cent share to the individual companies, now consequently 100 per cent employee-owned. The World Bank stated that although this was formally a genuine privatisation process, the result in the field was still remote from what should be expected from private commercial port operations, in particular as far as competition was concerned. It noted that all stevedoring companies, for example, worked under the umbrella of the Commercial Sea Port of Gdańsk, an additional private company belonging to the port workers (80 per cent) and the companies themselves (20 per cent). This umbrella company actually did all the marketing for the stevedoring companies, based on a common tariff policy, and distributed the work to keep everyone busy, which was nothing but a new monopoly situation, in fact a workers' monopoly¹⁹⁵⁵. Even if the share capital of the daughter companies was owned by the workers, the Port Authority of Gdańsk had full control over them through the annual leasing contract for infrastructure and equipment¹⁹⁵⁶. The World Bank stressed that according to the Ports and Harbours Act, the port authorities would have to withdraw from the operating companies¹⁹⁵⁷.

¹⁹⁵¹ Thus Evans, A.A., *Technical and social changes in the world's ports*, Geneva, ILO, 1969, 59.

¹⁹⁵² Thus Vigarié, A., *Ports de Commerce et Vie Littorale*, Paris, Hachette, 1979, 415.

¹⁹⁵³ See also The World Bank, *Staff Appraisal Report. Republic of Poland. Port Access and Management Project*, June 11, 1996, Report No. 15149-POL, 7; see also Misztal, K., *The present state and future prospects of Polish sea ports*, Turku / Åbo, University of Åbo / University of Turku, 1993, 28 p.; Misztal, K. and Zurek, J., "The privatization of Polish ports—the present situation and outlook for the future", *Maritime policy and management* 1997, 291-297.

¹⁹⁵⁴ The World Bank, *Staff Appraisal Report. Republic of Poland. Port Access and Management Project*, June 11, 1996, Report No. 15149-POL, 3.

¹⁹⁵⁵ The World Bank, *Staff Appraisal Report. Republic of Poland. Port Access and Management Project*, June 11, 1996, Report No. 15149-POL, 10.

¹⁹⁵⁶ The World Bank, *Staff Appraisal Report. Republic of Poland. Port Access and Management Project*, June 11, 1996, Report No. 15149-POL, Annex 5, 1.

¹⁹⁵⁷ The World Bank, *Staff Appraisal Report. Republic of Poland. Port Access and Management Project*, June 11, 1996, Report No. 15149-POL, 11.

The Port Authorities of Gdynia and Szczecin-Świnoujście also established subsidiaries. In the latter port, workers obtained 55 per cent of the shares of the subsidiaries¹⁹⁵⁸.

In the meantime, the subsidiaries were progressively privatised by the sale of their shares to outside investors. Also, new enterprises were set up on the basis of terms agreed with the port authorities¹⁹⁵⁹. But as of 2012, full privatisation of all formerly public stevedoring companies has not yet been achieved.

- *Regulatory set-up*

1514. Under the current port labour system, all port workers in Poland are directly employed by cargo handling companies. These companies are not obliged to join an employer's organisation or a pool, and do compete with one another.

1515. Although Poland ratified ILO Convention No. 137, port workers do not have to be registered in a central or port-wide register. An ILO report from 2002 mentions that in Poland, the task of registering port workers falls to employers¹⁹⁶⁰. This is still the case today.

1516. There is no pool system for port workers in Poland. All port workers of publicly or privately controlled cargo handling companies are, as a rule, permanently employed.

However, there is no prohibition on the employment of temporary workers via employment agencies in peak periods, provided all regular workers are effectively employed. Reportedly, the privately owned terminals regularly rely on such employment. Occasional workers such as students are used as well. We were informed that at least three container terminal operators in Gdańsk and Gdynia rely on the services of the agency Kadry Agencja Pracy Tymczasowej which also supplies certified crane operators and cooperates on training programmes; for other jobs competition such as forklift drivers, other agencies compete. Well-performing temporary agency workers are often offered a permanent contract with the port operator.

There are no hiring halls for port workers in Polish ports.

¹⁹⁵⁸ For further details, see The World Bank, *Staff Appraisal Report. Republic of Poland. Port Access and Management Project*, June 11, 1996, Report No. 15149-POL, 10-11 and Annex 5, 2-3.

¹⁹⁵⁹ See Misztal, K. and Zurek, J., "The privatization of Polish ports—the present situation and outlook for the future", *Maritime policy and management* 1997, (291), 295-296.

¹⁹⁶⁰ International Labour Conference (90th Session 2002), *General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, <http://www.ilo.org/public/english/standards/reim/ilc/ilc90/pdf/rep-iii-1b.pdf>, 54, para 123.

1517. Further, no distinction is made between port workers working on shore and workers working on board and between port workers in the narrow sense (who are employed at the ship/shore-interface) and warehouse or logistics workers in the port. As a rule, port workers can be moved from one job to another.

1518. Reportedly, commercial cargo handling companies can engage new staff on the basis of individually negotiated contracts of employment, in which case no collective bargaining agreements must be complied with. Such additional permanent workforce are often selected following a period of temporary employment through an employment agency.

1519. A manager of another privately controlled company informed us that qualifications of port workers are determined by the employer. The employer organises medical, psychological and acrophobia tests according to his own needs. Through additional tests and exams, employees can develop a career within the company. As a result, turnover among workers is reportedly low. As regards daily operations, the employer said he enjoys considerable flexibility, including on the composition of gangs, which he considers a major competitive asset.

1520. Theoretically, port workers can be transferred temporarily from employer to employer, although in practice this does not happen.

1521. Port workers enjoy unemployment benefit in accordance with general social security law.

- Facts and figures

1522. The Central Statistical Office of Poland maintains detailed statistics on the maritime economy which are published in a Yearbook, from which we have excerpted the data on 'maritime economy entities' active in cargo handling and storage in seaports. An expert at the Gdańsk Port Authority estimates that office workers represent between 10 and 30 per cent of all workers at operator companies, while the percentage is almost 100 per cent at port authorities.

To summarise the data below, some 423 cargo handling operators, among which 198 commercial companies, employ 7,487 staff, of whom, supposedly, 5,990 (20 per cent) port workers for the purpose of the present study.

Table 88. Number of maritime economy entities active in cargo handling and storage in seaports by legal form, 2007-2010 (source: Central Statistical Office of Poland¹⁹⁶¹)

	2007	2008	2009	2010
State-owned enterprises	-	-	-	-
Commercial companies, of which	75	81	187	198
- Joint-stock	6	6	7	8
- Limited liability	66	70	172	180
- Unlimited partnerships	3	5	8	9
Civil law partnerships	7	9	38	37
Individual persons conducting economic activity	31	34	161	184
Total	113	125	391	423

¹⁹⁶¹ Central Statistical Office, *Statistical Yearbook of Maritime Economy 2011*, Warsaw / Szczecin, 2011, www.stat.gov.pl, 36.

Table 89. Number of of maritime economy entities active in cargo handling and storage in seaports by maritime province (voivodship), 2007-2010 (source: Central Statistical Office of Poland¹⁹⁶²)

	2007	2008	2009	2010
Pomerania (comprising Gdańsk and Gdynia)	60	68	94	105
Warmia-Masuria	-	1	1	3
West Pomerania (comprising Szczecin and Świnoujście)	50	49	89	90
Total	113	125	391	423

Replying to our questionnaire, the Port of Gdańsk Authority mentioned a number of 104 employers in its port in 2011.

1523. Still according to the Central Statistical Office of Poland, data on employed persons are as follows:

¹⁹⁶² Central Statistical Office, *Statistical Yearbook of Maritime Economy 2011*, Warsaw / Szczecin, 2011, www.stat.gov.pl, 42.

Table 90. Number of employed persons active in cargo handling and storage in seaports, 2007-2010 (source: Central Statistical Office of Poland¹⁹⁶³)

	2007	2008	2009	2010
State-owned enterprises	-	-	-	-
Commercial companies, of which	5,096	4,717	7,683	6,873
- Joint-stock	249	258	304	909
- Limited liability	4,788	4,392	7,248	5,832
- Unlimited partnerships	59	67	131	127
Civil law partnerships	23	29	161	158
Individual persons conducting economic activity	63	77	394	419
Total	5,182	4,831	8,337	7,487

Table 91. Number of employed persons active in cargo handling and storage in seaports by maritime province (voivodship), 2007-2010 (source: Central Statistical Office of Poland¹⁹⁶⁴)

	2007	2008	2009	2010
Pomerania (comprising Gdańsk and Gdynia)	3,063	2,813	2,705	2,664
Warmia-Masuria	-	-	-	3
West Pomerania (comprising Szczecin and Świnoujście)	2,113	1,985	2,052	1,964
Total	5,182	4,831	8,337	7,487

¹⁹⁶³ Central Statistical Office, *Statistical Yearbook of Maritime Economy 2011*, Warsaw / Szczecin, 2011, www.stat.gov.pl, 38.

¹⁹⁶⁴ Central Statistical Office, *Statistical Yearbook of Maritime Economy 2011*, Warsaw / Szczecin, 2011, www.stat.gov.pl, 45.

Table 92. Number of maritime economy entities active in cargo handling and storage in seaports by number of employed persons, 2007-2010 (source: Central Statistical Office of Poland¹⁹⁶⁵)

	2007	2008	2009	2010
up to 9	78	90	320	345
10-49	17	21	46	51
50-249	11	8	16	18
250-499	4	5	6	7
500 and more	3	1	3	2
Total	113	125	391	423

Table 93. Number of full and part-time employees employed by entities active in cargo handling and storage in seaports employing more than 9 persons, 2007-2010 (source: Central Statistical Office of Poland¹⁹⁶⁶)

	2007	2008	2009	2010
Total	4,971	4,583	7,554	6,519
- of which women	721	663	2,061	1,618
Full-time employees	4,909	4,516	7,402	6,410
- of which women	694	633	1,983	1,560
Part-time employees	61	62	146	106
- of which women	27	28	75	57

Interestingly, the Central Statistical Office also maintains data on the average monthly gross remuneration in the maritime sector, including in cargo handling and storage of seaports but, as we have explained¹⁹⁶⁷, this subject is beyond the scope of our study.

¹⁹⁶⁵ Central Statistical Office, *Statistical Yearbook of Maritime Economy 2011*, Warsaw / Szczecin, 2011, www.stat.gov.pl, 46.

¹⁹⁶⁶ Central Statistical Office, *Statistical Yearbook of Maritime Economy 2011*, Warsaw / Szczecin, 2011, www.stat.gov.pl, 50.

¹⁹⁶⁷ See *supra*, para 25.

1524. There are two main trade unions for port workers: the Port Workers Country Section of the Independent and Self-Governing Trade Union Solidarnosc (Niezależny Samorządny Związek Zawodowy (NSZZ) "Solidarność") and the Free Trade Union of Maritime Economy Workers (Wolny Związek Zawodowy Pracowników Gospodarki Morskiej, WZZPGM).

Reportedly, Solidarnosc still holds a particularly strong position among workers in cargo handling companies that have remained under control of the port authorities. In new, privately owned companies, however, employee organisations have considerably less bargaining power, if they play any role at all. Detailed membership figures or shares are not available. The Port of Gdańsk Authority stated that 50 per cent of its own employees are unionised, but that the percentage is higher for port workers. At privatised terminals, union density is probably lower.

In Poland as a whole, trade union density is estimated at around 15 per cent, one of the lowest rates in the European Union¹⁹⁶⁸.

9.16.4. Qualifications and training

1525. Even if they were not fully consistent, responses to our questionnaire indicate that the following types of formal training are available for port workers in Poland:

- specialised training as part of a regular educational programme (secondary school);
- continued or advanced training after regular educational programme;
- induction courses for new entrants;
- courses for the established port worker;
- training in safety and first aid;
- specialist courses for certain categories of port workers such as operators of cranes, container handling equipment, tugmasters or forklifts, lashing and securing personnel, tallymen, signalmen and reefer technicians;
- training aimed at the availability of multi-skilled or all-round port workers;
- retraining of injured and redundant port workers.

In most cases, the training is compulsory.

The Ministry of Transport, Housing and Maritime Economy provided us with a curriculum on port and terminal operation techniques published by the Ministry of Education¹⁹⁶⁹ which covers the following items:

- professional terms relating to seaports and terminals;

¹⁹⁶⁸ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

¹⁹⁶⁹ Ministerstwo Edukacji Narodowej, *Program Nauczania. Techniki Eksploatacji Portów I Terminali 342 [03]*, 13 September 2006.

- laws and regulations on seaports and terminals;
- types and functions of seaports and terminals;
- rules on the handling of vessels;
- rules on cargo handling in seaports and terminals;
- rules on passenger and baggage handling in seaports and terminals;
- rules concerning other means of transport used in seaports and terminals;
- rules on safety and security of work;
- rules on environmental protection;
- telecommunication.

1526. As we have mentioned¹⁹⁷⁰, privatised terminal operators seem, as a rule, free to decide on qualification and training issues.

One interviewed privately owned container terminal operator explained that all new employees on the terminal have to attend an initial in-house occupational health and safety training as well as an ISPS training.

These training sessions are carried out by the safety and compliance manager who is an occupational health and safety senior specialist and a port facility security officer (PFSO). Additionally, training on the International Maritime Dangerous Goods (IMDG) Code is organised for the operational staff. Periodic occupational health and safety training sessions are carried out every 3, 4 or 5 years (depending on the worker's position). All training is provided by in-house instructors.

In-house training for crane drivers *etc.* is organised on the basis of the following programme:

¹⁹⁷⁰ See *supra*, para 1519.

Table 94. In-house training programme for STS, RTG, R/S and IMV at the DCT terminal in the port of Gdańsk (source: DCT)

	Ship-to-Shore Crane	Rubber Tyred Gantry Crane	Reach Stacker	Internal Movement Vehicle
Total number of days	42	25	3	6
Theoretical training	1st day	1st day	1st day	half of first day
Practical training (first part)	2nd - 10th day	2nd - 5th day	2nd - 3rd day	1st - 6th day
Internal examination	10th day	5th day	3rd day	6th day
Practical training (second part)	11th - 20th day	6th - 12th day		
2nd Internal examination	20th day	12th day		
Practical training (third part)	21st - 42nd day	13th - 25th day		
External (state) examination	42nd day	25th day	3rd day	

Reportedly, STS, RTG and R/S training is required by law¹⁹⁷¹. Nobody is allowed to drive such equipment without the relevant certificate, which is only issued after a state exam. The exam is organised by the Office of Technical Inspection (Urząd Dozoru Technicznego, UDT) which is a government agency responsible for the authorisation of all technical devices in Poland.

1527. Another operator of a privatised container terminal explained that its equipment and workers are certified by the Transportation Supervision Agency (Transportowy Dozór Techniczny, TDT) and confirmed that no specific school for port workers exists. Training is mainly a responsibility for the individual employer.

1528. Yet a further privately owned terminal operator confirmed that training is indeed organised within the company.

¹⁹⁷¹ We were unable to identify the applicable legal instruments.

1529. Some local port regulations set forth requirements on training of workers handling dangerous goods¹⁹⁷².

9.16.5. Health and safety

- *Regulatory set-up*

1530. The abovementioned Regulation of 6 July 1993 of the Minister of Transport and Maritime Economy on health and safety at work in sea and inland ports¹⁹⁷³ contains the following nine chapters:

Chapter 1: Preliminary provisions

Chapter 2: General requirements: Qualifications and responsibilities of the workers; Organisational matters; Quays, piers, breakwaters, roads and yards; Warehouses; Lighting and electronic devices

Chapter 3: Cargo handling devices/equipment: General requirements; Engine vehicles; Gravity conveyors; Mechanical conveyors; Capstan winches/Broaching machines; Auxiliary cargo handling equipment (General requirements; slings; Bridges, platforms, plates, pallets, loading trays; Electromagnetic receptors)

Chapter 4: Access to the vessel for the workers

Chapter 5: Preparatory works on board of the vessel: Opening and closing the hatches and ship's cargo handling equipment; Securing the cargo holds' hatches; Entering the cargo hold

Chapter 6: Cargo handling: General requirements; Handling of wood and general cargo; Handling of bulk cargo; Cargo handling operations on board of the specialised vessel

Chapter 7: Various works: Mooring operations; Cleaning of the cargo holds

Chapter 8: Storage of the cargo

Chapter 9: Final provisions

¹⁹⁷² See, for example, § 153 of the Port Regulations of Swinoujscie - Szczecin which reads:

1. *Cargo handling of dangerous goods shall be executed in accordance with such safety operations instructions as have been prepared by stevedores and approved by the Director of the Maritime Office in Szczecin.*

2. *The instructions referred to in subsection 1 shall determine the person responsible for cargo operation, the rules of cargo operation, emergency procedure EmS, First Aid rules, MFAG, communications during operations and the procedures to be used for communicating and requesting assistance.*

3. *Persons employed in carrying out cargo operations involving dangerous goods shall have appropriate training; this includes training on the types of dangers, rules of cargo handling and operations with dangerous goods. Persons responsible for cargo handling shall be responsible for carrying out the training. Such training shall be confirmed by a signature on a participants' list, which should be shown on request to any supervisory body.*

¹⁹⁷³ See *supra*, para 1509.

The Regulation defines "port handling" as the activities associated with the cargo handling on seagoing and inland shipping vessels and all other means of water and land transport, including all activities concerning cargo handling, storage, disposal, arrangement and transfer of cargoes in warehouses and on the storage places for subsequent transport (§ 1, 11).

1531. Enforcement of health and safety rules may be ensured through the intervention of the port authority, the harbour master, the terminal operator and the Labour Inspectorate.

- Facts and figures

1532. According to the Polish Ministry of Transport, no statistics on accidents and occupational diseases concerning work in ports are available, but the Regional Labour Inspectorates are informed about every incident within the port area.

In mid-November 2012, the National Labour Inspectorate informed us that in the period 2010-2012 its inspectors investigated 7 accidents at work connected with work at sea ports. It would appear that these data not only cover port labour as defined for the purpose of the present study.

Table 95. Number of occupational accidents in Polish seaports investigated by the National Labour Inspectorate, 2010-2012¹⁹⁷⁴ (source: National Labour Inspectorate)

Year	Type of accident (by the gravity of its consequences)		
	fatal	serious	light
2010	0	1	0
2011	1	0	1
2012	1	3	0

The National Labour Inspectorate investigates circumstances and causes of workplace accidents which employers are legally obliged to report. Hence it is unable to provide frequency and seriousness rates.

¹⁹⁷⁴ Data received on 16 November 2012.

Data maintained by the Central Statistical Office (GUS) show that in the period 2010-2011 a total of 162 water-related occupational accidents occurred. This figure comprises accidents at lakes, rivers, ports and on board all types of vessels, platforms, etc. (reference code 112).

Table 96. Number of occupational accidents at lakes, rivers, ports and on board all types of vessels, platforms, etc. in Poland, 2010-2011 (source: National Labour Inspectorate / Central Statistical Office)

Year	Total	Type of accident (by the gravity of its consequences)	
		fatal	serious
2010	86	0	1
2011	76	2	1

1533. The Institute of Maritime and Tropical Medicine at Gdynia has conducted a number of interesting studies on health and safety in port labour.

For example, in 1990 it published a study on energy expenditure of port workers performing heavy loading and discharging work and other groups of workers. The results indicated that the work of stevedores and trimmers is heavy and, for specific loading operations, very heavy. Remaining groups performed work which could be considered light, at times of a moderate strenuousness. Out of all the occupational groups, the labour of stevedores and trimmers was characterised by the highest energy expenditure. The lower the energy expenditure, the higher the average body mass and the incidence of overweight and obesity¹⁹⁷⁵.

In 1996, a study was published on the effect of heavy work on the musculoskeletal system of port workers which confirmed that the stevedores perform heavy to very heavy labour while the work of other port workers is moderately strenuous or light¹⁹⁷⁶.

Yet other studies focused on reasons for loss of fitness of port workers to perform physically heavy loading operations¹⁹⁷⁷, cervical and back pain syndromes¹⁹⁷⁸, sick absence¹⁹⁷⁹, maximum oxygen uptake by port workers performing heavy work and by operators of mechanical equipment in ports¹⁹⁸⁰, the impact of the working environment upon the health of workers handling dusty materials (with special attention for the respiratory and circulatory system)¹⁹⁸¹,

¹⁹⁷⁵ <http://www.ncbi.nlm.nih.gov/pubmed/2135914>.

¹⁹⁷⁶ <http://www.ncbi.nlm.nih.gov/pubmed/9101049>.

¹⁹⁷⁷ <http://www.ncbi.nlm.nih.gov/pubmed/9101048>.

¹⁹⁷⁸ <http://www.ncbi.nlm.nih.gov/pubmed/9591149>.

¹⁹⁷⁹ <http://www.ncbi.nlm.nih.gov/pubmed/1844842>.

¹⁹⁸⁰ <http://www.ncbi.nlm.nih.gov/pubmed/1844847>.

¹⁹⁸¹ <http://www.ncbi.nlm.nih.gov/pubmed/3270581>.

changes in electrocardiograms at rest among port workers employed at the loading and unloading of dusty materials¹⁹⁸² and reasons why port workers lose their fitness for work¹⁹⁸³.

9.16.6. Policy and legal issues

1534. The main issue regarding port labour arrangements in Polish ports seems to be the incomplete transition of the Polish port system from a centralised state-controlled service port model to a landlord model based on intra-port competition between privately-owned and commercially run terminal operators.

As we have noted above¹⁹⁸⁴, this privatisation process is still ongoing. As a result, the ownership and management structure of port terminals in Poland is currently rather diverse, and the same applies to the corresponding port labour regimes.

1535. In the port of Gdańsk, for example, the dry bulk facilities in the outer port are now run by a company that used to be owned by the workers who each owned one share but which was after a public tender taken over by a Belgian commercial group. The new terminal is scheduled for completion in 2013. Also in the outer port, Gdańsk's major container terminal is run by DCT, a newly established commercial player which attracted funds from a major international infrastructure investment group.

The Port of Gdynia has privatised several terminal handling companies, including its container terminal BCT. In 2011, a major bulk handling company in the port of Gdynia was taken over by a French group. Privatisation of a general cargo terminal is planned in the course of 2012.

Privately owned terminals employ their own staff. Over the past years, some claim to have recruited numerous additional workers in order to cope with increasing cargo volumes.

1536. However, the older inner port of Gdańsk, for example, is still operated by a subsidiary controlled by the Port Authority, which continues to own 98.28 per cent of the shares. This company operates 8 quays and is the port's biggest operator. It employs almost 600 employees. Its privatisation is still under consideration. At the time of writing, the formal tender process was expected to be launched before the end of 2012.

¹⁹⁸² <http://www.ncbi.nlm.nih.gov/pubmed/3841819>.

¹⁹⁸³ <http://www.ncbi.nlm.nih.gov/pubmed/7580346>.

¹⁹⁸⁴ See *supra*, para 1513.

1537. Replying to our questionnaire, the Port of Gdańsk Authority argues that employment should be more flexible and that the lack of modern and adequate regulations is also detrimental to employees. Overmanning continues to occur but is not seen as a major competitive issue. Still according to the Port of Gdańsk Authority, port workers are insufficiently trained.

1538. The Port of Gdańsk Authority aims at a further privatisation of its cargo handling subsidiaries which continue to employ an excess workforce, but this is reportedly opposed by the trade unions, while private investors are not keen on taking over massive social liabilities and less profitable divisions. The Port Authority believes that there is considerable interest from port operators to take over Port Gdański Eksploatacja.

1539. Several interviewees from the private sector confirmed that a further privatisation of publicly owned cargo handling companies in Polish ports is hampered by the presence of an excess workforce and less efficient working practices.

One interviewee explained that at non-privatised terminals, unwritten customs would for example require employment of two operators per gantry crane, who would then each perform half of an 8-hour shift. Upon privatisation, several employers abolished this rule and reasserted the right of the employer to decide on manning levels, while of course ensuring breaks for rest and meals. In publicly-owned terminals, such customs may continue to apply.

1540. We have no information on how ILO Convention No. 137, which is still binding upon Poland, is implemented at the privatised terminals.

1541. Self-handling by ship's crews is not specifically regulated in Poland. Port authorities leave this matter to contractual arrangements between the vessel and the operator¹⁹⁸⁵. It is probably safe to assume that a factual ban applies, which may be lifted by the operator¹⁹⁸⁶. We

¹⁹⁸⁵ European Sea Ports Organisation, *Factual Report on the European Port Sector*, Brussels, 2004-2005, 155.

¹⁹⁸⁶ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) mentions that the following longshore work by crewmembers aboard U.S. vessels is prohibited in Polish ports:

- (a) *All longshore activities.*
- (b) *Exceptions:*
 - (1) *Operation of cargo-related equipment,*
 - (2) *Opening and closing of hatches, and*
 - (3) *Rigging of ship's gear.*

were informed of one example where a container terminal charges a handling fee when the ship's crew is loading or unloading project cargo, because the terminal owns the infrastructure which moreover has only a limited berthing capacity. At non-privatised terminals, self-handling may encounter opposition from the unions.

1542. Replies to our questionnaire suggest that port workers cannot be transferred temporarily to another port. The Ministry of Transport, Construction and Maritime Economy and the Port of Gdańsk Authority denied that such a ban existed. The former commented that there is no demand for such transfers, but the latter said that workers are reluctant to work at another port.

1543. The Ministry of Transport, Construction and Maritime Economy and the Port of Gdańsk Authority concur that, generally, rules on employment and on health and safety are adequate and properly enforced.

9.16.7. Appraisals and outlook

1544. The Polish *National Transport Policy for 2006 – 2025* which was approved by the Council of Ministers on 29 June 2005 mentions the following prioritised activity:

*implementation of European Union standards on port management and operation, including separation of the function of port area and infrastructure management from provision of commercial port services*¹⁹⁸⁷.

As we have explained¹⁹⁸⁸, Polish port authorities are still in the process of privatising cargo handling companies in which they or the workers hold shares, but it seems that today this process is largely completed.

The Ministry of Transport, Construction and Maritime Economy is currently preparing a new *Transport Development Strategy for 2020* as well as a *Seaports Development Programme for 2020* (both with prospects to 2030).

¹⁹⁸⁷ *National Transport Policy for 2006 – 2025*, <http://www.en.mi.gov.pl/files/2/46f38651bb49e/PolitykaTransportowaPastwanalata20062025Rzdowajzangielski.pdf>, 20.

¹⁹⁸⁸ See *supra*, paras 1513 and 1534.

1545. The Port of Gdańsk Authority does not consider the current port labour regime satisfactory but also does not believe that this is the main competitive factor. It mentioned the port labour systems of Rotterdam and Hamburg as benchmarks.

Both the Ministry of Transport, Housing and Maritime Economy and the Port of Gdańsk Authority describe relations between employers and unions as satisfactory (the latter, however, also describes them as unsatisfactory at times).

1546. One interviewed independent commercial terminal operator said that the organisation of port work at its terminal is not hampered by any restrictive rules. He mentioned, however, that a further transfer of publicly-owned cargo handling companies to the private sector is delayed due to the presence of huge social liabilities and opposition by the powerful trade union Solidarnosc. Commercial operators tend to employ smaller gangs who are, however, better paid and receive pay increases and bonuses. According to this interviewee, the labour situation in Polish ports is gradually being normalised.

1547. However, we also heard echoes of trade unionists complaining that in Gdańsk employees are "completely without rights" and that any talk of unions leads to firing¹⁹⁸⁹.

1548. The Port of Gdańsk Authority does not see a need for any EU action and argues that, primarily, port labour is a matter for national regulations. The Ministry of Transport, Construction and Maritime Economy mentioned that the need for further national reform remains to be assessed.

¹⁹⁸⁹ Brink, "Havnearbejdere i Rotterdam kalder på solidaritet", 16 February 2012, http://www.eufagligt.dk/artikel/havnearbejdere_i_rotterdam_kalder_pa_solidaritet/.

9.16.8. Synopsis

1549.		
SYNOPSIS OF PORT LABOUR IN POLAND¹⁹⁹⁰		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 55 seaports, 3 main ports • Landlord model, in final transition from full-service model • 65m tonnes • 13th in the EU for containers • 54th in the world for containers • Appr. 423 employers (198 companies) • Appr. 6,000 port workers (?) • Trade union density: 50% (?) 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • Party to ILO C137 • Company CBAs, but not at privatised terminals • All port workers employed by terminals • Registration of workers by individual employer • No pools • No hiring halls • No mandatory manning scales at privatised terminals • No ban on temporary agency work 	<ul style="list-style-type: none"> • Completion of privatisation of publicly owned terminals • Excess workforce at publicly owned terminals • Restrictive working practices at publicly owned terminals • Ban on self-handling at publicly owned terminals • Reluctance of privatised terminals to cooperate with unions
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Company-based training 	<ul style="list-style-type: none"> • No specific requirements • National training curriculum available • Compulsory certification of equipment operators • Local requirements on handling of dangerous goods 	<ul style="list-style-type: none"> • Insufficient training at publicly-owned terminals
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No specific accident statistics available 	<ul style="list-style-type: none"> • National Health and Safety Regulations • No Party to ILO C32 or C152 	<ul style="list-style-type: none"> • Lack of statistics

¹⁹⁹⁰ 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.

9.17. Portugal

9.17.1. Port system¹⁹⁹¹

1550. Portugal has several commercial seaports, namely nine on the mainland and at least one on each island of the Autonomous Regions of Azores and Madeira.

The main cargo seaports are located in the mainland and include, from North to South, Leixões, Aveiro, Lisbon, Setúbal and Sines.

In 2011, the gross weight of seaborne goods handled in Portuguese ports was about 66.8 million tonnes. The five main ports handle more than 95 per cent of the national cargo throughput. For containers, Portuguese ports ranked 9th in the EU and 44th in the world in 2010¹⁹⁹².

1551. Portuguese ports are state-owned. As from 1997, Portuguese ports were transformed into landlord ports. The legal status of port authorities changed from public institutions to private enterprises with the State as sole shareholder. Cargo handling services are provided by private entities.

9.17.2. Sources of law

1552. The current legislative regime of port labour was established from 1993 onwards.

First of all, mention should be made of the legal framework for cargo handling operations:

¹⁹⁹¹ For general information on Portuguese seaports, see www.imarpor.pt; Carvalho, M.L.N.C., *Performance Evaluation of the Portuguese Seaports*, dissertation, Universidade Técnica de Lisboa, 2007, <https://dspace.ist.utl.pt/bitstream/2295/147760/1/MLC%20Performance%20Evaluation%20of%20Portuguese%20Seaports.pdf>; ECOTEC, *Employment trends in all sectors related to the sea or using sea resources, Country Report – Poland*, European Commission. DG Fisheries and Maritime Affairs, August 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/portugal_employment_trends_en.pdf, 6-7; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 322-356; for statistics, see http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

¹⁹⁹² Container ranking based on UNCTAD, *Review of Maritime Transport 2011*, New York and Geneva, UNCTAD / UN, 2011, http://unctad.org/en/Docs/rmt2011_en.pdf, 201-203.

- Decree-Law No. 298/93 of 28 August 1993 establishing the regime of port operations, as amended by Decree-Law No. 65/95 of 7 April 1995¹⁹⁹³;
- Decree-Law No. 324/94 of 30 December 1994 approving the general conditions for public service concessions for cargo handling in ports¹⁹⁹⁴.

Port labour, then, is governed by the following instruments:

- Decree-Law No. 280/93 of 13 August 1993 establishing the legal regime of port labour, as rectified by Rectification No. 202/93 of 30 October 1993¹⁹⁹⁵;
- Regulatory Decree No. 2/94 of 28 January 1994 regulating the carrying out of port activities¹⁹⁹⁶.
- Ordinance No. 178/94 of 29 March 1994 laying down rules on the granting of licences to Port Labour Companies¹⁹⁹⁷.

1553. Where no specific rules apply, employment of port workers is governed by general labour law, especially the Labour Code (Act No. 99/2003 of 27 August 2003¹⁹⁹⁸), which was last amended in 2012¹⁹⁹⁹.

1554. The main instrument on occupational health and safety is the Occupational Safety and Health Act No. 102/2009 of 10 September 2009²⁰⁰⁰.

No specific legislation on health and safety in port work was enacted.

Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers was transposed in 2003²⁰⁰¹.

¹⁹⁹³ Decreto-Lei n.º 298/93 de 28 de Agosto de 1993 Estabelece o regime de operação portuária.

¹⁹⁹⁴ Decreto-Lei n.º 324/94 de 30 de Dezembro de 1994 Aprova as bases gerais das concessões do serviço público de movimentação da cargas em áreas portuárias.

¹⁹⁹⁵ Decreto-Lei n.º 280/93 de 13 de Agosto de 1993 Estabelece o regime jurídico do trabalho portuário; Declaração de rectificação n.º 202/93.

¹⁹⁹⁶ Decreto Regulamentar n.º 2/94 de 28 de Janeiro de 1994 Regulamenta o exercício da actividade portuária.

¹⁹⁹⁷ Portaria n.º 178/94 de 29 de Março de 1994 Estabelece normas sobre a atribuição de licença às entidades que pretendam exercer a actividade de cedência de mão-de-obra portuária.

¹⁹⁹⁸ Código del Trabajo.

¹⁹⁹⁹ Lei n.º 23/2012 Procede à terceira alteração ao Código do Trabalho, aprovado pela Lei n.º 7/2009, de 12 de Fevereiro; see further *infra*, para 1561.

²⁰⁰⁰ Lei n.º 102/2009 de 10 de Setembro Regime jurídico da promoção da segurança e saúde no trabalho.

²⁰⁰¹ Decreto-Lei n.º 323/2003 de 24 de Dezembro de 2003.

1555. Portugal ratified ILO Convention No. 137²⁰⁰² but not ILO Conventions Nos. 32 or 152.

1556. There is no nation-wide collective agreement on port work, but each Portuguese port has its own agreement. These agreements deal with, *inter alia*, the organisation of labour, classification of workers, working time, wages, leave and holidays, the termination of employment contracts, the transfer of undertakings, training of port workers, health and safety, trade union rights and discipline. We were able to consult the – particularly elaborate – agreements concluded in 1993 for the ports of Lisbon²⁰⁰³, Douro-Leixões²⁰⁰⁴ and Figueira da Foz²⁰⁰⁵, which were published in the Labour and Employment Gazette (*Boletim do Trabalho e Emprego*). The agreements for Lisbon and Figueira are to a large extent identical. We consulted the original versions only (reportedly, over the years, the wage scales were repeatedly revised). The Douro-Leixões agreement was entirely replaced by a new version in 2012²⁰⁰⁶.

The collective agreements are supplemented by company-specific protocols, but to our knowledge these documents are not public.

1557. We were also unable to consult the Regulations (*Regulamentos*) of the labour pools, except the one for Aveiro, which contains rules on, *inter alia*, the ordering of workers, priority rights, tariffs and payment conditions. The Regulations of the pools must be posted in a visible place²⁰⁰⁷. Reportedly, they differ considerably.

1558. A final source of law are practices, usages and customs. Their express repeal in Lisbon and Figueira to the extent that they were contrary to the port-wide agreement of 1993²⁰⁰⁸ suggests that rules compatible with the agreement indeed retained their force.

²⁰⁰² Decreto n.º 56 de 1 de Agosto de 1980 Aprova, para ratificação, a Convenção n.º 137, relativa às repercussões sociais dos novos métodos de manutenção nos portos.

²⁰⁰³ CCT entre a AOPL – Assoc. de Operadores do Porto de Lisboa e outra e o Sind. dos Conferentes de Cargas Marítimas de Importação dos Dist. de Lisboa e Setúbal e outros, Lisboa, 12 de Novembro de 1993.

²⁰⁰⁴ CCT entre a Assoc. dos Operadores Portuários dos Portos do Douro e Leixões e outra e o Sind. dos Estivadores e Conferentes Marítimos e Fluviais do Dist. do Porto e outro, Matosinhos, 29 de Setembro de 1993.

²⁰⁰⁵ ACT entre a OPERFOZ – Operadores do Porto da Figueira da Foz, L.^{da}, e outra e o Sind. dos Conferentes de Cargas Marítimas de Importação e Exportação dos Dist. de Lisboa e Setúbal e outros, Lisboa, 15 de Novembro 1993.

²⁰⁰⁶ Contrato coletivo entre a Associação dos Operadores Portuários dos Portos do Douro e Leixões e outra e o Sindicato dos Estivadores, Conferentes e Tráfego dos Portos do Douro e Leixões — Revisão global, Leça da Palmeira, 19 de março de 2012.

²⁰⁰⁷ See Art. 9(2) of Regulatory Decree No. 2/94.

²⁰⁰⁸ Cl. 133(2) of the Collective Agreement for Lisbon; Cl. 131(2) of the Collective Agreement for Figueira.

9.17.3. Labour market

- Historical background

1559. A report from 1968 by the European Free Trade Association (EFTA)²⁰⁰⁹ explains that, in those days, the state-controlled Port Authority of Lisbon took little part in the loading and discharging operations, as this work was largely carried out by private firms of master stevedores and master porters. The Port Authority did, however, control import cargo in as much as the Authority determined the charges payable by importers for services performed on shore. For this work the Authority employed two main contractors who received the cargo on shore and delivered it either into bond or direct to road vehicles or railway trucks. Export cargo, on the other hand, was dealt with in an entirely different way. Private interests received the cargo and loaded it into the ships, and the Port Authority exercised no control either over the handling or in regard to charges.

According to the authors of the report, it was fair to say that modern developments had come much more slowly to the Port of Lisbon than to some other European ports. This could be attributed in part to such factors as the very widespread and hemmed in nature of the landward area (which inhibited development requiring space), low labour costs, lack of real competition with other ports, and a customs and port policy which, although it was being reviewed, had discouraged consignees from removing goods quickly from the port. The "very formidable" number of employers, to many of whom port operations were only a secondary business, also tended to slow down the introduction of modern methods and appliances. It was not without significance that major private firms concerned with bulk cargoes, and in some cases with general cargo exports, had modernised their installations.

According to the 1968 report by EFTA, the labour force in the port of Lisbon consisted of 3,000 dockworkers, half of whom formed a regular labour force. The other half were called in and employed only when a situation of shortage of regular labour arose. The regular labour force belonged to a syndicate which had its counterpart in other industries, and which aimed generally at higher pay and improved conditions of work for dock labour. The regular men had practically full employment; whereas the irregulars, that is, the men who come in when there is work on offer, had a completely casual form of employment.

It appeared that a regular labour force of 1,500 men, which needed at times to be augmented by a further 1,500 men, must in fact have been too small for the normal requirements of the port. All the men were engaged on a daily basis. Foremen attended at a call point and selected

²⁰⁰⁹ Our account is almost literally based on X., *General cargo handling in three EFTA ports*, Geneva, European Free Trade Association, 1968, 38 and 42-43, and on information on later developments kindly provided by IPTM.

the men required for that particular day. In cases, for instance, where the same men were going back to the same job, perhaps for a whole week or more, they still had to report and to be re-engaged daily. This method of engaging workers had been a feature of dock labour in other ports for a very long time, but it was, gradually, in process of being changed. The system had many acknowledged shortcomings from the point of view of both the interests and the efficiency of the workers. There was no attempt in Lisbon to share the work equally amongst the labour force. Since, as mentioned above, the Port Authority took very little active part in the loading and discharging operations of the port, and in any event was not concerned at all with export operations, there was in fact no central organising body undertaking responsibility for dock labour conditions throughout the port. At the time, no fewer than seventy different master stevedores had the right to employ dock labour; a particularly large number when account was taken of the relatively small dock labour force. However, a new agreement was being negotiated under which six of the principal shipping lines engaged in export trade would join forces for stevedoring work on their own ships. They envisaged employing six hundred dockworkers on a yearly basis. Once this agreement was concluded, the new organisation would have been in a position to offer not only regular employment to the men they engaged but also general amenities up to modern standards. However, a representative of the syndicate said the dockworkers would never accept full decasualisation and that the men valued highly the freedom which casual employment gave them.

It was not until the promulgation of Decree-Law No. 145-A/78 of 17 June 1978 that a first legislative framework for port labour was introduced. The Decree-Law determined the employment status of port workers and regulated market access for port companies. On the same date, Decree-Law No. 145-B/78 created the Port Labour Institute (Instituto do Trabalho Portuário, ITP) as a national coordination body for port labour issues. The ITP was organised on the basis of tripartite participation by the public administration, the employers and the trade unions. Decree-Law No. 145-B/78 also established the Port Labour Coordination Centres (Centros Coordenadores de Trabalho Portuário, CCTPs). The Centres were responsible for the organisation, coordination and rationalisation of the various aspects of port labour, including the registration and identification of port workers and the payment of wages. As a result of these arrangements, port workers are nowadays permanently employed and earn monthly wages. In smaller ports where there was no scope for the creation of a CCTP, a different system applied.

1560. Further reform schemes were implemented in 1989 and 1993.

Innovations included a reduction in gang sizes, which could henceforth be determined by the operator entrusted with the technical direction of operations; the transfer of the labour pool management to the private sector; the harmonisation of labour regulations; the abolition of the extra levy on tonnage to pay for pensions; and a preference for operations by concessionaires²⁰¹⁰.

²⁰¹⁰ X., *Social and labour problems caused by structural adjustments in the port industry*, Geneva, International Labour Office, 1996, 17.

The current Portuguese port labour regime finds its origin in the 1993 reform. At the time, the Government considered that there were compelling reasons of national interest to revise the existing legal arrangements. It noted that the extra costs and inefficiencies that affected ports and limited their competitiveness were no longer acceptable²⁰¹¹. A Social Concertation Pact for the Dock Sector was signed by the Government, the port workers' unions and sectoral employers' associations²⁰¹².

1561. In 2012, in response to the sovereign debt crisis, general labour law underwent a major reform. With a view to greater flexibility, new rules were enacted on term employment contracts, severance payments, working time arrangements and the termination of employment contracts²⁰¹³.

- *Regulatory set-up*

1562. The 1993 regime of port labour is enshrined in a set of five different legal instruments²⁰¹⁴, which we will summarise below. In addition, we shall highlight some provisions of local collective agreements.

1563. It follows from the legal provisions that all employers must be licensed and that the port workers are divided into two major groups: those who are employed in the permanent workforce of a port operator (*trabalhadores dos quadros (privativos) de empresa*), for whom there are no significant special provisions in the law, and those who belong to the common complement (*contingente comum*) of the Port Labour Company (Empresa de Trabalho Portuário, ETP), *i.e.* pool workers (*trabalhadores do quadro da ETP*) who are called on by the individual port operators to meet their labour shortages as and when they occur. The ETPs have the authority to, *inter alia*, set the number of pool workers, assign workers to port operators and exercise disciplinary powers²⁰¹⁵.

²⁰¹¹ Preamble of Decree-Law no. 298/93 of 28 August 1993.

²⁰¹² See X., "Dockers' unions opposed to dock work reform", 28 March 1997, <http://www.eurofound.europa.eu/eiro/1997/03/inbrief/pt9703109n.htm>.

²⁰¹³ For an overview, see Canas da Silva, R., "Portuguese labour law reform: developments in 2011-2012", *European Labour Law Journal* 2012, Vol. 3, No. 1, 86-97.

²⁰¹⁴ See already *supra*, para 1552.

²⁰¹⁵ See also <http://www.eurofound.europa.eu/emire/PORTUGAL/DOCKWORK-PT.htm>.

1564. First of all, Decree-Law No. 298/93 of 28 August 1993 regulates port operations and access to the market of cargo handling (Art. 1).

The Decree-Law contains detailed definitions of a number of basic concepts such as port operations, port area, port areas for public services, port areas for the private handling of (industrial) cargoes, port authority *etc.* (Art. 2). It defines stevedoring companies (*empresas de estiva*) as legal persons licensed to carry out activities of cargo handling in a port area (Art. 2(g)).

The Decree-Law states that the activity of cargo handling is of public interest (Art. 3(1)). As a result, cargo handling may only be provided (1) on the basis of a public service concession granted, following an open tendering procedure, to a stevedoring company who then possesses an exclusive right of use; (2) on the basis of a licence, which may only be granted in cases where no competing applicants will present themselves or where a strategic national interest is at stake; or (3) in exceptional cases, by the port authority itself (Art. 3(2) and 3(4)). In 2012, the major share of cargo throughput is handled by private concessionaires²⁰¹⁶.

Chapter III of the Decree-Law contains specific provisions on the stevedoring companies. Certain operations remain outside the scope of the regime. These include the handling of military cargo; operations involving distressed ships supervised by competent authorities; operations in the course of official inspections; the handling of ship supplies; the loading, unloading and transfer of petroleum and other liquid bulk at specialised terminals, of dangerous chemicals and, prior to loading or following unloading, of rolling stock²⁰¹⁷; lashing and unlashings of cargo, the opening and closing of hatches and the towing on board of cargo if carried out by the ship's crew using on board equipment²⁰¹⁸; the sweeping and cleaning of ship's holds and the loading, unloading and stowing of cargo in local boats using ship's gear; and the loading and unloading of means of land transportation using the latter's own gear prior to loading into or following unloading from a ship (Art. 7(2)). All these operations may be carried out without the intervention of port workers (Art. 7(3))²⁰¹⁹.

The Decree-Law sets out the conditions under which licences may be obtained (Art. 9 *et seq.*). These requirements relate to *inter alia* the company's financial and economic situation.

²⁰¹⁶ Carvalho, M.L.N.C., *Performance Evaluation of the Portuguese Seaports*, dissertation, Universidade Técnica de Lisboa, 2007, 8.

²⁰¹⁷ See also Cl. 19(9) of the Annex to the Collective Agreement for Lisbon; Cl. 19(8) of the Annex to the Collective Agreement for Figueira.

²⁰¹⁸ Comp. Cl. 19(10) of the Annex to the Collective Agreement for Lisbon; Cl. 19(9) of the Annex to the Collective Agreement for Figueira.

²⁰¹⁹ Compare, however, Cl. 19(8) *et seq.* of the Annex to the Collective Agreement for Lisbon which still reserve for port workers the loading and unloading of ship supplies; in the same sense, Cl. 19(7) of the Annex to the Collective Agreement for Figueira. These agreements also reserve for port workers the mounting of handling equipment such as trestles or conveyor belts (see Cl. 19(11) of the Annex to the Collective Agreement for Lisbon; Cl. 19(10) of the Annex to the Collective Agreement for Figueira). For the situation in Douro and Leixões, see Cl. 7 the Collective Agreement for Douro-Leixões of 2012 (and compare Cl. 5 of Annex II to the Collective Agreement for Douro-Leixões of 1993).

Further chapters of the Decree-Law regulate the rights and duties of stevedoring companies (Chapter IV, Art. 19 *et seq.*), the public service concessions (Chapter V, Art. 26 *et seq.*) and sanctions (Chapter VI, Art. 31 *et seq.*).

Importantly, the Decree-Law expressly stipulates that, without prejudice to the legal powers of the ship master, the stevedoring company exercises operational authority over the personnel (Art. 21(2)) and has the exclusive right to decide on the workforce needed as well as on its management (Art. 21(3)). The rules however do not affect the supervision and coordination powers of the Port Authority and the Institute for Port Labour (Instituto do Trabalho Portuário, ITP) (Art. 21(4)). Today, the latter Institute is dormant and most of its responsibilities in relation to port labour have been transferred to the Port and Maritime Transport Institute (Instituto Portuário e dos Transportes Marítimos, IPTM)²⁰²⁰. Non-compliance by a pool worker with orders given by the stevedoring company gives the latter the right to demand immediate replacement of such worker (Art. 21(5)).

1565. Decree-Law No. 324/94 of 30 December 1994 sets out the conditions of public service concessions for cargo handling in ports.

Condition XI relates to the personnel employed by the concessionaire and stipulates that workers must be employed either on the basis of an individual employment contract or in accordance with the legal regime of port labour. According to Condition XI, the concessionaire must trimestrially inform the ITP on the composition of its workforce.

1566. Decree-Law No. 280/93 of 13 August 1993 lays down the legal framework for port labour (Art. 1(1)).

For the purposes of this Decree-Law, port work is defined as “the various tasks of cargo handling in public or private areas within the port area” (Art. 1(2)).

The Decree-Law does not apply to work performed by employees or agents of the port authority or to workers in the port area who are not exclusively or predominantly entrusted with cargo handling operations (Art. 1(3)).

The Decree-Law further defines the port workforce (*efectivo dos portos*) as all workers who hold the appropriate professional card and who are engaged in cargo handling under an

²⁰²⁰ Established by Decree-Law nr. 257/2002 of 22 November 2002. On Portuguese ports policy, see Carvalho, J., *Portuguese Ports Policy*, presentation delivered at the 2011 ESPO Conference, Cyprus, 5-6 May, available on <https://espo.cpa.gov.cy/espo/userfiles/file/Joao%20Carvalho.pdf>; see also Carvalho, M.L.N.C., *Performance Evaluation of the Portuguese Seaports*, dissertation, Universidade Técnica de Lisboa, 2007, <https://dspace.ist.utl.pt/bitstream/2295/147760/1/MLC%20Performance%20Evaluation%20of%20Portuguese%20Seaports.pdf>.

employment contract for an indefinite term (Art. 2(a))²⁰²¹. Activities of cargo handling are defined as stowing, unstowing, loading, unloading, transshipment, storage and handling of goods at docks, terminals, warehouses and quays, as well as the assembling and disassembling of unitised goods, and the reception, storage and dispatching of these goods (Art. 2(b)). A Port Labour Company (Empresa de Trabalho Portuário, ETP) – *i.e.* a port labour pool – is defined as a legal person whose sole activity is the assignment of skilled workers to carry out cargo handling tasks in ports (Art. 2(c)). The port areas coincide with the areas under the jurisdiction of port authorities (Art. 2(d)). The Decree-Law distinguishes between zones for public service cargo handling and zones for private cargo handling at industrial plants (see Art. 2(e)-(f)).

Labour relations between port workers and their employees are governed by the provisions of the Decree-Law, by the rules applicable to the contract of employment as well as by other labour legislation (Art. 3).

In the organisation and performance of port work, employers and users of port workers must take into account the requirements of quality, productivity and continuity of the services provided to the port users, as well as the interests of the national economy and the principles of free movement of people and goods (Art. 4).

Only workers holding the appropriate professional card may be engaged to perform port work (Art. 5).

The professional card is issued by the ITP, now IPTM (Art. 6(1)). Upon issuance of the card, the port worker is considered registered for the purposes of ILO Convention No. 137.

The relationship between the stevedoring companies, the Port Labour Company and companies using private port areas, on the one hand, and port workers, on the other hand, is governed by the individual contract of employment (Art. 7(1)).

A separate chapter of the Decree-Law describes the legal status of the Port Labour Companies (ETPs) (Chapter 3).

First and foremost, Port Labour Companies must obtain a licence (Art. 8(1)).

The licensing of Port Labour Companies falls within the competence of ITP, now IPTM. Licences are granted according to the procedure laid down by Ordinance of the competent Minister (Art. 8(2))²⁰²².

Only legal entities established under private law which are solely engaged in the provision of temporary port labour and which have no other activities may be licensed as a Port Labour Company (Art. 9(1)). Technical, economic and financial conditions for obtaining a licence are

²⁰²¹ Compare Cl. 6 of the Collective Agreement for Douro-Leixões of 2012.

²⁰²² See *infra*, nr. 1567.

laid down in a separate Decree (Art. 9(2))²⁰²³. For all matters not specifically regulated by the law relating to port labour, Port Labour Companies are subject to the provisions of the general legislation on temporary work agencies (Decree-Law No. 358/89)²⁰²⁴ (Art. 9(3)).

The IPTM maintains an updated register of the licensed Port Labour Companies in each port (Art. 10)²⁰²⁵.

Finally, the Decree-Law contains an elaborate transitional regime (Art. 11 *et seq.*) which regulates *inter alia* the transformation of the former Organisms for the Management of Port Workforce (Organismos de gestão de mão-de-obra portuária, OGMOPs) (Art. 12). It also lays down sanctions (Art. 16 *et seq.*), including against the employment of non-qualified workers (Art. 18).

1567. Regulatory Decree No. 2/94 of 28 January 1994, which was made under Article 9(2) of the abovementioned Decree-Law No. 280/93, lays down the detailed conditions under which Port Labour Companies (ETPs) may be licensed.

The introductory recitals of this Regulatory Decree point to the analogy of the regulation with the regime of temporary employment agencies.

The Regulatory Decree stipulates that the ETP has the task of providing the stevedoring companies and users of private port areas with temporary port workers who fulfil the legal requirements to perform cargo handling in ports (Art. 2).

All ETPs must obtain a licence from the IPTM (Art. 3).

ETPs must meet conditions relating to the availability of dedicated facilities, compliance with tax and social security laws, a financial guarantee, technical expertise, compliance with laws on the activity and the legal capacity of the management to perform commercial activities (Art. 4).

Next, the Decree elaborates on some of these conditions (Art. 5-7) and sets out the duties of the ETPs, which operate under a number of general public service obligations such as continuity, equal treatment of users and publication of tariffs (Art. 9). The Decree also regulates the conclusion of user agreements (Art. 10).

Finally, the Decree contains provisions on the extension, alteration and termination of licences (Art. 11-13).

²⁰²³ See *infra*, nr. 1567.

²⁰²⁴ Decreto-Lei nº 358/89 de 17 de Outubro de 1989 Define o regime jurídico do trabalho temporário exercido por empresas de trabalho temporário.

²⁰²⁵ For an overview of ETPs, see <http://www.fnstp.pt/files/moretp.pdf>.

1568. Ordinance No. 178/94 of 29 March 1994 brings into effect Article 8(2) of the abovementioned Decree-Law No. 280/93 and lays down detailed procedural rules for the licensing of Port Labour Companies.

1569. Today, there are ETPs in the mainland ports of Aveiro, Douro and Leixões, Figueira da Foz, Lisbon, Setúbal, Sines and Viana do Castelo. In Setúbal and Sines, there are two ETPs. In Setúbal, the ETPs compete for all traffic. In Sines, one ETP caters for container traffic while the other focuses on dry bulk.

The shareholders of the ETPs are stevedoring companies. Neither the Government, nor the Port Authority participates in the pools. In the ports of Leixões and Lisbon, a trade union representative sits on the Board of the ETP. In Aveiro, the unions also acted as shareholders.

The ETPs do not use hiring halls.

1570. Under national social security arrangements, pool workers from the port labour pool receive guaranteed pay in periods when they are without work.

1571. Practically, rules on labour arrangements are enforced by the Labour Ministry, the Transport Ministry, the port authorities, the terminal operators and the trade unions. Sanctions do apply to breaches of rules on employment of port workers.

1572. To a large extent, the relationship between employers and workers is governed by the port-wide collective agreements.

In Lisbon and Figueira, these agreements confirm, for example, that no port work may be performed by other workers than the port workers within the meaning of the collective agreement²⁰²⁶ and that all port workers must possess a professional card²⁰²⁷. In Douro and Leixões, the Collective Agreement confirms the exclusive right of the ETP to supply temporary and occasional workers²⁰²⁸ and to temporarily replace permanent staff of the port operators²⁰²⁹.

²⁰²⁶ Cl. 2(1) of the Annex to the Collective Agreement for Lisbon; Cl. 2(1) of the Collective Agreement for Figueira.

²⁰²⁷ Cl. 8 of the Collective Agreement for Lisbon; Cl. 8 of the Collective Agreement for Figueira.

²⁰²⁸ Cl. 17(1) of the Collective Agreement for Douro-Leixões of 2012.

²⁰²⁹ Cl. 22(3) of the Collective Agreement for Douro-Leixões of 2012.

In Lisbon and Figueira, all workers must:

- (1) have attended school until the 9th year;
- (2) be 18 years;
- (3) possess a driver's licence;
- (4) be physically robust and medically fit;
- (5) have attended the basic port worker's course²⁰³⁰.

In the port of Lisbon, all port workers are classified into three 'types' (*tipos*) A, B and C. Workers of type A were employed by companies or the pool before 31 December 1993 and enjoy priority to be employed permanently by the companies and to be assigned by the pool. Type B workers have an employment contract for an indefinite term with an individual company. The workers of type C are pool workers who are employed for a fixed term by the labour pool (ETP). The latter are used in the event of temporary or exceptional increases in the work and may only perform general work (they are general workers or *trabalhadores de base*)²⁰³¹. Workers of types B and C may be employed for work on board, work on land or tally work²⁰³². The same categorisation of workers is applied in Figueira²⁰³³. Type C workers cannot be employed for tally work.

Workers are further classified into 'categories' (*categorias profissionais*): superintendent, coordinator and general workers; chief, coordinator and general worker in Figueira; superintendent, chief tallyman, coordinator, basic worker and general worker in Douro and Leixões²⁰³⁴. As a rule, all workers hierarchically superior to general workers must be employed as permanent staff of the individual companies²⁰³⁵.

Further, a distinction is made between three professional 'classes' (*classes profissionais*): stevedoring, transportation and tallying. The agreements contain elaborated descriptions of the tasks of the workers belonging to the various professional categories²⁰³⁶. We were informed, however, that these distinctions have been abandoned in practice.

In Lisbon and Figueira, individual companies wishing to recruit new workers must, as a rule, grant priority to existing pool workers of type A; derogations are possible in the event that no workers having the required special competences are available, or all relevant workers refuse

²⁰³⁰ Cl. 10 of the Collective Agreement for Lisbon; Cl. 10 of the Collective Agreement for Figueira; compare Cl. 11 of the Collective Agreement for Douro-Leixões of 2012.

²⁰³¹ Cl. 6 and 19 of the Collective Agreement for Lisbon and Cl. 13(1) of its Annex.

²⁰³² Cl. 12 of the Annex to the Collective Agreement for Lisbon.

²⁰³³ Cl. 6 and 19 of the Collective Agreement for Figueira and Cl. 12 and 13(1) of its Annex.

²⁰³⁴ Cl. 14(3) of the Collective Agreement for Lisbon and Cl. 6(1) of its Annex; Cl. 14(3) of the Collective Agreement for Figueira and Cl. 6(1) of its Annex; Cl. 4 of Annex I to the Collective Agreement for Douro-Leixões of 1993 and Cl. 8(1) of the Agreement for Douro-Leixões of 2012 and Cl. 1 of its Annex.

²⁰³⁵ See, for example, Cl. 7 and 8 of the Annex to the Collective Agreement for Figueira; Cl. 1 of Part I of Annex 1 to the Collective Agreement for Douro-Leixões of 2012 (Cl. 5, 6 and 7 of Annex I to the Collective Agreement for Douro-Leixões of 1993).

²⁰³⁶ Cl. 6 *et seq.* of the Annex to the Collective Agreement for Lisbon; Cl. 6 *et seq.* of the Annex to the Collective Agreement for Figueira; Cl. 5 *et seq.* of the Collective Agreement for Figueira; Cl. 2 of Part II of Annex I to the Collective Agreement for Douro-Leixões of 2012 (Cl. 81 of the Collective Agreement for Douro-Leixões of 1993).

such employment or legitimate grounds are invoked²⁰³⁷. In the case of vacancies for workers of type B, priority must be given to the best ranked workers of type C²⁰³⁸.

To reinforce their complement, the ETPs may use occasional workers (*trabalhadores portuários eventuais*)²⁰³⁹. ETPs may also maintain a reserve of workers who are used to substitute unavailable workers²⁰⁴⁰. If insufficient pool workers are available in Douro and Leixões, employers may employ workers under a contract for a fixed term or occasional workers, but they have to inform the employers' association and the unions²⁰⁴¹.

In case of a shortage of pool workers, companies may exchange their own workers among themselves²⁰⁴².

Companies may refuse to employ individual pool workers in the case of a serious earlier disciplinary offence or for any other legitimate reason accepted by the ETP²⁰⁴³.

In Lisbon, Figueira, Douro and Leixões, the companies have a duty to distribute the work in a fair manner among the workers, according to their aptitudes and the needs of the service. Workers must be available for all work in the course of their working time and can be moved to another task²⁰⁴⁴.

The collective agreements for Lisbon and Figueira contain detailed descriptions of the rights and duties of employers and workers. For example, workers must comply with orders given by their employer, respect working hours, exercise due care and prevent damage to goods and equipment, and carry out tasks for the improvement of productivity²⁰⁴⁵.

The organisation and technical control of operations are the sole competence of the port companies²⁰⁴⁶. The agreements stress that pool workers, too, work under the authority and the

²⁰³⁷ Cl. 9(2)-(3) of the Collective Agreement for Lisbon; Cl. 9(2) and (3) of the Collective Agreement for Figueira.

²⁰³⁸ Cl. 15 of the Annex to the Collective Agreement for Lisbon; Cl. 15 of the Annex to the Collective Agreement for Figueira.

²⁰³⁹ See, for example, Cl. 13 of the Collective Agreement for Lisbon; Cl. 13 of the Collective Agreement for Figueira. The principle is said to apply at all ETPs.

²⁰⁴⁰ Cl. 35 of the Collective Agreement for Lisbon; Cl. 34 of the Collective Agreement for Figueira. This is also said to be valid for all ETPs.

²⁰⁴¹ Cl. 13(1) of the Collective Agreement for Douro-Leixões of 2012; compare Cl. 12(2) of Annex I to the Collective Agreement for Douro-Leixões of 1993.

²⁰⁴² Cl. 18(3) of the Collective Agreement for Lisbon; Cl. 18(3) of the Collective Agreement for Figueira; compare Cl. 4 of Part I of Annex II to the Collective Agreement for Douro-Leixões of 1993.

²⁰⁴³ Cl. 20(2) of the Collective Agreement for Lisbon; Cl. 20(2) of the Collective Agreement for Figueira; compare Cl. 23(4) of the Collective Agreement for Douro-Leixões of 2012 (Cl. 18(4) of the Collective Agreement for Douro-Leixões of 1993).

²⁰⁴⁴ Cl. 23(2) of the Collective Agreement for Lisbon; Cl. 22(2) of the Collective Agreement for Figueira; Cl. 27(2) and 33 of the Collective Agreement for Douro-Leixões of 2012 (Cl. 22 of the Collective Agreement for Douro-Leixões of 1993).

²⁰⁴⁵ Cl. 24-26 of the Collective Agreement for Lisbon; Cl. 23-25 of the Collective Agreement for Figueira, Cl. 89(1) of the Collective Agreement for Figueira; Cl. 27-30 of the Collective Agreement for Douro-Leixões of 2012 (Cl. 81 of the Collective Agreement for Douro-Leixões of 1993).

²⁰⁴⁶ Cl. 27(1) of the Collective Agreement for Lisbon; Cl. 26(1) of the Collective Agreement for Figueira.

instructions of the user company²⁰⁴⁷. The employer has the right to introduce new equipment provided it is safe (and/or workers receive adequate training)²⁰⁴⁸. The agreements stress that pool workers, too, work under the authority and the instructions of the user company²⁰⁴⁹.

In Lisbon and Figueira, individual companies decide on the number of staff they will employ²⁰⁵⁰.

The employer has the right to determine manning levels in cooperation with the superintendent of the workers²⁰⁵¹. In Lisbon and Figueira, gangs shall be composed taking into account:

- (1) technical and economic requirements of the operations concerned;
- (2) the characteristics of the cargo;
- (3) the equipment to be used;
- (4) the type of service to be performed;
- (5) the professional skills of the workers;
- (6) applicable prevention and safety rules²⁰⁵².

Similar criteria now apply in Douro and Leixões²⁰⁵³.

In Lisbon and Figueira, coordinators may, as a rule, not be required to perform general work, and general workers may not be charged with more than one task²⁰⁵⁴.

The collective agreements regulate working times, shifts and overtime²⁰⁵⁵. In Lisbon and Figueira, workers are distributed over shifts²⁰⁵⁶. Overtime must be distributed fairly in accordance with special schemes²⁰⁵⁷.

²⁰⁴⁷ Cl. 20(4) of the Collective Agreement for Lisbon; Cl. 20(4) of the Collective Agreement for Figueira.

²⁰⁴⁸ See and compare Cl. 27(3) of the Collective Agreement for Lisbon; Cl. 26(3) of the Collective Agreement for Figueira; Cl. 32 of the Collective Agreement for Douro-Leixões of 2012 (compare Cl. 21 of the Collective Agreement for Douro-Leixões of 1993).

²⁰⁴⁹ Cl. 20(4) of the Collective Agreement for Lisbon; Cl. 20(4) of the Collective Agreement for Figueira.

²⁰⁵⁰ Cl. 14(1) of the Collective Agreement for Lisbon; Cl. 14(1) of the Collective Agreement for Figueira.

²⁰⁵¹ Cl. 29(1) of the Collective Agreement for Lisbon; Cl. 28(1) of the Collective Agreement for Figueira; compare Cl. 31 and 34 of the Collective Agreement for Douro-Leixões of 2012 (Cl. 20(1) and 23 of the Collective Agreement for Douro-Leixões of 1993 and Cl. 1(1) of Part I of its Annex II).

²⁰⁵² Cl. 29(2) of the Collective Agreement for Lisbon; Cl. 28(2) of the Collective Agreement for Figueira.

²⁰⁵³ Cl. 31(2) and 34(2) of the Collective Agreement for Douro-Leixões of 2012 (compare compare Cl. 20(2) and 23 of the Collective Agreement for Douro-Leixões of 1993; under this agreement, specific safety-oriented manning rules applied. For example, a minimum gang of two workers had to be used for lashing and unlash work in the ports of Douro and Leixões – at least if this work is not carried out by the ship's crew: see Cl. 5(2) of Part I of Annex II and further Part II of the Collective Agreement for Douro-Leixões of 1993).

²⁰⁵⁴ Cl. 29(4)-(5) of the Collective Agreement for Lisbon; Cl. 28(4)-(5) of the Collective Agreement for Figueira.

²⁰⁵⁵ Cl. 30 *et seq.* of the Collective Agreement for Lisbon; Cl. 29 *et seq.* of the Collective Agreement for Figueira; Cl. 35 *et seq.* of the Collective Agreement for Douro-Leixões of 2012 (Cl. 24 *et seq.* of the Collective Agreement for Douro-Leixões of 1993).

²⁰⁵⁶ Cl. 34(1) of the Collective Agreement for Lisbon; Cl. 33(1) of the Collective Agreement for Figueira.

²⁰⁵⁷ Cl. 38(1) of the Collective Agreement for Lisbon; Cl. 37(1) of the Collective Agreement for Figueira.

Workers must be available for all work in the course of their working time and can be moved to another task²⁰⁵⁸.

Disciplinary authority rests with the company²⁰⁵⁹, but the unions must be informed of these proceedings²⁰⁶⁰.

- Facts and figures

1573. There are 21 port operators and 9 pool companies in Portuguese ports, distributed as follows over individual ports:

Table 97. Number of port operators and pool companies in Portuguese ports, November 2012 (source: Instituto Portuário e dos Transportes Marítimos)

Port	Number of operators	Number of pool companies
Aveiro	2	1
Douro and Leixões	2	1
Faro / Portimão	1	0
Figueira da Foz	1	1
Lisboa	7	1
Setúbal	4	2
Sines	2	2
Viana do Castelo	2	1
Total	21	9

1574. According to IPTM there are 796 port workers in Portuguese ports, including 579 workers employed for an indefinite period and 217 fixed-term workers.

²⁰⁵⁸ Cl. 17 of the Collective Agreement for Lisbon; Cl. 17 of the Collective Agreement for Figueira; compare Cl. 21(3) and 33(1) and (2) of the Collective Agreement for Douro-Leixões of 2012 (Cl. 19(3) of the Collective Agreement for Douro-Leixões of 1993).

²⁰⁵⁹ Cl. 77 of the Collective Agreement for Lisbon; Cl. 75 of the Collective Agreement for Figueira; Cl. 91 of the Collective Agreement for Figueira; Cl. 73 of the Collective Agreement for Douro-Leixões of 2012 (Cl. 81 of the Collective Agreement for Douro-Leixões of 1993).

²⁰⁶⁰ Cl. 84(5)(d) of the Collective Agreement for Lisbon; Cl. 82(5)(d) of the Collective Agreement for Figueira; Cl. 91 of the Collective Agreement for Figueira.

Table 98. Number of port workers in Portuguese ports, 31 July 2012 (source: Instituto Portuário e dos Transportes Marítimos)

Port	Contract for an indefinite term			Contract for a fixed term		
	concluded before 1993	concluded after 1993	Total	for more than 6 months	for less than 6 months	Total
Aveiro	60	22	82	0	0	0
Faro / Portimão	0	0	0	0	0	0
Figueira da Foz	15	0	15	0	0	0
Leixões	91	0	91	20	10	30
Lisboa	79	181	260	57	0	57
Setúbal	27	0	27	0	0	0
Sines	30	57	87	130	0	130
Viana do Castelo	17	0	17	0	0	0
Subtotal	319	260	579	207	10	217

In addition to these port workers, there is an unknown number of occasional workers.

The share of pool workers in the total number of port workers differs considerably between ports. In Lisbon, for example, we were informed that half of the workers are pool workers and the others terminal personnel. In Setúbal, there are some 57 terminal workers, and 300 casual workers (figures for mid 2012).

1575. Reportedly, all port workers have joined a trade union. There are six trade unions for port workers²⁰⁶¹, among which the Stevedores' and Transport Workers' Union of the Centre and South of Portugal (Sindicato dos Estivadores, Trabalhadores do Tráfego do centro e sul de Portugal) claims to represent 80 per cent of port workers in the country²⁰⁶². The unions are

²⁰⁶¹ These are:

- Sindicato dos Estivadores, Trabalhadores do Tráfego e Conferentes Marítimos do Centro e Sul de Portugal, SETTCMSP;
- Sindicato dos Estivadores, Lingadores e Conferentes do Porto de Viana do Castelo, SELCVC;
- Sindicato dos Estivadores, Conferentes e Tráfego dos Portos do Douro e Leixões, SECTPDL;
- Sindicato dos Trabalhadores do Porto de Aveiro, STPA;
- Associação Sindical dos Trabalhadores Administrativos, Técnicos e Operadores dos Terminais de Carga Contentorizada do Porto de Sines, SINDICATO XXI;
- Sindicato dos Trabalhadores Portuários de Mar e Terra de Sines, SINPORSINES.

²⁰⁶² See X., "Governo aprova novo regime do trabalho portuário", *Económico* 20 September 2012, http://economico.sapo.pt/noticias/governo-aprova-novo-regime-do-trabalho-portuario_152230.html;

organised in two national federations: the Confederation of Maritime and Port Unions (Confederação dos Sindicatos Marítimos e Portuários, FESMARPOR) and the National Federation of Port Workers' Unions (Federação Nacional de Sindicatos dos Trabalhadores Portuários, FNSTP)²⁰⁶³. Both are said to be ITF-affiliated²⁰⁶⁴.

9.17.4. Qualifications and training

1576. As we have mentioned²⁰⁶⁵, the collective agreements for the ports of Lisbon and Figueira set the attending of training courses as a condition for employment. Their Annexes expressly confirm that no worker has access to the job unless he is properly trained²⁰⁶⁶.

Employers have a duty to promote training for their workers, and the latter have a duty to attend such courses²⁰⁶⁷.

Some local agreements provide that no worker may be employed as a crane or equipment operator unless he is properly trained²⁰⁶⁸. Multi-skilling through training is encouraged²⁰⁶⁹.

1577. Training for port workers is organised both at port and at company level. There is no national port training school.

1578. According to IPTM, the following types of formal training are available:

- induction courses for new entrants;

X., "Portos: balanço «muito positivo» dos dois dias de greve", Agência Financeira 21 September 2012, <http://www.agenciafinanceira.iol.pt/economia-nacional/portos-estivadores-greve-ultimas-noticias/1376466-5205.html>.

²⁰⁶³ FNSTP also unites trade unions of dock workers in Madeira and the Azores.

²⁰⁶⁴ The website of IDC mentions as its affiliates: Sindicato de Lisboa ETC, Sindicato de Aveiro, Federação Nacional dos Sindicatos de Trabalhadores Portuários, and Viana do Castelo (http://www.idcdockworkers.org/index.php?option=com_content&task=view&id=51&Itemid=45&lang=english).

²⁰⁶⁵ See *supra*, para 1572.

²⁰⁶⁶ Cl. 14(1) of the Annex to the Collective Agreement for Lisbon; Cl. 14(1) of the Annex to the Collective Agreement for Figueira.

²⁰⁶⁷ Cl. 24(a) and 25(1)(i) as well as 124 and 125 of the Collective Agreement for Lisbon; Cl. 23(a) and 24(1)(i) as well as 122 and 123 of the Collective Agreement for Figueira; Cl. 10, 27(1)(d), 28(d), 29(1)(i) and 87-89 of the Collective Agreement for Douro-Leixões of 2012 (Cl. 79, 80, 87(1)(d), 88(c) and (f), and 89(1)(i) of the Collective Agreement for Douro-Leixões of 1993 as well as Cl. 11(1) of its Annex I).

²⁰⁶⁸ Cl. 2(2) of Part II of Annex I to the Collective Agreement for Douro-Leixões of 2012 (Cl. 10(2) of Annex I to the Collective Agreement for Douro-Leixões of 1993).

²⁰⁶⁹ Cl. 2(3) of Part II of Annex I to the Collective Agreement for Douro-Leixões of 2012 (Cl. 10(4) of Annex I to the Collective Agreement for Douro-Leixões of 1993).

- courses for the established port worker;
- training in safety and first aid;
- specialist courses for certain categories of port workers such as operators of cranes, container equipment and forklifts as well as for tallymen.

Not all ports have similar arrangements, however. In Setúbal, for example, no permanent training programmes seem to exist.

1579. There are no curricula for the training of port workers in Portugal.

In the 1980s, the Instituto do Trabalho Portuário published a series of port labour courses²⁰⁷⁰, but today these documents are used for reference purposes only.

The unions participate in the elaboration of courses. One union representative stated that most available training manuals were prepared by the unions.

9.17.5. Health and safety

- *Regulatory set-up*

1580. The Occupational Safety and Health Act contains general rules on the provision of safe working conditions, the prevention of occupational risks, the development of policies, education, training and information, *etc.* It contains no special rules for ports.

1581. As we have mentioned²⁰⁷¹, Portugal has no specific laws or regulations on health and safety in port labour.

However, Decree-Law No. 298/93 imposes specific sanctions for non-compliance with applicable health and safety rules (Art. 32(1)(b)).

²⁰⁷⁰

See <http://opac.iefp.pt/ipac20/ipac.jsp?session=13375994W04H5.220023&menu=search&aspect=subtab11&npp=20&ipp=20&spp=20&profile=crc&ri=&term=portuario&index=.GW&aspect=subtab11#focus>.

²⁰⁷¹ See *supra*, para 1554.

1582. Health and safety is further regulated in the collective agreements.

In Lisbon and Figueira, for example, workers must comply with health and safety regulations and use collective and personal protective equipment²⁰⁷². Also, the employers and unions agreed to implement international and national health and safety rules²⁰⁷³.

1583. Practically, health and safety rules are enforced with the help of national employment authorities, the port authority, terminal companies and the trade unions.

- Facts and figures

1584. IPTM states that there are no statistics on the number, types and causes of occupational accidents involving port workers in Portugal. Reportedly, only accident statistics on employees of the port authorities are maintained. We received no further statistics from either the Portuguese Labour Inspectorate or local employers' associations.

9.17.6. Policy and legal issues

1585. Satisfaction with the port labour regime adopted in 1993 appears very limited.

Over the years, various consecutive propositions for the reform of port work were put forward.

1586. In 1997, the Portuguese Government published a White Paper entitled 'Maritime and Ports Policy at the approach of the 21st Century'²⁰⁷⁴ in which it proposed measures to deregulate port work, ensuring the right of cargo handling companies to freely contract

²⁰⁷² Cl. 25(1)(j) and 121(1) of the Collective Agreement for Lisbon; Cl. 24(1)(j) and 119(1) of the Collective Agreement for Figueira; compare Cl. 27(1)(c), 28(e), 29(1)(j) and 81-86 of the Collective Agreement for Douro-Leixões of 2012 (Cl. 76-78, 88(d) and 89(1)(j) of the Collective Agreement for Douro-Leixões of 1993).

²⁰⁷³ Cl. 120(2) of the Collective Agreement for Lisbon; Cl. 118(2) of the Collective Agreement for Figueira; Cl. 83(2) of the Collective Agreement for Douro-Leixões of 2012 (Cl. 77(2) of the Collective Agreement for Douro-Leixões of 1993).

²⁰⁷⁴ Livro Branco: Política Marítimo-Portuária Rumo ao Século XXI.

labour²⁰⁷⁵. The working document was intended to be the starting point for a new maritime and ports policy. The National Federation of Dockers' Unions pointed out that the intended deregulation would be contrary to ILO Convention No. 137. To our knowledge, the document did not lead to any further reform of the legal regime of port labour.

1587. In 2006, the Government approved Strategic Orientations for the Port Maritime Sector. This document suggested the codification of port legislation in one legislative decree (or Port Act). A draft Port Act was presented in Parliament in 2009²⁰⁷⁶. Reportedly, this draft Act would have defined 17 specific exclusions from the concept of "port operations", removing from the scope of activities of the stevedoring companies (and consequently from the exclusive right of the port workers) *inter alia* yard operations, gate controls, river and feeder traffic by boats and barges, offshore and estuarine work and cargo operations in port zones which are integrated in logistics platforms²⁰⁷⁷. Reportedly, these exclusions targeted the port of Lisbon, located in the Tagus river estuary. We were informed that these proposals are still on the table.

1588. Replying to our questionnaire, the governmental agency IPTM stated that rules on employment are properly enforced.

In terms of future policy, IPTM explained that the labour costs for cargo handling could be lowered through the non-use of port workers for certain tasks which are now considered port work.

IPTM mentions the following restrictions on employment:

- priority of employment for pre-1993 workers;
- exclusive rights for certain categories of workers;
- low flexibility in the hiring process.

For IPTM, these restrictions are major competitive handicaps.

IPTM could identify no sub-standard labour conditions in Portuguese ports.

²⁰⁷⁵ See X., "Dockers' unions opposed to dock work reform", 28 March 1997, <http://www.eurofound.europa.eu/eiro/1997/03/inbrief/pt9703109n.htm>.

²⁰⁷⁶ See http://www.idcdockworkers.org/index.php?option=com_content&task=view&id=69&Itemid=38&lang=english.

²⁰⁷⁷ See http://www.idcdockworkers.org/index.php?option=com_content&task=view&id=64&Itemid=38&lang=english.

1589. Despite the reform scheme of 1993, the applicable laws and regulations and collective agreements continue to impose far-reaching restrictions on employment.

Our summary of current arrangements above²⁰⁷⁸ points out that these restrictions include, for example, the preferential right of port workers, the extension of this preferential right to activities beyond the ship/shore interface, the distinction between various types, categories and classes of workers, with special privileges for older type A workers and the co-decision right of unionised workers in relation to manning levels.

A recent media interview with Secretary of State Sérgio Monteiro confirms the serious negative impact on the competitiveness of Portuguese ports of rigid rules obliging port operators to hire personnel for tasks beyond the normal range of port work, to take into account the distinction between type A, type B and type C workers and to pay for the availability of these workers, even if they do not perform any task. Especially type A workers enjoy employment privileges regardless of their productivity or skills²⁰⁷⁹.

1590. The union density of 100 per cent and the particularly strong protection of union rights in the collective agreements suggest that closed shop issues may deserve further attention. In Lisbon, Figueira, Douro and Leixões, union membership fees are immediately deducted by the employer²⁰⁸⁰. In the former two ports, workers unable to present a port worker's identification card must be permitted access to the workplace upon production of a union membership card²⁰⁸¹. In the same ports, superintendents or chiefs – *i.e.* the highest professional category who co-decides on manning scales – must be union members²⁰⁸². Media reports confirm that access to the port labour market is controlled by the unions²⁰⁸³. Trade union density in Portugal as a whole is between 19 and 30 per cent²⁰⁸⁴. IPTM commented that in practice, union membership is not a requirement.

²⁰⁷⁸ See *supra*, para 1562 *et seq.*

²⁰⁷⁹ See Moura Pedro, C., "Sérgio Monteiro – Secretário de Estado das Obras Públicas, Transportes e Comunicações. Mudanças para aumentar a competitividade", *Transportes* 13 January 2012, <http://www.transportesemrevista.com/Default.aspx?tabid=210&language=pt-PT&id=3236&area=undefined>.

²⁰⁸⁰ Cl. 126 of the Collective Agreement for Lisbon; Cl. 124 of the Collective Agreement for Figueira; Cl. 90 of the Collective Agreement for Douro-Leixões of 2012 (Cl. 81 of the Collective Agreement for Douro-Leixões of 1993).

²⁰⁸¹ Cl. 139(3) of the Collective Agreement for Lisbon; Cl. 137(3) of the Collective Agreement for Figueira.

²⁰⁸² Cl. 17(1) of the Annex to the the Collective Agreement for Lisbon; Cl. 17(1) of Annex to the Collective Agreement for Figueira.

²⁰⁸³ Moura Pedro, C., "Sérgio Monteiro – Secretário de Estado das Obras Públicas, Transportes e Comunicações. Mudanças para aumentar a competitividade", *Transportes* 13 January 2012, <http://www.transportesemrevista.com/Default.aspx?tabid=210&language=pt-PT&id=3236&area=undefined>.

²⁰⁸⁴ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

1591. Self-handling is not allowed²⁰⁸⁵. A major international ro-ro operator using the port of Lisbon confirmed to us that, unlike the situation in Amsterdam, Hamburg and Tilbury, the crew is not allowed to move cargoes inside the ship. However, the cargo may be secured by the ship's crew. This is in conformity with the applicable laws and regulations as set out above²⁰⁸⁶.

1592. Furthermore, employment of temporary workers via job recruitment or employment agencies outside the pool is not allowed.

1593. Reportedly, port workers in Portugal cannot be transferred temporarily from employer to employer, nor can they be transferred temporarily to another port.

1594. A recent international media report confirms that in Portuguese ports, there is no competitive labour market and that port workers are highly unionised and have huge bargaining power because of their ability to block imports and exports²⁰⁸⁷. We also received signals of wage rates for Portuguese port workers being excessively high compared with the situation in northern ports such as Hamburg. The latter issue is beyond the scope of the present study however.

1595. In 2012, the ETP in the Port of Aveiro filed for insolvency proceedings. At the time of writing, it operated under a recovery programme.

²⁰⁸⁵ See details *supra*, para 1566. U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) *All longshore activities.*

(b) *Exceptions:*

(1) *Military operations,*

(2) *Operations in an emergency, when under the supervision of the maritime authorities,*

(3) *Security or inspection operations,*

(4) *Loading and discharge of supplies for the vessel and its crew,*

(5) *Loading and discharge of fuel and petroleum products at special terminals,*

(6) *Loading and discharge of chemical products if required for safety reasons,*

(7) *Placing of trailers and similar material in parking areas when done before loading or after discharge,*

(8) *Cleaning of the vessel,*

(9) *Loading, discharge, and disposal of merchandise in other boats, and*

(10) *Opening and closing hatches.*

²⁰⁸⁶ See *supra*, para 1566.

²⁰⁸⁷ X., "Ports in the storm", *The Economist* 24 March 2012, <http://www.economist.com/node/21551072>.

1596. We received no particular complaints about health and safety or training issues. IPTM stated that health and safety rules are properly enforced.

9.17.7. Appraisals and outlook

1597. The General Survey of national implementation of ILO Convention No. 137 published by ILO in 2002 noted a fundamental divergence of opinion on the port labour system between Portuguese employers and unions.

The Confederation of Portuguese Industry (CIP) reported to ILO that Convention No. 137 and Recommendation No. 145 refer to an employment and labour situation that has changed since the texts were adopted in 1973 and that it is necessary to revise the national legislation to take into account the economic imperatives that currently prevail in the port sector, and for the same reason, the ILO's instruments should also be revised.

The General Union of Workers (UGT) regretted that Portuguese legislation relating to ports, which had been revised in recent years, allowed less room for the consultation and participation of trade unions in the management and administration of ports. According to the UGT, less attention was also being paid to social matters and to the impact on workers of the structural adjustments carried out in the sector. The conditions for the registration of workers who are available for dock work were too lax. This situation had resulted in more difficult working conditions, which an ineffective labour inspectorate is not capable of remedying. The UGT deplored that no effect was given to the protective provisions contained in the Convention, which the Government has ratified, and the Recommendation²⁰⁸⁸.

1598. In 2007, both parties repeated their positions. The employers' organisations confirmed that the Convention is inadequate and should be denounced. In the view of the General Union of Workers, the specific characteristics of dock work required the adoption of special rules, particularly in relation to occupational health and safety and the vocational training of the workers concerned²⁰⁸⁹.

²⁰⁸⁸ International Labour Conference (90th Session 2002), *General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, <http://www.ilo.org/public/english/standards/reln/ilc/ilc90/pdf/rep-iii-1b.pdf>, 87, para 216.

²⁰⁸⁹ International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), 97th Session, 2008, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf, 693.

1599. The governmental agency IPTM informed us that it does not consider the current port labour regime in Portugal satisfactory and also that legal certainty is insufficient. Depending on the port, it regards the relationship between employers and the unions as satisfactory. IPTM believes that the current system has a negative impact on the competitive position of Portuguese ports.

1600. An expert informed us that manpower costs account for a large share of port call costs, especially because the legal framework did not follow the technological evolution in cargo handling. Current arrangements are not in line with this technological evolution and do not contribute to the sustainability and competitiveness of Portuguese ports. The issue of high labour costs for cargo handling might be addressed through general EU guidelines which would then be adapted by each EU Member State.

1601. Portugal has been severely hit by the recent economic crisis and especially by the present sovereign debt crisis.

With the involvement of the EU and the International Monetary Fund (IMF), a financing package was designed to allow Portugal some breathing space from borrowing in the markets while it demonstrates implementation of the policy steps needed to get the economy back on track²⁰⁹⁰.

The current Memorandum of Understanding on Specific Economic Policy Conditionality envisages the following reforms in the port sector:

5.25. Define a strategy to integrate ports into the overall logistic and transport system. Specify the objectives, scope and priorities of the strategy, and the link to the overall Strategic Plan for the Transport sector.

5.26. Develop a legal framework to facilitate the implementation of the strategy and to improve the governance model of the ports system. In particular, define the necessary measures to ensure the separation of regulatory activity, port management and commercial activities.

5.27. Specify in a report the objectives, the instruments and the estimated efficiency gains of initiatives such as the interconnection between CP Cargo and Ex-Port, the Port Single Window and Logistic Single Window.

5.28. Revise the legal framework governing port work to make it more flexible, including narrowing the definition of what constitutes port work, bringing the legal framework closer to the provisions of the Labour Code²⁰⁹¹.

²⁰⁹⁰ IMF, "IMF Executive Board Approves an €26 Billion Extended Arrangement for Portugal", Press Release No. 11/190, 20 May 2011, <http://www.imf.org/external/np/sec/pr/2011/pr11190.htm>.

²⁰⁹¹ IMF Country Report No. 11/279.

1602. Currently, a new reform process aims at the modernisation of the port labour regime and at a harmonisation with the Labour Code. Its objective is to enhance synergies between ports, to reduce costs for the different stakeholders and to increase the competitiveness of Portuguese ports.

On 10 November 2011, the Portuguese Council of Ministers adopted Resolution No. 45/2011 on Strategic Plans for Transport. In this Resolution, the Government acknowledges that in order to ensure the development and increasing efficiency of the port sector, it is essential to improve the port governance system as well as the port labour regime with a view to greater competitiveness and increased national exports²⁰⁹².

By mid-2012, legislative proposals had been prepared which would confine the scope of rules on port labour to the loading and unloading of ships, improve flexibility and lower costs through a cap on overtime, regulate early retirement for older workers, open up the market to temporary work agencies and abolish professional cards for port workers.

At the time of writing, the new bill had been approved by the Portuguese Government on 20 September 2012 and would be put before Parliament. It was based on an agreement with the National Federation of Port Workers' Unions and the General Workers' Union but not with the Stevedores' and Transport Workers' Union of the Centre and South of Portugal which claims to represent eighty per cent of all port workers in Portugal. The reform was expected to reduce the cost of port calls by 25 to 30 per cent²⁰⁹³.

²⁰⁹²

See

also

http://www.idcdockworkers.org/index.php?option=com_content&task=view&id=169&Itemid=9&lang=english.

²⁰⁹³ See X., "Governo aprova novo regime do trabalho portuário", *Económico* 20 September 2012, http://economico.sapo.pt/noticias/governo-aprova-novo-regime-do-trabalho-portuario_152230.html; X., "Portos: balanço «muito positivo» dos dois dias de greve", *Agência Financeira* 21 September 2012, <http://www.agenciafinanceira.iol.pt/economia-nacional/portos-estivadores-greve-ultimas-noticias/1376466-5205.html>.

9.17.8. Synopsis

1603.		
SYNOPSIS OF PORT LABOUR IN PORTUGAL²⁰⁹⁴		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 5 main mainland seaports • Landlord model • 67m tonnes • 9th in the EU for containers • 44th in the world for containers • 21 employers • 796 port workers • Trade union density: 100% 	<ul style="list-style-type: none"> • <i>Lex specialis</i> (Decree-Law of 1993, Decree of 1994) • Party to ILO C137 • No national CBA, but port CBAs • Regulations of Labour Pools • Local usages • Reforms in 1989 and 1993 • 3 categories of port workers: <ul style="list-style-type: none"> (1) permanent workers employed by individual operators under general labour law (2) pool workers employed under <i>lex specialis</i> (3) occasional workers • Labour pools must be licensed • One labour pool in every major port, with some exceptions • Shares in Labour Pools owned by stevedoring companies • No hiring halls 	<ul style="list-style-type: none"> • Priority of permanent employment for old pool workers • Priority of engagement for pool workers • Extension of regime beyond ship/shore interface • Exclusive rights for certain categories of workers • Closed shop • Low flexibility of hiring process • Limitations on authority of operators to decide on manning levels • Ban on self-handling • Ban on temporary agency work • Forthcoming reform scheme
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Training courses organised at port and company level 	<ul style="list-style-type: none"> • Training requirements in local CBAs • No national certification • Multi-skilling encouraged 	<ul style="list-style-type: none"> • No specific issues
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No specific statistics available 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • Provisions in port CBAs • No Party to ILO C32 or C152 	<ul style="list-style-type: none"> • Lack of statistics

²⁰⁹⁴ 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.

9.18. Romania

9.18.1. Port system²⁰⁹⁵

1604. Romania has ports located on the Black Sea shore and along the Danube River. The largest port in Romania is the port of Constanța, with Mangalia and Midia as smaller satellite ports. Constanța has become a major distribution centre serving Central and Eastern Europe.

The Danube ports mainly handle inland barge traffic but also accommodate seagoing vessels.

In 2011, the Port of Constanța handled 46 million tonnes of cargo, of which over 37 million tonnes of maritime cargo²⁰⁹⁶. The Danube ports of Galati, Braila and Tulcea handled at least 2.4 million tonnes of seaborne cargo. As a result, total maritime traffic in Romanian ports amounted to some 40 million tonnes in 2011. As for container throughput, Romanian ports ranked 16th in the EU and 72th in the world in 2010²⁰⁹⁷.

1605. Romanian ports are owned by the State and managed by state-owned companies.

In the Port of Constanța the cargo related services are mainly carried out by private companies in a competitive environment, applying free market principles along the lines of a landlord model.

The same system applies in other Romanian ports.

9.18.2. Sources of law

1606. Ordinance No. 22/1999 on the Administration of Ports and Waterways, the Use of Water Transport Infrastructure of the Public Domain and the Development of Shipping Activities in

²⁰⁹⁵ For general information on Romanian ports, see www.portofconstantza.com and www.romanian-ports.ro; also X., "Maritime Harbor Activities In Romania. Social Dialogue", 2009, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158937.pdf; Martens, R., *Empowering Romania as the Eastgate trade hub of Europe. Joint Taskforce PESP Constanta*, September 2010, 279 p., [http://www.archicom.nl/media/Downloads/Expansion%20Port%20of%20Constanta%20\(PESP%20Constanta\).pdf](http://www.archicom.nl/media/Downloads/Expansion%20Port%20of%20Constanta%20(PESP%20Constanta).pdf); for statistics, see <http://www.mt.ro/nou/articol.php?id=statistici>; http://www.romanian-ports.ro/html/trafic_portuar.html; http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

²⁰⁹⁶ See the *Annual Report 2011*, <http://www.portofconstantza.com>, 15.

²⁰⁹⁷ Container ranking based on UNCTAD, *Review of Maritime Transport 2011*, New York and Geneva, UNCTAD / UN, 2011, http://unctad.org/en/Docs/rmt2011_en.pdf, 201-203.

Ports and Inland Waterways (hereinafter: 'Ports and Waterways Ordinance')²⁰⁹⁸ regulates the management of Romanian ports and contains a separate chapter on port labour (Chapter X). As we shall explain below²⁰⁹⁹, the Ordinance was repeatedly revised, most recently, after a protracted process, in 2010²¹⁰⁰.

The Ports and Waterways Ordinance expressly provides that port labour is regulated by the Ordinance, by labour legislation and by international agreements and conventions to which Romania is a Party (Art. 59).

The Ports and Waterways Ordinance was implemented by, *inter alia*, Order No. 287 of 27 February 2003 on the Authorisation of Economic Operators Performing Shipping Activities (hereinafter: 'Order on Authorisation of Port Operators')²¹⁰¹ and the Procedural Rules on the Issuance of Port Worker's Books and the Registration of Port Workers of 5 April 2011 (hereinafter: 'Procedural Rules on Port Labour')²¹⁰².

Port authorities are also involved in the management of free zones where goods can be handled and stored under a customs and profit tax exemption established by specific laws and regulations which are however beyond the scope of the present study. The free zones at Sulina, Constanța / Basarabi, Galatzi, Braila and Giurgiu are located in or close to port areas. Reportedly, the laws and regulations on labour in ports equally apply in the free zones.

1607. Health and safety in port labour is governed by Act No. 319/2006 on Safety and Health at Work²¹⁰³ which was implemented by Government Decree No. 1425 of 2006²¹⁰⁴.

Another relevant instrument is Government Decision No. 1051 of 9 August 2006 "on the minimum safety and health requirements for the manual handling of loads that present a risk to workers, particularly of back injury"²¹⁰⁵.

²⁰⁹⁸ Ordonanta 22 (r. 2) din 29 ianuarie 1999 (Ordonanta 22/1999) privind administrarea porturilor si a cailor navigabile, utilizarea infrastructurilor de transport naval apartinand domeniului public, precum si desfasurarea activitatilor de transport naval in porturi si pe caile navigabile interioare. The Ordinance was approved by Lege nr. 528 din 17 iulie 2002 pentru aprobarea Ordonantei Guvernului nr. 22/1999 privind administrarea porturilor si serviciile in porturi.

²⁰⁹⁹ See *infra*, para 1612.

²¹⁰⁰ Lege nr. 108 din 3 iunie 2010 privind aprobarea Ordonanței de urgență a Guvernului nr. 86/2007 pentru modificarea și completarea Ordonanței Guvernului nr. 22/1999 privind administrarea porturilor și a căilor navigabile, precum și desfășurarea activităților de transport naval în porturi și pe căi navigabile. On the background of the latter Act, see *infra*, para 1612.

²¹⁰¹ Ordinul 287 din 27 februarie 2003 (Ordinul 287/2003) privind autorizarea agentilor economici care desfasoara activitati de transport naval.

²¹⁰² Metodologia din 5 aprilie 2011 (Metodologia din 2011) de eliberare a carnetelor de lucru in port si de inregistrare a muncitorilor portuari.

²¹⁰³ Legea nr. 319 din 14 iunie 2006 securității și sănătății în muncă.

²¹⁰⁴ Hotararea de Guvern 1425 din 2006 pentru aprobarea Normelor metodologice de aplicare a prevederilor Legii securitatii si sanatatii in munca nr. 319 din 2006.

²¹⁰⁵ Hotărâre nr. 1051 din 9 august 2006 privind cerințele minime de securitate și sănătate pentru manipularea manuală a maselor care prezintă riscuri pentru lucrători, în special de afecțiuni dorsolombare.

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 2003²¹⁰⁶.

1608. Romania ratified ILO Convention No. 137²¹⁰⁷, but it is not bound by ILO Conventions Nos. 32 or 152.

1609. Currently, there is no port-specific national collective labour agreement in Romania. Reportedly, provisions on port labour were included in a national collective labour agreement for the transport sector for the period 2008-2010, which has now expired. For the employers' side, the agreement was concluded by the national employers' association CNPR which consulted sectoral associations such as AAOPFR and UPIR²¹⁰⁸. We were unable to consult this document.

We were also informed that company collective agreements were concluded at every port operator. We were unable to consult such agreements.

9.18.3. Labour market

- Historical background

1610. To our knowledge, port labour in Romania was first regulated by the Act on the Organisation of Port Labour of 1931 which reserved port labour to workers permanently registered with the Harbour Master's Office. The workers were employed on the basis of a rotation system. The Act also set up a Port Labour Committee made up of the regional Labour Inspector, two representatives of port employers and two representatives of the workers, joined by the Harbour Master, who only had a consultative vote²¹⁰⁹.

²¹⁰⁶ Ordin nr. 320/2006 din 03/03/2006 pentru modificarea și completarea Ordinului ministrului lucrărilor publice, transporturilor și locuinței nr. 727/2003 privind aprobarea cerințelor și procedurilor armonizate pentru încărcarea și descărcarea în siguranță a vrachierelor; Ordin nr. 727/2003 din 21/05/2003 privind aprobarea cerințelor și procedurilor armonizate pentru încărcarea și descărcarea în siguranță a vrachierelor.

²¹⁰⁷ Decret nr. 83 din 23 iulie 1975 privind ratificarea unor conventii ale Organizației Internaționale a Muncii.

²¹⁰⁸ On these organisations, see *infra*, para 1625.

²¹⁰⁹ X., "Maritime Harbor Activities In Romania. Social Dialogue", 2009, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158937.pdf, unpaginated, item 4.2.

1611. The current pattern of port management and port labour was elaborated over the past two decades. The main instrument adopted after the fall of communism in 1989 is the Ports and Waterways Ordinance of 1999, which continues to apply today, albeit in a revised version. Even if Romania ratified ILO Convention No. 137 in 1975, it did not enact any legislation for its implementation until the adoption of the first version of the Ports and Waterways Ordinance.

1612. Between 2004 and 2010, serious issues arose over the functioning and the existence of the port labour pool in Constanța, the eradication of illegal work in the port and, subsequently, a reform of port labour legislation²¹¹⁰.

First of all, in implementation of the Ports and Waterways Ordinance of 1999, as amended in 2003 – and, for that matter, of ILO Convention No. 137 – the Port Labour Agency of Constanța was established in August 2004²¹¹¹. The founding partners were the trade union FNSP, 6 port operators and the Port Administration. It ensured payment of a minimum wage to some 60 to 70 workers who presented themselves for work on a daily basis or participated in multi-skilling courses. However, almost simultaneously, but without any specific legal basis, the private work agency Armoni Prest was established. Since the law did not regulate the legal nature of unemployment payments to workers (it was neither social aid, nor unemployment benefit), both entities were abolished after only six months. Both the employers' organisation and the trade union regretted this development, as some employers took in workers without legal contracts of employment, against wages three to four times lower. This type of illegal activity, including excessive overtime, was said to cause serious health and safety risks. In 2005 and 2006 inspections revealed that over 80 per cent of workers entering the port did not have permits or labour licences and possessed no or insufficient know-how. Another worrying phenomenon was that port operators dismissed hundreds of workers, only to replace them with illegal or temporary workers. In addition, trade union FNSP pointed out that undeclared work in the port caused distortions of competition between port operators.

In the first half of 2006 the trade unions urged the Government to combat illegal or undeclared work in the port.

ETF supported FNSP's case in the following open letter to the Prime Minister of Romania:

²¹¹⁰ The following notes are to a large extent literally based on Ciutacu, C., "Port workers initiate protest action against illegal work", 11 January 2008, <http://www.eurofound.europa.eu/eiro/2007/10/articles/ro0710029i.htm>, X., "Maritime Harbor Activities In Romania. Social Dialogue", 2009, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158937.pdf and FNSP's reports and positions posted on <http://fnspc.ro>.

²¹¹¹ Ordinul nr. 2024 din 1 noiembrie 2004 (Ordinul 2024/2004) privind furnizarea fortei de munca de rezerva, in Portul Constanta, de catre Agentia pentru Ocuparea si Formarea Profesionala a Muncitorilor Portuari - Port Constanta.

The ETF affiliated member, Federatia Nationala a Sindicatelor Portuare Constanta (FNSP), informs us of severe problems faced by the legally employed labour force of Constanta Port, namely: the gradual spread of casual work – nearly half of cargo traffic is handled by workers without legal contracts; that port operators systematically employ workforce from companies which are not authorised to supply labour for main port activities; that the use on a large scale of casual work – particularly by transnational port operators - have already set ground for deep-rooted, unfair competition, in the detriment of traditional port operators, who play by the law. I am informed that so critical the situation is, that FNSP has decided to mobilise port workers for a protest action on 10 May.

Vis-à-vis the above mentioned I must emphasise that all above practices – illegal and abusive – pose a serious threat to safety and security of port operations, of cargo and of people. It is shocking that, in a country aspiring to become a full EU member, law-binding practices put workers and port operations in a totally disadvantaged position!

I therefore urge you and your government to engage in a dialogue with FNSP in order to eradicate casual work and illegal practices in the Constanta Port and to reinstate a climate of safety and security for port activities.

Meanwhile, the ETF will inform all affiliated port workers' unions of the labour situation in the Port of Constanta. We will closely monitor the way the dialogue with the FNSP develops. To this end I inform you that in the last year the ETF has been permanently in touch with the European Commission – the Directorate General for Employment, Social Affairs and Equal Opportunities – regarding the malfunction of social dialogue in transport in Romania. A delegation of Romanian transport workers will possibly visit Brussels in the near future in order to have an exchange of views with the European Commission on the question of sectoral social dialogue.

I would be grateful to hear from you what exactly are the concrete steps that your government is going to take in order to meet the claims of the FNSP²¹¹².

Trade union FNSP demanded the re-establishment of the Port Labour Agency which would after all only "[follow] the European model which exists in all the world's largest ports".

Employers denied the accusations that they relied on large numbers of illegal workers and feared that FNSP, through the establishment of the Agency in which it would be the sole representative of the workers, tried to monopolise the provision of workforce in the port and to turn it into a profit-seeking venture for their own benefit²¹¹³.

After an initial strike by harbour workers in the spring of 2006 in protest against illegal work, an agreement was signed between the trade unions, employers and other organisations involved in harbour work to eradicate the illegal work forms at the Port of Constanța. The

²¹¹² <http://www.itfglobal.org/etf/romanian-port-workers.cfm> (last sentence bold in the original).

²¹¹³ See, for example, Samoila, C., "Fobia lui Petre Costel are la origini interese materiale", *Ziua de Constanța* 11 May 2006, <http://www.ziuaconstantia.ro/rubrici/deschidere-editie/fobia-lui-petre-costel-are-la-origini-interese-materiale.html>; Samoila, C., "Munca la negru este speculata in favoarea SRL-ului sindicalistilor din port", *Ziua de Constanța* 12 May 2006, <http://www.ziuaconstantia.ro/rubrici/actualitate/munca-la-negru-este-speculata-in-favoarea-srl%11ului-sindicalistilor-din-port.html>.

agreement was signed by trade union FNSP, the National Trade Union Bloc (Blocul Național Sindical or BNS, to which FNSP is affiliated), the Constanța County Labour Inspectorate (Inspectoratul Județean de Muncă Constanța, IJMC), the Romanian Naval Authority (Autoritatea Navală Română, ANR), the National Company Maritime Ports Administrations Constanța, the police and OPOP. This agreement also included changes to the re-published Ports and Waterways Ordinance.

On 5 September 2007, the Government adopted Emergency Ordinance No. 86, which modified the Ports and Waterways Ordinance²¹¹⁴. However, by mid August 2007, the proposed changes had not been approved by the Ministry of Transport's Social Dialogue Commission. The Government therefore disregarded the Commission's veto, and issued the Ordinance without considering the suggestions made by the trade unions and the employers' organisations.

FNSP stated that they had asked for all port workers to be registered, a personal labour register to be issued and evidence to be kept of these registers. According to FNSP, "the Ministry showed that they didn't want this to happen, because there were big interests at stake, and these regulations would have made things more complicated". Backed by BNS, the trade union representatives asked Romania's Prime Minister to intervene in this "case which broke the principles of the social dialogue". They also threatened to inform the International Labour Organization, the European Commission and the International Transport Workers' Federation of the situation. The trade union leaders believed that about half of the 11,000 workers at the Constanța port worked illegally or partly illegally and that they worked on a daily basis, illegally supplied by tens of operators or temporary work agencies, without a port worker's book and indeed even without an employment contract, and that no social security contributions were paid. Moreover, these labour conditions were said to be in breach of (1) ILO Recommendation No. 145 which provides that port workers should be registered in order to "prevent the use of supplementary labour when the work available is insufficient to provide an adequate livelihood to dockworkers" (Art. 11(a)); (2) conditions on the licensing of port operators, especially those that relate to employment of port workers, as laid down in the Ordinance on the authorisation of port operators; and (3) the general restrictions on the use of temporary labour laid down in the Romanian Labour Code. The unions also complained that these practices only could continue to flourish because competent authorities did not bother to seriously inspect ports and port operations.

To support their demands, the trade unions organised a protest meeting on 9 October 2007 outside the Ministry's offices. More than 500 workers from the ports of Constanța and Brăila participated in this meeting.

On 15 October 2007, the unions organised another strike which paralysed activities for twelve hours in the ports of Constanța, Brăila and Tulcea. About 2,000 workers took part in the strike action. Following this strike, the Minister for Transport, Ludovic Orban, visited Constanța

²¹¹⁴ Ordonanță de urgență 86 din 5 septembrie 2007 (OUG 86/2007) pentru modificarea și completarea Ordonanței Guvernului nr. 22/1999 privind administrarea porturilor și a căilor navigabile, precum și desfășurarea activităților de transport naval în porturi și pe căi navigabile.

harbour to carry out inspections for illegal work and announced future visits to the port even at night.

An important element leading to the start of the conflict has been the cancellation of Article 63 of the Ports and Waterways Ordinance, which stated that the organisation of labour in ports was the responsibility of both the Agency in charge of the employment and training of port workers and of some professional organisations of workers. By cancelling Article 63, the Port Labour Agencies, controlled by the trade unions, were suppressed. As concern mounted due to the abrogation of Article 63, Minister Orban declared that port employees can establish any association they wish in order to control port activities, as long as it is in accordance with the existing legislation regarding associations and foundations. According to the Minister, the trade unions do not need a special legal provision in this respect. Concerning the existence of illegal work in harbours, Minister Orban demonstrated to the trade unions during his port visits his willingness to ascertain the level of such activities, and to act accordingly in order to eradicate the problem.

During the prolonged debates on the Draft Act for the Legislative Approval of Emergency Ordinance No. 86/2007, the Committee for Labour and Social Protection of the Chamber of Deputies, for example, proposed an alternative wording to the effect that the establishment of Port Labour Agencies be an option, not an obligation, on the social partners, and that the employment of unregistered port workers be deleted from the catalogue of criminal acts, because the responsibility to recruit workers should rest with the employers²¹¹⁵.

Reportedly, in 2009 a number of employers were fined²¹¹⁶ for having employed illegal workers. Also in 2009, an ILO project on social dialogue in Romanian ports concluded that a specific legal framework for port labour remained a necessity in order, *inter alia*, to ensure safety of work and prevent illegal employment²¹¹⁷. It should be noted that the fight against undeclared labour in all sectors of the national economy has been a priority of the Romanian Labour Inspectorate since its establishment in 1999²¹¹⁸.

On 3 June 2010, the Romanian legislator approved the Emergency Ordinance No. 86/2007 but also adopted final amendments to the Ports and Waterways Ordinance. We will summarise the current legal regime below²¹¹⁹ and explain that the law now provides for the mandatory establishment of a Port Labour Agency in the port of Constanța.

²¹¹⁵ See *Parliamentary Documents*, Camera Deputaților, Comisia pentru muncă și protecție socială, Aviz asupra proiectului de Lege privind aprobarea Ordonanței de urgență a Guvernului nr.86/2007 pentru modificarea și completarea Ordonanței Guvernului nr.22/1999 privind administrarea porturilor și a căilor navigabile, precum și desfășurarea activităților de transport naval în porturi și pe căi navigabile.

²¹¹⁶ See Marinescu, A., "Munca la negru, combătută cu rezerva de... muncă", *Liderul de Opinie- Stiri din Constanta* - 21 October 2009, <http://lideruldeopinie.ro/19395/munca-la-negru-combatuta-cu-rezerva-de-munca>.

²¹¹⁷ See once more X., "Maritime Harbor Activities In Romania. Social Dialogue", 2009, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158937.pdf, unpagged, Conclusions.

²¹¹⁸ See Ciutacu, C., "Sectoral campaigns of the Labour Inspectorate, Romania", 29 October 2009, <http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/ro002.htm>.

²¹¹⁹ See *infra*, para 1613 *et seq.*

By April 2011, the Port Labour Agency had not yet been established. FNSP reiterated that the Agency is necessary to eradicate illegal and unskilled work and that similar pools operate in other major European ports. A spokesman from employers' organisation OPOP confirmed its support for the creation of the Agency²¹²⁰.

- *Regulatory set-up*

1613. Today, the ports of Constanța, Mangalia and Midia are owned by the Romanian State which has charged the National Company Maritime Ports Administration (MPA) S.A. Constanța with their regulation and management. The MPA of Constanța is listed on the stock exchange, but the majority of shares (80 per cent) continue to belong to the State.

The ports situated on the Danube River between Sulina and Harsova are managed by the National Company Maritime Danube Ports Administration S.A. Galati.

Other river ports are managed by the Administration of the Ports on the Fluvial Danube S.A. Giurgiu.

1614. The Ports and Waterways Ordinance identifies cargo handling services including loading and unloading from ships, stowage, storage, lashing, sorting, labeling, palletising, packing, stuffing and stripping of containers and other cargo related activities as shipping activities (Art. 19(1), 3, b), 2).

The latter may only be performed by authorised economic operators (*operatori economici autorizati*); the procedure and conditions for authorisation are set by the Ministry (Art. 19(2)). The criteria include the possession of the necessary port facilities and technical equipment and the use, in accordance with legal requirements, of qualified and registered personnel (see Art. 5 of Annex 2 to the Order on Authorisation of Port Operators).

The Ports and Waterways Ordinance expressly authorises Port Authorities to grant rights of use on port land to port operators (see Art. 29).

However, publicly owned port authorities are not allowed to perform cargo handling activities (Art. 20(2) of the Ports and Waterways Ordinance).

²¹²⁰ Tița-Călin, I., "Sindicatelor portuare cer ajutorul ministrului Anca Boagiu", *Cuget Liber Online* 5 April 2011, <http://www.cugetliber.ro/stiri-economie-sindicatelor-portuare-cer-ajutorul-ministrului-anca-boagiu-80105>.

1615. Cargo may only be loaded and discharged, and passengers may only embark and disembark, at ports open to the public as designated by the Minister of Transport and Infrastructure. This exclusivity does not apply, however, to (1) loading and unloading at industrial berths where manufacturers process their own goods; (2) in the event it is economically impossible to use a public port, one-off loading and unloading of goods at isolated places; (3) loading and unloading of goods at industrial berths whenever public ports do not possess adequate facilities. Any derogation as mentioned under (1) or (2) must be approved by the Ministry; as regards the exception under (3), each individual operation must be authorised (Art. 21).

1616. The Ports and Waterways Ordinance provides that 'specific port labour' (*munca specifica in porturi*) is performed by port workers (*muncitorii portuari*) (Art. 60(2))²¹²¹.

The concept of 'specific port labour' is defined as the loading and unloading of goods and/or containers in and from ships, the handling of goods to and from warehouses and other means of transportation, storage, stowage, lashing, sorting, palletising, packing, stuffing and stripping of containers, slinging, bagging of goods, as well as the cleaning of warehouses and ship's holds, either done manually or with mechanical means (Art. 60(1)).

1617. A port worker can be any person who has reached the age of 18 and meets the criteria for health and professional training set by the law (Art. 61(1) of the Ports and Waterways Ordinance). The qualification system is also governed by applicable laws (Art. 61(2)). Reportedly, no specific laws or regulations are currently in force.

Some public authorities responding to the questionnaire added that workers must not have a criminal record and that for some jobs training is required. Some added that trade union membership is a legal requirement, but other experts denied this.

1618. Port workers may only carry out their profession in a port if they are registered and possess a work book (Art. 62(1)).

The Port Authorities are charged with maintaining a list of workers performing port labour on the basis of an individual employment contract (Art. 24(1), f).

²¹²¹ The full text reads as follows:

Munca specifica in porturi este prestata de muncitorii portuari.

The Port Authority registers the worker on the basis of a written request from the Port Labour Agency or from an employer – who is duly authorised as an economic operator in the port (Art. 62(3)) – with whom the worker has concluded a contract of employment which was duly registered with the local Labour Inspectorate (Art. 62(2)).

Work books are issued and workers are registered in accordance with procedural rules approved by the Minister of Transport and Infrastructure (Art. 62(4)). The Port Authority shall determine a tariff of fees for the issuance of work books (Art. 62(5)).

The work book is valid only in the port where the worker has concluded a contract with the individual economic operator who applied for registration or where the worker is validly registered by the Port Labour Agency (Art. 62(6)).

If the individual employment contract is terminated or the worker withdraws from the Port Labour Agency, the economic operator or the Agency is obliged to notify the Port Authority in writing and to hand in the work book (Art. 62(7)). Work books that have been handed in are kept by the Port Authority (Art. 62(8)). If the worker concludes an individual employment contract with another operator who provides services in the same port, the Port Authority shall re-issue the work book on request (Art. 62(9)).

Port operators shall register with the Port Authority all workers with whom they have concluded an individual contract of employment (Art. 63(1)). Port operators may only use port workers with whom they have concluded an employment contract for either a definite or an indefinite term provided it is registered with the Port Authority and the worker possesses a work book (Art. 63(2)).

1619. The register of port workers is considered a register within the meaning of ILO Convention No. 137.

1620. In order to ensure the availability of the necessary reserve workforce and to optimise its use with regard to the fluctuations of port traffic, Agencies for Employment and Training of Port Workers (*agenție de ocupare și formare profesională a muncitorilor portuari*, hereinafter 'Port Labour Agency') are to be established in the ports of Constanța, Midia and Mangalia. The Port Labour Agency is a professional association set up and managed in accordance with the general Associations and Foundations Act (Art. 63(1) of the Ports and Waterways Ordinance).

The Agencies shall consist of representatives of economic operators and/or their organisations and of the trade union federation with the highest number of members in the ports of Constanta, Midia and Mangalia (Art. 63(2)).

The main tasks of the Port Labour Agency are:

- (1) the preparation of a development programme for the port labour reserve, in accordance with the dynamics of port activities;
- (2) to keep available reserve port workers under an individual contract of employment with the Agency;
- (3) to manage the reserve pool, with a view to balancing supply and demand at the port concerned;
- (4) to maintain work books for reserve workers;
- (5) to ensure the supply of reserve port workers at the request of the economic operators;
- (6) to carry out activities in relation to qualifications, training, multi-skilling and professional reconversion at the request of workers or employers, based on a contract;
- (7) to cooperate with the Port Authority, local public authorities or any other authorities to address specific problems in relation to the reserve labour pool, and to solve deficiencies noted in relation to the use of the reserve port labour pool;
- (8) to take initiatives to ensure a minimum income for reserve port workers when they are unable to perform work beyond their will;
- (9) to see to it that economic operators do not use port workers otherwise than in accordance with the Ordinance (Art. 64(1)).

Reserve port workers are supplied on the basis of a contract concluded by the economic operator and the Port Labour Agency (Art. 64(2)).

The Regulations on the organisation and the functioning of the Port Labour Agency must be approved by the Minister of Labour, Family and Social Protection (Art. 64(3)).

The Port Labour Agency is financed through, *inter alia*, monthly contributions by the pool workers and the economic operators. The former are determined annually by the General Assembly; the latter are based on the volume of cargo handled (expressed in tonnes or TEU). Other income sources include contributions for training by the National Employment Agency (see Art. 65(1)).

To our knowledge, as yet no Port Labour Agencies are operational.

1621. There are no hiring halls in Romanian ports.

1622. Infringements of the main rules of the Ports and Waterways Ordinance relating to port labour, including the employment of unregistered workers and the performance of port labour without registration or possession of a work book, are criminally sanctioned (see Art. 67, especially t), u), x) and ad)).

Port Authorities responding to our questionnaire mentioned among the competent enforcement bodies the port authority, the harbour master, national agencies and the terminal operators.

1623. The Procedural Rules on Port Labour reiterate a number of provisions contained in the Ordinance and regulate *inter alia* the application for registration as a port worker and the keeping of the register of port workers.

In addition, they state that workers may be registered for occupations mentioned in the legal classification of professions in Romania²¹²² and for any other port-specific profession (Art. 2(4) of the Procedural Rules on Port Labour). In practice, the registration system is not applied for all jobs.

They also note that the register must mention specialisations of port workers, if any (Art. 4(1), d)).

Every year, the port worker's book must be stamped by the Port Authority (Art. 5(5))

1624. Unemployed port workers receive unemployment benefit.

- *Facts and figures*

1625. We could collect no precise data on the number of port employers in Romanian ports. However, we were able to identify some 35 individual terminal operators in Romanian ports²¹²³.

In addition, confusion reigns over the organisational structure of the private port sector in Romania. It seems that today, a number of private operators along the Danube, the river port administrations of Galati and Giurgiu and the Danube-Black Sea Canal Administration are

²¹²² Order No. 1832/856 of 6 July 2011 for the Approval of the Classification of Professions in Romania (Ordin nr. 1832/856 din 6 iulie 2011 privind aprobarea Clasificarii ocupatiilor din Romania — nivel de ocupatie (sase caractere)) identifies several categories of port workers' jobs such as stevedore, port crane operator, port forklift operator and foreman. The Order gives effect to European Commission Regulation no. 1022/99 of 29 October 2009 on the implementation of ISCO 08 within the national occupational classification system and the adaptation of statistical surveys in accordance with the ISCO 08 structure (see *supra*, paras 82 and 236).

²¹²³ Caution is needed, however, because (1) we might have overlooked some companies, and (2) some identified terminals may not employ port workers for the purpose of the present study. Data on individual port terminals in Constanta can be found in Martens, R., *Empowering Romania as the Eastgate trade hub of Europe. Joint Taskforce PESP Constanta*, September 2010, 279 p., [http://www.archicom.nl/media/Downloads/Expansion%20Port%20of%20Constanta%20\(PESP%20Constanta\).pdf](http://www.archicom.nl/media/Downloads/Expansion%20Port%20of%20Constanta%20(PESP%20Constanta).pdf).

members of the Union of Romanian Inland Ports (Uniunea Porturilor Interioare Romanesti, UPIR), which is affiliated to the European Federation of Inland Ports (EFIP). UPIR claims to be the main association of Romanian port operators. Reportedly, almost all port operators have left the Romanian Association of Inland Shipowners and Port Operators (Asociația Armatorilor și Operatorilor Portuari-Fluviali din România, AAOPFR) which is affiliated at national level to the National Confederation of Romanian Employers (Confederația Națională a Patronatului Român, CNPR), and at international level to the European Barge Union (EBU)²¹²⁴. A small number of employers is represented by the Port Operators Employer Organisation (Organizația Patronală Operatorul Portuar, OPOP)²¹²⁵. Yet another relevant organisation is the Employer Association in Maritime Transport and Port Exploitations (Asociația Patronală din Transportul Naval și Exploatari Portuare, APTNEP)²¹²⁶.

1626. There are no nation-wide statistics on the total number of port workers in Romania.

According to information received from the port authorities, there are 3,619 registered port workers in the port of Constanța, and about 568 port workers in the ports of Galati, Braila and Tulcea, resulting in an estimated total for the country of 4,187 port workers involved in the handling of seaborne cargo²¹²⁷.

1627. Port workers are represented by the trade union National Union Federation 'The Navigator' (Federația Sindicala Naționala 'Navigatorul', FSNN). FSNN is a founding member of

²¹²⁴ See Chivu, L., "Representativeness of the European social partner organisations: Inland water transport – Romania", 31 August 2010, <http://www.eurofound.europa.eu/eiro/studies/tn0809017s/ro0809019q.htm>.

²¹²⁵ Ciutacu, C., "Port workers initiate protest action against illegal work", 11 January 2008, <http://www.eurofound.europa.eu/eiro/2007/10/articles/ro0710029i.htm>.

²¹²⁶ Ciutacu, C., "Romania: representativeness of the European social partner organisations – Sea and coastal water transport", 4 September 2008, <http://www.eurofound.europa.eu/eiro/studies/tn0707017s/ro0707019q.htm>.

²¹²⁷ The Port Authority of Giurgiu and the Administration of Navigable Canals were unable to provide information on the number of port workers in their ports. See also Chivu, L., "Representativeness of the European social partner organisations: Inland water transport – Romania", 31 August 2010, <http://www.eurofound.europa.eu/eiro/studies/tn0809017s/ro0809019q.htm>, where figures are given on the number of employees in maritime and river transport working at least 21 days in 1999 and 2005, among whom a category of "Dockers, machine operators (port workers)" is identified, numbering 2,301 in 1999 (2,271 men and 30 women) and 2,241 in 2005 (2,197 men and 44 women). According to an ILO report, 3,595 dock workers were registered in January 2003 and 3,722 in June 2007 (International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), 97th Session, 2008, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf, 693). Yet other sources from 2008 mention 9,000 workers in the Port of Constanța and 18,000 "harbour workers" in Romania as a whole (see X., "DP World - Europe's Eastern gateway blocked: Strike in the docks of Constanța", 22 July 2008, <http://archives.econ.utah.edu/archives/aut-op-sy/2008m07/msg00036.html>, footnote (2); Ciutacu, C., "Port workers initiate protest action against illegal work", 11 January 2008, <http://www.eurofound.europa.eu/eiro/2007/10/articles/ro0710029i.htm>; compare also Ciutacu, C., "Romania: representativeness of the European social partner organisations – Sea and coastal water transport", 4 September 2008, <http://www.eurofound.europa.eu/eiro/studies/tn0707017s/ro0707019q.htm>).

the Alliance of Trade Unions of Transport Operators in Romania (Alianța Sindicatelor Transportatorilor din România, ASTR), which is representative in the transport sector. At national level, FSNN is affiliated to the National Trade Union Confederation 'Meridian' (Confederația Sindicală Națională Meridian, CSN Meridian). At international level, FSNN is affiliated to the International Transport Workers' Federation (ITF)²¹²⁸.

26 trade unions are affiliated to the National Federation of Port Unions (Federația Națională a Sindicatelor Portuare Constanța, FNSP), representing some 6,000 workers out of a total of 9,000 workers in the port of Constanța. FNSP is a member of the National Trade Union Bloc (Blocului National Sindical, BNS) and of the National Trade Union Conference of Romanian Transport Workers (Conventiei Sindicale Nationale a Transportatorilor din Romania, CSNTR)²¹²⁹.

Yet another workers' organisation representing port workers is the National Trade Union Confederation Cartel Alfa (Confederația Națională Sindicală Cartel Alfa, Cartel Alfa). Further (unverified) information suggests that in Constanța, 1,000 workers have joined Cartel Alfa, while 3,490 workers are members of FNSP.

According to one local expert, it is impossible to provide even the slightest guess on trade union density among Romanian port workers, as there is no clear organisational structure at national level and relations between individual unions are rather strained.

9.18.4. Qualifications and training

1628. As we have mentioned²¹³⁰, the Ports and Waterways Ordinance provides that all port workers must be trained, but the required qualifications have so far not been defined. The Procedural Rules on Port Labour reiterate that port workers must have the necessary qualifications, if applicable²¹³¹.

1629. The Ports and Waterways Ordinance mentions the provision of training to port workers among the essential responsibilities of the Port Labour Agencies for Constanța, Midia and Mangalia²¹³².

²¹²⁸ See Chivu, L., "Representativeness of the European social partner organisations: Inland water transport – Romania", 31 August 2010, <http://www.eurofound.europa.eu/eiro/studies/tn0809017s/ro0809019q.htm>.

²¹²⁹ See <http://finspc.ro>; see also X., "DP World - Europe's Eastern gateway blocked: Strike in the docks of Constanta", 22 July 2008, <http://archives.econ.utah.edu/archives/aut-op-sy/2008m07/msg00036.html>, footnote (2).

²¹³⁰ See *supra*, para 1617.

²¹³¹ See *infra*, para 1623.

²¹³² See *supra*, para 1620.

The Ordinance aims to ensure that in Romanian ports only skilled workers are employed.

Any participation in training courses is noted down in the port worker's book (Art. 5(4) of the Procedural Rules on Port Labour).

Reportedly, the provisions above do not prevent other entities from providing training, and the registration of the attendance of training course in worker's books is not generally applied.

1630. The general Romanian Safety and Health at Work Act obliges employers to ensure sufficient and adequate safety and health training (see Art. 20).

1631. In 1997, a PHARE project resulted in the establishment of a Port School in Constanța. Its Board of Directors is made up of two representatives of the employers' organisations, two representatives of the unions and a representative of the Maritime Ports Administration. The Port School has become the main provider of continuous formation for port professions. So far, it has developed occupational standards for the following port jobs: port truck driver, auto trailer driver, stevedoring port operator, port loading truck driver, foreman of dockers, forwarding port operator, lashing man and stevedore. Mid 2009, 5,463 port workers had attended the courses of the Port School, representing more than half of the port workers²¹³³. To our knowledge, the Port School does not provide training for workers in the river ports

1632. Port worker training is also offered by the National Company for Control of Boilers, Lifting Equipment and Pressure Vessels (Compania Națională pentru Controlul Cazanelor, CNCIR). To date, this state-owned entity has trained some 150 port workers from Constanța, Midia and Tulcea. Reportedly, the Port School and CNCIR compete.

1633. Responses to our questionnaire indicate that the following types of formal training are available for port workers in Constanța (and some of them also in other ports):

- specialised training as part of a regular educational programme (secondary school);
- induction courses for new entrants (compulsory);
- courses for the established port worker (compulsory);
- training in safety and first aid (compulsory);

²¹³³ X., "Maritime Harbor Activities In Romania. Social Dialogue", 2009, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/projectdocumentation/wcms_158937.pdf, unpagged, item 5.5.

- specialist courses for certain categories of port workers, including container equipment operators, ro-ro truck drivers, forklift operators, lashing and securing personnel, tallymen, signalmen and reefer technicians (all compulsory);
- training aimed at the availability of multi-skilled workers (compulsory);
- retraining of injured and redundant port workers (compulsory).

The Romanian Labour Inspectorate specified that the Port School, which is authorised by the Ministry of Education, Research, Youth and Sports organises courses to obtain the qualification of port worker for the following jobs:

- load binder workers on lifting equipments (certified by CNCIR);
- machine workers: electric and motor forklift workers (CNCIR) and tractor drivers in port facilities (with driving licence) or on roads (with driving licence);
- lashing workers for general goods and containers;
- crane workers (CNCIR)²¹³⁴.

1634. In 2010, Constanța South Container Terminal was awarded a grant from the European Social Fund. The funds were spent on implementing a project at CSCT entitled 'Internal Partnership for Health & Safety'. The overarching objective of the project was to reduce the probability of workplace injuries and to improve workplace conditions, leading to improved productivity and to make the business even more competitive²¹³⁵. We are unaware of the results of this project.

9.18.5. Health and safety

- *Regulatory set-up*

1635. The Safety and Health at Work Act applies in all sectors, both public and private (Art. 3(1)); it sets out general duties on employers in relation to, *inter alia*, the protection of workers, the prevention of risks, information and training of workers and the organisation of work (see Art. 6 *et seq.*).

The Regulations annexed to Government Decree No. 1425 of 2006 provide, *inter alia*, that, in order to ensure health and safety conditions at work and preventing accidents and occupational diseases, employers are required to obtain authorisation for operation in terms of safety and

²¹³⁴ For more information on CNCIR training courses for port workers, see http://www.cncir.eu/index.php?option=com_content&view=article&id=73&Itemid=109.

²¹³⁵ See the press release of 27 August 2010 on http://www.csct.ro/main_pages.php?id=36&op=view&article=20.

health issues before starting any activity (Art. 3). It also elaborates on health and safety training for workers (Art. 74 *et seq.*).

Government Decision No. 1051 of 9 August 2006 "on the minimum safety and health requirements for the manual handling of loads that present a risk to workers, particularly of back injury" is also relevant to ports.

However, neither of those laws and regulations contains rules that are specific to port labour.

1636. The Romanian Labour Inspectorate has published a number of Guidelines on best practices²¹³⁶, but these do not include any port-specific instrument either.

1637. The Procedural Rules on Port Labour provide that, with a view to safety of work, port operators are obliged to use workers possessing the necessary qualifications for the job concerned, if applicable (Art. 2(4)).

1638. We were informed that health and safety rules pertaining to port labour are enforced by various entities, including national authorities responsible for transport and labour, the port authority and the terminal operators.

1639. In 2003, due to the special health and safety risks inherent in port labour, port workers, among other special categories of workers, were granted the right to retire earlier than ordinary employees²¹³⁷. We were informed that this scheme has been abolished since, in the light of technological developments, many port jobs are no longer considered particularly strenuous.

²¹³⁶ See <http://www.inspectmun.ro/site/Legislatie/legislatie.html>.

²¹³⁷ See especially Hotărâre nr. 1025 din 28 august 2003 privind metodologia și criteriile de încadrare a persoanelor în locuri de muncă în condiții speciale.

- *Facts and figures*

1640. The Romanian Labour Inspectorate maintains aggregate statistics on occupational accidents in the sector of storage and services ancillary to transportation²¹³⁸. The Inspectorate provided as with the following statistics:

Table 99. Number of accidents at port operations in Romanian ports, 2011 (source: Labour Inspection of Romania)

	Specific port operations (general cargo)	Specific port operations (containers)
Accidents with temporary incapacity to work	20	5
Accidents with permanent incapacity to work	1	1
Fatal accidents	3	0

9.18.6. Policy and legal issues

- *Restrictions on employment*

1641. Replying to our questionnaire, the Port Authority of Constanța stated that service providers from other EU countries are not allowed to establish themselves in the port. The other three responding Port Authorities reported the opposite. All Port Authorities agreed that undertakings from other EU Member States are free to provide services and to choose their workers, as long as the latter are registered. We could trace no legal provisions reserving authorisations for port operators or registration as a port worker to Romanian nationals.

1642. In 2010, the Romanian Competition Council (RCC) received signals that in specific situations, port operators holding monopoly positions for operating a specific category of commodities tie the provision of stevedoring with the purchasing of a different service such as ship's agency. At the level of the stevedoring services, RCC found that the small number of port operators specialising in the handling of certain categories of goods and the large

²¹³⁸ See, for example, the Annual Report for 2011 on http://www.inspectmun.ro/site/RAPORT%20ANUAL/RaportIM_2011.pdf.

quantities of goods actually handled by some of them suggest the existence of dominant or even monopolistic positions in the markets of these services²¹³⁹.

1643. Port operators or employers are not obliged to join a professional organisation. Neither are they obliged by law to join the Port Labour Agency.

1644. Some replies to the questionnaire suggest that Romanian ports are closed shops. We were unable to verify this. Other experts denied that port workers must join a trade union. Generally, trade union density in Romania is estimated at between 40 and 50 per cent²¹⁴⁰.

1645. The questionnaire resulted in contradictory statements by Port Authorities on the possibility of using workers supplied by temporary work agencies.

1646. The Port Authority of Constanța confirmed that port workers can be transferred temporarily from employer to employer and to other ports. However, the Ports and Waterways Ordinance expressly states that a registration as a port worker is only valid in the port for which it was issued.

1647. The Port Authority of Giurgiu and the Administration of the Navigable Canals informed us that self-handling is prohibited²¹⁴¹. They also mention a restriction resulting from the mandatory use of port workers for non-port work. We could obtain no further explanation.

²¹³⁹ See OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>, 261-262.

²¹⁴⁰ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

²¹⁴¹ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) *All longshore activities.*

(b) *Exceptions:*

(1) *Operation of specialized shipboard equipment, and*

(2) *Loading and discharge of cargo requiring special operations.*

1648. All four Port Authorities that responded to our questionnaire assert that applicable rules on employment of port workers are properly enforced. Another expert said that the rules are unclear and have lacunae.

- Restrictive working practices

1649. In the Constanța Port Authority's reply to the questionnaire, the following restrictive working practices are listed:

- limited working days;
- inadequate duration of shifts;
- late starts, early knocking off;
- unjustified interruptions of work and breaks;
- unauthorised absences;
- overmanning;
- inadequate composition of gangs;
- ban on mobility between hold and hold, ship and ship, ship and shore and between shore jobs.

These practices are, however, not considered a major competitive disadvantage.

1650. The Port Authority of Giurgiu and the Administration of the Navigable Canals indicate that the following restrictive working practices are applied in their ports:

- limited working days and hours;
- late starts and early knocking off;
- limitations on use of new techniques.

According to both respondents, these issues do not result in major competitive handicaps however.

- Issues relating to working conditions and health and safety

1651. According to the union FNSP's website, company-specific collective bargaining agreements tend to lower the level of working conditions set out in the sectoral agreement for the transport sector.

1652. In 2008, a large number of container terminal workers in Constanța went on strike over working conditions. They complained that, when hired five years earlier, people were promised that the work would be done according to European standards and that soon (western) European wages would be paid, but that the latter had not happened. According to the workers, the only increase was an increase in pressure of work, together with an increase in numbers of containers, which had to be shipped or unloaded per shift, and an increase in over-time, which was still paid without any bonus payments. One of their most important demands was the adherence to the standard working-time. A media report described this issue as follows:

The terminal runs on a 12/24-hours shift-scheme, which means that a single shift is twelve hours long, after that the worker has got a 24-hours break. After each fourth shift there is a break of 48 hours. The workers have to switch constantly between day- and night-shift. The management does not stick to this scheme, workers are often called to work on their day off; they are supposed to start work within an hour. They have to be available on their mobile phones at all times. If they don't answer the phone the management puts it as 'unmotivated attitude', meaning that in the 'cartea de munca', the employee's record book, the remark 'absent without valid excuse' will be entered. After three of these 'unauthorised absences' you get the sack. The striking workers tell that due to being permanently 'on call' they are not able to make plans for their free time with their families. Or as a docker puts it straight: "The work fucks you up and you are not even paid properly for it"²¹⁴².

After the first week of the strike, the leadership of the trade union confederation Cartel Alfa stated about the situation: 'We cannot possibly accept that huge profits are made without any incentive for the workers, who are treated like slaves at the beck and call of troubled-waters profiteers'. Cartel Alfa demanded an emergency fact-finding inspection by the Labour Inspectorate into the operations of the terminal, alleging breaches of the Labour Code, including the use of illegal work during the strike.

After 12 and a half days of strike, and after 6 days of collective bargaining, the terminal management and the FNSP trade union agreed on a wage increase amounting to 35-45 per cent, one extra day of annual leave and a regular working schedule of 12 hours in each 24 or 48 hours. On the shift system, the strikers were ultimately unable to prevail. Reportedly, it was only noted down that the shift system of 12/24 and 12/48 (*i.e.* twelve hours work, 24 hours break, 12 hours work, 48 hours break) must be adhered to. Also, a list was to be compiled of all the workers generally willing to work overtime, thus making themselves available to the company at all times. Refusing overtime will apparently not be penalised. Extra pay for

²¹⁴² See Cisel, A., " DP World – Europe's Eastern Gateway blockiert: Streik im Hafen von Constanta", 20 July 2008, <http://www.labournet.de/internationales/rumae/constantia.html>; X., "DP World - Europe's Eastern gateway blocked: Strike in the docks of Constanta", 22 July 2008, <http://archives.econ.utah.edu/archives/aut-op-sy/2008m07/msg00036.html>; see also Ouared, S., "Dockers d'Alger et de Constanza (Roumanie) Le capitalisme esclavagiste des Emirs du Golfe à visage découvert", 8 August 2009, <http://www.alger-republicain.com/spip.php?article18>.

overtime was not arranged. And shift cancellations during low periods will still not be paid²¹⁴³. Yet, the leader of FNSP commented on the agreement:

the first to gain from this will be the company itself, because the workers will be more motivated, better fed, healthier, more devoted and more faithful to the company, and this will boost work efficiency and profits²¹⁴⁴.

1653. According to the Port Authority of Constanța, the following sub-standard or otherwise unacceptable labour conditions prevail:

- job insecurity;
- temporary unemployment;
- unfavourable employment practices;
- lack of social security;
- unhealthy working conditions;
- unsafe working conditions;
- lack of training.

1654. On the basis of the questionnaire, the Port Authority of Galati identified the following sub-standard or otherwise unacceptable labour conditions:

- job insecurity;
- lack of social security;
- unhealthy working conditions;
- unsafe working conditions;
- lack of training.

1655. The Port Authority of Giurgiu and the Administration of Navigable Canals, too, mention problems relating to job insecurity and temporary unemployment.

1656. In the light of the foregoing it may sound surprising that all four responding Port Authorities confirmed that rules on health and safety in port labour are properly enforced.

²¹⁴³ Cosel, A., "DP World Constanta South Container Terminal: The strike has ended", 2 August 2008, http://www.labournet.de/internationales/rumae/constantia3_engl.html.

²¹⁴⁴ See Chivu, L., "Container terminal workers get pay rise in deal following strike", 9 September 2008, <http://www.eurofound.europa.eu/eiro/2008/08/articles/ro0808029i.htm>.

1657. For want of port labour-specific statistics, it is hard to draw any conclusion on the safety level in ports. However, media reports suggest that in Romanian ports, too, accidents regularly do occur. In 2010, for example, a port worker died after being crushed by a 20 tonne-steel coil which fell from a hoist in the port of Constanța, and his colleague was severely injured²¹⁴⁵.

1658. In 2012, the media reported about the bad state of repair of the drinking water network in the port of Constanța which prevents port workers from drinking tap water or taking a shower²¹⁴⁶. We are unaware of which authority bore responsibility for this situation.

9.18.7. Appraisals and outlook

1659. In 2005, an EU-funded project on the development of competition authorities identified transport, including ports, as an economic sector which is essential for the Romanian economy from the competition point of view. The Report stressed the importance of free and non-discriminatory access to ports and referred to the then still pending proposal for an EU Port Service Directive including its provisions on free access to port services and self-handling²¹⁴⁷.

1660. In 2010, the Romanian Competition Council decided to open a sector inquiry into ancillary port services, with a particular attention to stevedoring services and ship's agency services in order to identify and sanction alleged anticompetitive practices²¹⁴⁸.

1661. According to all four Port Authorities that filled out the questionnaire, the current port labour regime is satisfactory and offers sufficient legal certainty. They also agreed that the current relationship between port employers and port workers and their respective

²¹⁴⁵ Cical, F., "Docheri striviți de o rolă de 20 de tone", *Telegraf* 24 February 2010, http://www.telegrafonline.ro/1266962400/articol/113185/docheri_striviti_de_o_rola_de_20_de_tone.html.

²¹⁴⁶ Tița-Călin, I., "Mii de docheri din portul Constanta sunt nevoiti sa bea apa scumpa, de la dozator", *Cuget Liber* 31 May 2012, <http://www.cugetliber.ro/stiri-economie-mii-de-docheri-din-portul-constanta-sunt-nevoiti-sa-bea-apa-scumpa-de-la-dozator-133455>.

²¹⁴⁷ See X., "The list of sectors essential for the Romanian economy from the competition point of view", Bucharest, 2005, http://www.adrvest.ro/attach_files/Esential_sectors_in_Romanian_economy_1146141250.pdf, 10-12, paras 27-31.

²¹⁴⁸ OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>, 262.

organisations can be described as good, with the exception, however, of the Administration of the Navigable Canals, who label these relations only 'satisfactory', because the remuneration of port workers is inadequate.

1662. For the Port Authority of Constanța, the port labour regime has a positive impact on the competitive position of the port, especially because suitably qualified employees reduce the number of accidents. The Port Authority considers the port of Rotterdam a model.

The Port Authority of Giurgiu thinks that its port labour system does not impact on port competitiveness at all, yet mentions Constanța as the preferable model.

The Administration of the Navigable Canals states that the current regime of port labour impacts negatively on its competitive position. They also refer to Rotterdam as a best practice.

1663. An individual expert from the sector of river ports said that there is no need whatsoever to set up Port Labour Agencies and that port operators should be free to choose their workers. Trade union FSNP advocates the establishment of these Agencies because it wishes to gain full control over the labour market. Still according to our informant, the private port operators do not support the creation of such Agencies. Casual employment of pool workers is a thing of the past as it is incompatible with the use of modern port technologies and equipment and the need for special skills which can only be acquired through training, which the cash-strapped Agencies would be unable to provide anyway. Furthermore, workers should be free from the pressure to join a union, and they will feel more secure if they are employed under a normal employment contract for an indefinite term. Moreover, the trade unions are constantly quarrelling among themselves. In Galati, one experiment with an special agency for temporary workers failed as the unqualified workers were causing damage to port equipment. This agency had not been established on the basis of the Ports and Waterways Ordinance, but of general laws.

1664. To an extent, the Port Authorities of Romania would favour future EU initiatives in the field of port labour.

The Port Authority of Constanța mention the possibility of adopting minimum rules concerning port operations.

According to the Port Authority of Galati, a good practice manual could be adopted at EU level.

The Port Authority of Giurgiu and the Administration of the Navigable Canals believe that in the field of port labour, every port should apply the same rules.

9.18.8. Synopsis

1665.		
SYNOPSIS OF PORT LABOUR IN ROMANIA²¹⁴⁹		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 6 ports • Landlord model • 40m tonnes • 16th in the EU for containers • 72th in the world for containers • Appr. 35 employers (?) • 4,187 port workers • Trade union density: 60-100% (?) 	<ul style="list-style-type: none"> • <i>Lex specialis</i> (Ports and Waterways Ordinance and Regulations) • Party to ILO C137 • Company CBAs • Reforms between 1999 and 2010 • Port operators must be authorised • 2 categories of workers: <ul style="list-style-type: none"> (1) permanent and temporary workers employed by authorised operator (2) workers employed by Port Labour Agency (pool) • All port workers must be registered by Port Authorities • Port Labour Agencies must be established for Constanta, Midia and Magalia • No hiring halls • Criminal sanctions 	<ul style="list-style-type: none"> • Port Labour Agencies not operational • Port Labour Agencies not accepted by all parties • Closed shop in Constanta (?) • Ban on self-handling • Restrictive working practices • Job insecurity
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Two competing training providers (Port School in Constanta, CNCIR) 	<ul style="list-style-type: none"> • Training requirement for poolin national law but no implementing regulations • Port Labour Agencies must provide training 	<ul style="list-style-type: none"> • Lack of training
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No specific statistics 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • No Party to ILO C32 or C152 	<ul style="list-style-type: none"> • Lack of statistics • Unsafe and unhealthy working conditions

²¹⁴⁹ 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.

9.19. Slovenia

9.19.1. Port system²¹⁵⁰

1666. The most important port and, in fact the only cargo port, of Slovenia is the port of Koper. As a multi-purpose port, it serves mainly the Slovenian, Austrian, Italian, Hungarian and Slovakian markets.

In 2011, the port of Koper handled 17 million tonnes of maritime goods. In the container trade, in 2010 Slovenia held the 17th position in the EU and the 73th in the world²¹⁵¹.

1667. The primary port infrastructure of the port of Koper is state-owned. The Republic of Slovenia has granted the company Luka Koper ('Port of Koper') a concession to manage, develop and maintain this infrastructure. The Republic of Slovenia holds 51 per cent of the shares in Luka Koper. In total, some 67 percent of the shares are state-controlled. Luka Koper is listed on the Ljubljana Stock Exchange.

1668. Through a number of entities forming part of the Luka Koper Group, Luka Koper provides all cargo handling services in the port itself. More in particular, it operates 12 different port terminals organised in 5 independent profit centres. As a result, there is no competition from third parties in the cargo handling market at Koper. In addition, the Luka Koper Group comprises a number of associated and jointly-controlled companies. The latter do not perform cargo handling services.

9.19.2. Sources of law

1669. The Slovenian Maritime Code of 23 March 2001²¹⁵² contains a number of basic provisions on the legal regime of ports (Art. 32 *et seq.*).

²¹⁵⁰ For general information on the port of Koper, see www.luka-kp.si where detailed annual and interim reports are posted; see also ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 46-70; for statistics, see also http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

²¹⁵¹ Container ranking based on UNCTAD, *Review of Maritime Transport 2011*, New York and Geneva, UNCTAD / UN, 2011, http://unctad.org/en/Docs/rmt2011_en.pdf, 201-203.

²¹⁵² Pomorski Zakonik (PZ).

The Port of Koper is managed under Decree No. 721-9/2008/11 of 10 July 2008 on the management of the cargo port of Koper, port operations and the granting of concessions for the management, administration, development and maintenance of port infrastructure in the port (hereinafter: 'Port Decree')²¹⁵³ and laid a basis for the granting of a concession by the State to Luka Koper. Neither the Decree, nor the Concession Agreement regulates port labour.

The port of Koper was declared open to international maritime traffic by a Decree of 30 January 2002²¹⁵⁴.

1670. Port labour in Slovenia is governed by general labour law. The main legislative instrument is the Employment Relations Act of 24 April 2002²¹⁵⁵.

1671. Slovenia has no specific laws or regulations on port labour.

According to a 2002 ILO survey, neither Slovenian law, nor Slovenian practice provides a definition of port labour²¹⁵⁶. The absence of such a definition was confirmed in the replies to our questionnaire.

1672. Port labour in Slovenia is governed by general laws and regulations on professional qualifications and on health and safety. The most important instruments are the Health and Safety at Work Act of 24 May 2011²¹⁵⁷ and the National Professional Qualifications Act of 20 December 2006²¹⁵⁸.

Slovenia transposed Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers as late as 2006²¹⁵⁹.

²¹⁵³ Uredba o upravljanju koprskega tovrnega pristanišča, opravljanju pristaniške dejavnosti, podelitvi koncesije za upravljanje, vodenje, razvoj in redno vzdrževanje pristaniške infrastrukture v tem pristanišču.

²¹⁵⁴ Uredba o določitvi pristanišč, ki so namenjena za mednarodni javni promet.

²¹⁵⁵ Zakon O Delovnih Razmerjih (Zdr).

²¹⁵⁶ International Labour Conference (90th Session 2002), *General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, <http://www.ilo.org/public/english/standards/reim/ilc/ilc90/pdf/rep-iii-1b.pdf>, 48-49, para 110.

²¹⁵⁷ Zakon O Varnosti In Zdravju Pri Delu (ZVZD-1).

²¹⁵⁸ Zakon o nacionalnih poklicnih kvalifikacijah.

²¹⁵⁹ Pravilnik o varnem nakladanju in razkladanju ladij za prevoz razsutega tovora, 18. maja 2006.

1673. Slovenia has ratified neither ILO Convention No. 137, nor ILO Convention No. 152. Apparently, the country is still bound by ILO Convention No. 32²¹⁶⁰.

1674. On 18 September 2008, a new collective labour agreement was concluded between Luka Koper and the two representative trade unions²¹⁶¹. The collective labour agreement deals with:

- the contract of employment;
- working time, breaks and vacation;
- education and training;
- health and safety;
- responsibility of workers to meet their obligations;
- wages and other compensations;
- activities of trade unions.

The collective labour agreement does not include a definition of port labour. The agreement applies to all workers employed in the company Luka Koper (with some exceptions for employees with individual contracts and manager contracts). Formally, it is not a nationwide collective agreement; therefore it was not registered with the Ministry of Labour. The agreement does not apply to any other companies than Luka Koper, not even to its associated companies.

According to Luka Koper's Annual Report for 2011, the Port Authority called upon the representative trade unions to give their consent to the publication of the collective agreement at the website of Luka Koper, but the trade unions responded negatively²¹⁶².

9.19.3. Labour market

- Historical background

1675. Whereas the port of Koper can pride itself on a centuries old history dating back to Roman times, the modern Port Authority of Koper was only established in 1957. Under the socialist constitutional system, it was run as a 'socially owned and managed company'²¹⁶³.

²¹⁶⁰ According to the website of ILO, since 29 May 1992.

²¹⁶¹ On these unions, see *infra*, para 1689.

²¹⁶² Port of Koper, *Annual Report 2011*, <http://www.luka-kp.si/eng/investors/annual-reports>, unpagged, item 6.1.

²¹⁶³ See Gestrin, F., "Pregled pomorstva v slovenskem primorju", in X., *Pomorski Zbornik*, II, Zagreb / Zadar, Institut za Historijske i Ekonomske Nauke, 1962, 1489-1515.

Through a protracted process which lasted from 1991 to 1996, the Port Authority was transformed into a joint stock company and partly privatised.

In 2008, the Slovenian Republic granted Luka Koper an exclusive concession to operate the port.

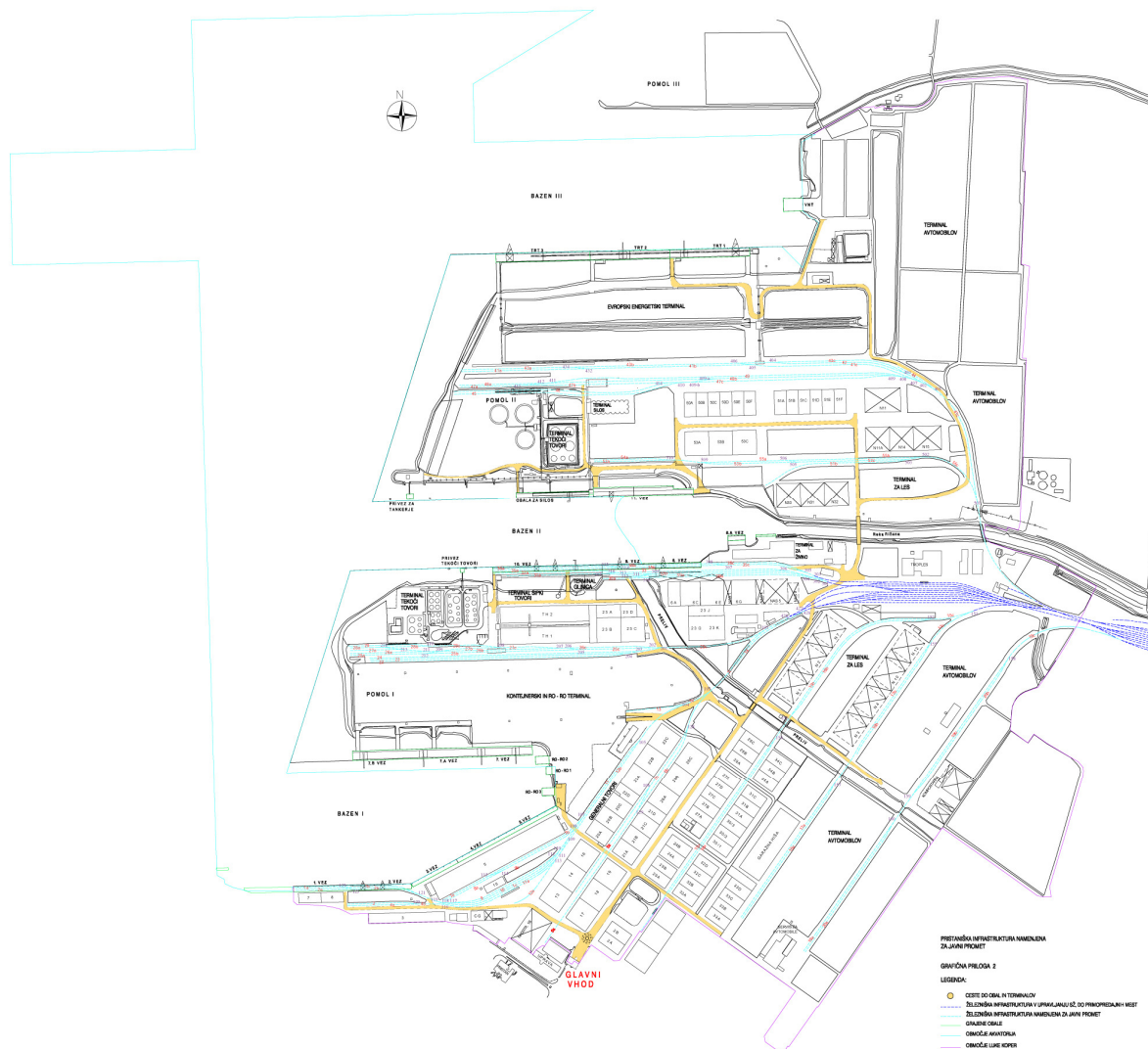
- Regulatory set-up

1676. The Slovenian Maritime Code mentions the provision of stevedoring services among the duties of a port operator (Art. 41).

1677. The Port Decree expressly stipulates that the concessionaire of the port of Koper enjoys an exclusive right to perform cargo and passenger handling services including, *inter alia*, stevedoring, warehousing (as far as it is ancillary to stevedoring), intra-port transportation and the handling of baggage; moreover, the concessionaire is entitled to perform additional logistics services necessary for the smooth and efficient provision of services (Art. 10). Luka Koper enjoys no exclusive right to provide logistics services, which can also be performed by third parties which comply with applicable port regulations. The scope of these rights is further defined in the Concession Agreement (see Art. 5.2).

Figure 112. The port area of Koper as defined in the Slovenian Port Decree, upon its adoption in 2008.

PRILOGA 2



1678. According to its Statute, the primary objective of Luka Koper d.d. is "to engage in profit generating activities which shall maximize the value of the company", in accordance with the Companies Act (Art. 2).

The company's employees are represented in the Supervisory Board by three members out of nine (Art. 16 of the Statute). The company's Management Board is composed of four

members²¹⁶⁴: the President, the Vice-President, one member and the Workers Director. The latter represents the interests of employees in relation to personnel and social issues (Art. 27). In accordance with the Law on worker participation in profits and on condition that a special agreement is concluded between the company and representative trade unions, a portion of the company's profits may be disbursed to employees (Art. 39).

1679. As we have mentioned above²¹⁶⁵, no specific port labour legislation applies in Slovenia. Port labour is regulated neither by the Maritime Code nor by the Port Decree.

1680. As all cargo handling services (and, for that matter, passenger embarkation and disembarkation services) are directly provided by Luka Koper Group, there is no further requirement on individual employers of port workers to join an employers' organisation or association.

1681. Port workers in Slovenia do not have to be registered and are not employed under a pool system. Port workers in Slovenia do not enjoy a specific legal status²¹⁶⁶ and the law sets out no specific qualification criteria. No distinction is made between workers at the ship/shore interface and warehouse or logistics workers. However, the Collective Agreement sets out a classification of workers according to their education level (Art. 7).

1682. As a rule, port workers are employed on a permanent basis (contracts for an indefinite term), but there are also casual temporary workers (fixed-term contracts) and occasionally employed workers.

By end 2011, 94.5 per cent of the Group employees and 93 per cent of the Company employees held a permanent employment contract. The average salaries are said to exceed the Slovenian average²¹⁶⁷. Job categories and their pay rates are defined in the collective agreement.

There is no hiring hall in the port of Koper.

The Collective Agreement contains no mandatory manning scales.

²¹⁶⁴ Currently, the Board is composed of only 3 members, including the Workers Director.

²¹⁶⁵ See *supra*, para 1671.

²¹⁶⁶ Jerman, B., "Some labour and social questions in the European Union port sector", *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 2009, (986), 1004.

²¹⁶⁷ Port of Koper, *Annual Report 2011*, <http://www.luka-kp.si/eng/investors/annual-reports>, unpagged, item 19.6.

Temporary workers can only be employed when conditions set out under general labour law or applicable collective agreements are met²¹⁶⁸. Workers can be hired from temporary work agencies, again on condition that the rules of general labour law are complied with.

1683. In the case of unemployment, port workers are entitled to the same unemployment benefits as other workers.

1684. As a rule, port workers can be transferred temporarily to another employer. Here as well, general labour law provisions must be reckoned with.

As Slovenia has only one commercial port, the hypothesis of a temporary transfer to another port has no relevance.

1685. Practically, laws on employment may be enforced by the public prosecutor, the police, the national employment authorities (Labour Inspectorate), the employer and the unions.

1686. Luka Koper mentions that if a port terminal is transferred to a new operator or employer, the latter is not obliged to take over the port workers²¹⁶⁹. In this respect, it should be noted that Luka Koper cannot transfer its concession to another party, but also that this concession has a limited duration.

- *Facts and figures*

1687 All port workers are employed by Luka Koper.

In addition, Luka Koper has approximately 40 subcontractors, who are either independent entrepreneurs (*samostojni podjetniki*) or limited liability companies (*družbe z omejeno odgovornostjo*). Luka Koper stresses that these subcontractors operate on the basis of service contracts and cannot be considered labour agencies. It added that the Labour Inspectorate endorses this. Luka Koper further specified that subcontractors are used for the following tasks:

²¹⁶⁸ See *infra*, para 1703.

²¹⁶⁹ See, however, on general EU law in this respect, *supra*, para 165.

- loading and unloading of cars;
- movement of cars;
- unskilled and skilled cargo handling work (the latter includes on-board lashing and securing on board);
- operation of port equipment;
- checking of containers.

In addition, some easier warehousing and weighing jobs are performed by invalid workers of the sister company Luka Koper Inpo d.o.o.

1688. In 2011, the Port of Koper employed a staff of 729, of whom some 352 workers can be considered port workers for the purposes of the present study²¹⁷⁰.

*Table 100. Number of employees and port workers (indicated with *) at the Port of Koper, 2011 (source: Luka Koper)*

Job category	Number of employees
Foreman*	47
Dispatcher	69
Fireman / Security man	12
Controller*	9
Stevedore*	23
Forklift driver*	23
Operator manager	34
Technologist*	22
Warehouseman*	69
Security man	13
Salesman	16
Crane operator*	159
Lawyer	3
Accounting clerk	3
Member of the Management Board	4
Shift manager*	30
Unit manager	21
Junior expert	26
Senior expert	26
Other	150
Total	729
of whom port workers (marked with *)	352

²¹⁷⁰ On the definition of a port worker, see *supra*, para 8 *et seq.*

In addition, Luka Koper's subcontractors employ some 290 (or, according to another source, 550) workers.

As a result, the overall number of port workers in Koper may be estimated at between 640 and 900 persons.

1689. 363 out of 729 staff at Luka Koper are unionised, which represents 46.1 per cent (which is higher than the national average of 30 per cent²¹⁷¹). Luka Koper has no information on the union density among port workers as defined above. This percentage can only be determined on the basis of data on the deduction of union membership fees for individual workers, which would be at odds with rules on the protection of privacy.

According to Luka Koper, the main trade unions are the Trade Union of Maritime Crane Operators of the Port of Koper (Sindikat Žerjavistov Pomorskih Dejavnosti – Luka Koper, SŽPD) with 268 members and the IDC-affiliated Trade Union of Slovenian Port Workers (Sindikat Pristaniških Delavcev Slovenije, SPDS) with 95 members. These organisations are officially considered representative trade unions. The former union is affiliated to the federation Alternativa (Slovenska Zveza Sindikatov Alternativa).

During a major industrial dispute in 2011, the workers employed by the subcontractors of Luka Koper were defended by the Trade Union of Performers of Port Services (Sindikat izvajalcev pristaniških storitev, SIPS) and the Invisible Workers of the World (IWW)²¹⁷².

9.19.4. Qualifications and training

1690. In 2006, Luka Koper, in cooperation with the National Institute for Vocational Education and Training, developed a professional standard (National Vocational Qualifications or Nacionalnih Poklicnih Kvalifikacij, NPK) for crane operators. Also relevant is the national professional qualification of NPK mechatronic which is based on a combination of engineering, electronics and informatics skills²¹⁷³.

²¹⁷¹ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

²¹⁷² See *infra*, para 1706.

²¹⁷³ Luka Koper, *Annual Report 2006*, <http://www.luka-kp.si/eng/investors/annual-reports>, 63.

The National Professional Qualifications Act of 20 December 2006 regulates the acquisition of professional qualifications which are necessary for the exercise of a profession or of individual sets or responsibilities within a profession at a specified level of difficulty.

On the basis of this Act, National Professional Qualification Standards were developed for, among others, forklift drivers and warehousemen, while the standards for crane drivers are reportedly still in preparation. Awaiting their adoption, general principles are applied with respect to the latter category of workers.

The general regulations on qualifications are also applied by the Luka Koper Group. Pursuant to the National Professional Qualifications Act, specific training and exams are now mandatory for the handling of certain types of equipment in the port.

However, no specific National Professional Qualification Standards were developed for general port workers. As a result, there are today no specific regulations or curricula on the training of general port workers in Slovenia.

1691. The general Health and Safety at Work Act obliges all employers to provide training on health and safety matters²¹⁷⁴.

The Act also provides that education and training concerning health and safety at work shall form an integral part of educational programmes provided by universities and schools of all types and levels and that training for safety and health at work shall form an integral part of the induction of workers (Art. 16). It further stipulates, *inter alia*, that employers must ensure that each employee receives adequate health and safety training on recruitment, in the event of a transfer to a new workplace, in the event of the introduction of any new technology or new means of work, and in the event of any modification of the work process which may alter the level of safety at work. Health and safety training must be adjusted to the specificities of the workplace and carried out according to a programme which shall be, where appropriate, renewed and modified with regard to new forms and types of threat (see Art. 38).

Luka Koper confirmed that it adheres to these requirements and that it monitors whether its workers are fit to carry out their job.

1692. Practically speaking, training of port workers is to a large extent organised by Luka Koper itself and training was made compulsory for all categories of port workers employed by it. As there are no other cargo handling companies in the country, there are no other training providers either, and Luka Koper is unable to outsource this activity. However, other institutions do provide training for general jobs such as truck or forklift driver.

²¹⁷⁴ See *infra*, para 1695.

Training and certification of workers employed by Luka Koper's subcontractors are a responsibility of the latter, but Luka Koper provides safety training for these workers. Exceptionally, if no training can be procured from external partners, Luka Koper also organises specific training on the use of specific port technologies.

1693. Replying to the port labour questionnaire, Luka Koper informed us that the following types of formal training are available and indeed compulsory:

- continued or advanced training after regular educational programme;
- induction courses for new entrants;
- courses for the established port worker;
- training in safety and first aid;
- specialist courses for certain categories of port workers such as crane drivers, container equipment operators, ro-ro truck drivers, forklift operators, lashing and securing personnel, tallymen, signalmen and refer technicians.

1694. Today, the level of education of Luka Koper's employees is highly diverse²¹⁷⁵.

On its website, Luka Koper informs the public that it is a learning organisation, devoting, in 2009, on average 16 hours to functional training per employee, and that employees participate in more than 150 different forms of education²¹⁷⁶.

In its 2011 Annual Report, Luka Koper mentions that it realised 18.6 hours of training per employee in the parent company, and 15.6 in the Group. Over 70 per cent of training was organised in-house²¹⁷⁷. We have no specific information on the training of port workers as defined in the present study.

²¹⁷⁵ See detailed information in Port of Koper, *Annual Report 2011*, <http://www.luka-kp.si/eng/investors/annual-reports>, unpaginated, item 19.4.

²¹⁷⁶ <http://www.luka-kp.si/eng/about-us/employees/education-and-training>.

²¹⁷⁷ Port of Koper, *Annual Report 2011*, <http://www.luka-kp.si/eng/investors/annual-reports>, unpaginated, item 19.

9.19.5. Health and safety

- *Regulatory set-up*

1695. The Health and Safety at Work Act, which also applies in ports, provides, *inter alia*, that every employer has a duty to ensure the health and safety of his employees in every aspect related to the work. Within the context of his responsibilities, the employer must take the measures necessary to ensure safety and health of workers and other persons present in the work process, including prevention, elimination and management of occupational risks, provision of information and training of workers, as well as provision of the necessary organisation and means (Art. 5). The Act further elaborates on these basic duties of employers and also describes the rights and duties of workers, for example in relation to the observation of health and safety measures and the use of personal protective equipment (see Art. 12).

1696. Since the entry into force of the Health and Safety at Work Act 2011, the Rules on Hygienic and Technical Safety Measures for Work in Port Transport of the SFR of Yugoslavia have ceased to apply (Art. 83 of the Act)²¹⁷⁸. Consequently, today no specific rules on health and safety in port labour apply.

1697. The Concession Agreement charges Luka Koper with, *inter alia*, maintaining order and safety in the port (Art. 4.2.1) and the provision of first aid services (Art. 4.2.4.2).

1698. Luka Koper maintains its health and safety at work system in accordance with the Guidelines of the international standard OHSAS 18001:2007²¹⁷⁹.

1699. Luka Koper informed us that health and safety rules are enforced by the national employment authorities (the Labour Inspectorate) and the terminal operator. Accidents resulting in serious injuries and fatal accidents must be reported to the Labour Inspectorate²¹⁸⁰.

²¹⁷⁸ See also Art. 65 of the previous Health and Safety at Work Act of 30 June 1999 which provided that, until the adoption of regulations governing health and safety at work, said Rules remained in force.

²¹⁷⁹ Port of Koper, *Annual Report 2011*, <http://www.luka-kp.si/eng/investors/annual-reports>, unpagged, item 19.3.

²¹⁸⁰ On the latter, see *infra*, para 1700, footnote.

- Facts and figures

1700. According to the Ministry of Labour of Slovenia²¹⁸¹, employers reported the following occupational accidents between 2009 and 2011²¹⁸²:

Table 101. Number of occupational accidents in the port of Koper, as reported to the Ministry of Labour, 2009-2011 (source: Ministry of Labour and Labour Inspectorate of Slovenia)

	2009	2010	2011
Luka Koper	10 (all minor)	15 (1 fatal and 4 major)	10 (all minor)
Luka Koper Inpo (<i>i.e.</i> a separate legal entity employing disabled persons)	3 (1 major)	7 (all minor)	6 (all minor)
Subcontractors operation in the port of Koper	14	20	4

These figures do not distinguish between port workers in the strict sense and other employees. In the same period, no occupational diseases were officially reported.

The Labour Inspectorate contributed the following figures:

²¹⁸¹ According to the statistics of Luka Koper, there were 22 occupational accidents in 2009 (18 in 2010), and between 2009 and 2010 1 fatal accident and 6 accidents resulting in serious physical injury occurred. See also the figures for January-March 2012 in Luka Koper Group, *Non-audited interim report of Luka Koper d.d. and Luka Koper Group. January - March 2012*, <http://www.luka-kp.si/eng/investors/annual-reports>, 30. It also informed us that in the first eight months of 2011, 53 work injuries occurred, which number fell to only 43 in the same period in 2012.

²¹⁸² Pursuant to the Health and Safety at Work Act 2011, employers are obliged to report immediately to the Labour Inspection any fatal accident at work or any accident at work rendering a worker incapable of work for more than 3 working days, or any collective accident, dangerous occurrence or an established occupational disease (Art. 41(1)).

Table 102. Number of occupational accidents in the port of Koper, as reported to the Labour Inspectorate, 2002-2012 (source: Labour Inspectorate of the Republic of Slovenia)

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012 (Jan-Sep)
Port of Koper d.d.											
Occupational accidents	28	35	49	34	38	44	28	29	24	28	21
Fatalities	0	0	0	0	0	0	0	0	1 ²¹⁸³	0	0
Subcontractors											
Occupational accidents	18	23	30	36	25	56	46	46	54	52	29
Fatalities	0	1	0	0	2	2	0	0	2	0	0

9.19.6. Policy and legal issues

- *Restrictions on the provision of port services and the hiring of port workers*

1701. Replying to our questionnaire, the port of Koper reports that service providers from other EU countries are allowed to establish themselves in the port, and they also enjoy a right to offer services in it. Moreover, these service providers can freely choose their workers.

In this respect, we should again point out that the market for cargo handling in the port of Koper is organised as a legally protected monopoly which is based on a concession for a fixed term granted by the State to Luka Koper. Prior to this concession, Luka Koper and its predecessors constructed the port facilities and also invested in its equipment.

1702. Still in response to the port labour questionnaire, Luka Koper mentions two restrictions that prevail in the port labour market: a ban on self-handling²¹⁸⁴ and limited working days and hours. However, the Port does not consider these restrictions a competitive disadvantage.

²¹⁸³ Commuting accident.

²¹⁸⁴ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) *All longshore activities.*

(b) *Exceptions:*

(1) *Opening and closing of hatches, and*

(2) *Rigging of ship's gear.*

The ban on self-handling is confirmed in European Sea Ports Organisation, *Factual Report on the European Port Sector*, Brussels, 2004-2005, 161.

What is more, the limitation of working time is also regarded as beneficial, because it enhances productivity and helps reduce accident rates.

1703. Still, Luka Koper believes that the current regime of port labour is unsatisfactory, because it does not allow sufficient flexibility in the event of extra demand for workers in peak times. Slovenian labour law does not contain specific provisions on the employment of temporary workers in case of an unexpected increase in the work volume. Neither does it contain specific rules for the port sector.

Slovenian labour legislation leaves room for further regulation of such matters through collective agreements. However, collective agreements must always conform to mandatory provisions of general labour legislation. This is the case, for example, with the rules on working time. The Employment Relations Act obliges employers to notify the workers in writing on the temporary redistribution of working time not later than one day before the redistribution of working time of an individual worker and three days before the redistribution of working time of more than ten workers (Art. 147(3)). In practice, however, it is difficult to predict an increase in the volume of port work 3 days in advance. Also, in case of an increased volume of work, Slovenian legislation permits the employment of additional workers for a definite time on the basis of fixed-time contracts. However, Slovenian courts are reluctant to accept the emergence of an increase of work and for this reason often classify these fixed-time contracts as permanent employment contracts²¹⁸⁵.

- Issues concerning working conditions, especially health and safety and training

1704. Responding to our questionnaire, Luka Koper informed us that, whereas the current relationship between port employers and trade unions can be described as satisfactory, there are some problems among certain groups of workers (in particular among qualified port workers operating port equipment such as cranes and transtainers) who enjoy a strong bargaining position because they have the power to disrupt port operations and who have managed to obtain better conditions than other workers.

Luka Koper also mentions the job insecurity of temporary workers which might become a serious issue in times of economic crisis. However, the policy of Luka Koper is to promote permanent employment as much as possible. It also stated that Slovenian law on the termination of employment contracts is the second most protective for workers in the entire EU.

²¹⁸⁵ Jerman, B., "Some labour and social questions in the European Union port sector", *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 2009, (986), 1003-1004.

As regards the enforcement of general labour law provisions, Luka Koper did not report any specific issues. It confirmed that the rules on health and safety in the port of Koper are satisfactory and properly enforced. Recent inspections by the Labour Inspectorate revealed no significant infringements, and all minor issues could be solved. Luka Koper considers the lack of specific rules on port work problematic and identifies respect of working and rest times as the greatest difficulty.

In its Annual Report for 2011, Luka Koper states that recent HR measures involved increased in-house mobility of employees, the temporary introduction of a new crane operators' work organisation system, additional recruitments outside the HR annual plan, and intensive training of crane operators through the tutoring system²¹⁸⁶.

1705. The Ministry of Labour / Labour Inspectorate informed us that it enforces labour legislation in the port "within its powers and within its objective abilities" and that its inspectors "consistently consider all received complaints and in cases of identified breaches act in accordance with their powers". It states that applicable rules on health and safety are satisfactory and that they are properly enforced by the Labour Inspectorate. The latter may issue regulatory or prohibitory orders and file criminal complaints against employers.

However, the Labour Inspectorate have detected breaches of labour regulations in the port of Koper, among others breaches of rules on remuneration, payment of holiday pay, illegal employment, daily and weekly rest, *etc.* The Labour Inspectorate also detected inadequacies concerning proper safety training and the use of personal protective equipment. It mentions that it continuously carries out inspections in the port, including with the other service providers. These inspections will continue in the future, within the limits of available human resources and taking into account other priorities.

The Annual Report of Luka Koper for 2011 confirms that the Labour Inspectorate issued a regulatory order, demanding additional training of employees. Luka Koper states that it is trying "to decrease the number of accidents at work and at the same time to perform the work quickly and in a quality manner"²¹⁸⁷. Recent training initiatives focused on the safe crossing of railway lines, the operation of forklifts, tractors and trucks and the appointment of traffic wardens.

1706. The information above should be interpreted against the background of a serious labour dispute that occurred in the port of Koper in the course of 2011²¹⁸⁸.

²¹⁸⁶ Port of Koper, *Annual Report 2011*, <http://www.luka-kp.si/eng/investors/annual-reports>, unpagged, item 19.

²¹⁸⁷ Port of Koper, *Annual Report 2011*, <http://www.luka-kp.si/eng/investors/annual-reports>, unpagged, item 19.3.

²¹⁸⁸ See, in addition to the background documents quoted below, Parisien, "Double Strike of Workers in Luka Koper (Port of Koper), Slovenia. Call for Support (Invisible Workers of the World)", 1 August

The crane operators' union SŽPD downed tools at Luka Koper because of a decline in working conditions, the breaking of maximum working hour restrictions and an unacceptable increase of the accident rate. Apparently, the immediate cause of the strike was the introduction of a new (yet only temporary) work regime with a team of 3 crane operators switching on 2 cranes in the course of 1 shift, whereas the previous regime was 2 operators working on 1 crane. The same regime would apply to transtainer drivers. The new system was based on a comparison of arrangements in other ports but the union vigorously opposed it and also demanded that crane, vehicle and machinery operators, as well as foremen and warehousemen, working in the Fruit Terminal be paid a supplement due to their exposure to more difficult working conditions, that a number of functions such as crane operator, foreman and locomotive driver be occupied exclusively by employees of Luka Koper and that new Luka Koper employees be primarily recruited from the staff of port service providers. The union also opposed the cutting of breaks for crane operators from 2 hours to 1. The port workers organised in the trade union SPDS and non-unionised workers did not join the strike.

However, about one third of the workers employed by the port's subcontractors, organised in the non-representative trade union SIPS, went on strike as well, complaining about underpayment and unreasonable working hours and demanding working conditions and pay equal to those of employees of Luka Koper. Legally, the latter action was not an official strike, but rather a form of civil protest.

The issues at stake are clearly explained in the following note published on Luka Koper's website, where each initial union demand is followed by a reply by the Management of the Port²¹⁸⁹:

Strike demands of Luka Koper's Union of Crane Operators - the standpoints of the Management Board of Luka Koper d.d.:

Crane operations within Luka Koper Group companies are currently performed under the 2-1 system, i.e. two crane operators per crane; this regime also extends to transtainers which are - for this purpose - also considered a crane. Within the breaks aimed at

2011, <http://njetwork.org/Double-strike-of-Workers-in-Luka>; X., "Luka Koper to Fire Organisers of Crane Operators' Strike", *Slovenian Press Agency* 1 August 2011, <http://www.sta.si/en/vest.php?s=a&id=1661953>; X., "Negotiators in Seaport Strike Near Positions", *The Slovenia Times* 2 August 2011, <http://www.sloveniatimes.com/no-mercy-for-the-crane-operators-on-strike?send=1>; X., "Slovenian crane operators strike over health and safety", 3 August 2011, <http://www.itfglobal.org/news-online/index.cfm/newsdetail/6269/>; X., "No Mercy for the Crane Operators", *Diplomatic Corporate Services* 3 August 2011, <http://www.diplomatic-corporate-services.si/news/no-mercy-for-the-crane-operators/>; Parisien, "Workers on strike ever more determined", 3 August 2011, <http://njetwork.org/Workers-on-strike-ever-more>; Parisien, "Appeal of the Subcontracting Workers", 4 August 2011, <http://njetwork.org/Appeal-of-the-Subcontracting>; Parisien, "First negotiations between subcontracting workers and employers", 4 August 2011, <http://njetwork.org/First-negotiations-between>; X., "Strike of Crane Operators at Koper Port Ends (adds)", *Slovenian Press Agency* 6 August 2011, <http://www.sta.si/en/vest.php?id=1663528>; X., "Strike ends in victory for Slovenian crane operators", 17 August 2011, <http://www.itfglobal.org/news-online/index.cfm/newsdetail/6307/>;

²¹⁸⁹ Luka Koper, "Strike demands of Luka Koper's Union of Crane Operators – the standpoints of the Management Board of Luka Koper d.d.", www.luka-kp.si. Union demands are in italic (bold in the original), replies are in regular (italic in the original).

augmenting operator concentration, a crane operator may be asked to perform one-off tasks (such as adjusting container spreader grips and other such equipment, movements of containers within the storage area and similar small tasks) for a maximum duration of 30 minutes. Luka Koper d.d. cranes may only be operated by crane operators employed by Luka Koper d.d.

Decisions as to the organisation of work at Luka Koper d.d. are exclusively the competence of the company's Management Board. The Management Board decided upon a new organisational regime – which was proposed to the Union in February – in order to allow workers to take summer holidays and compensatory hours, as well as to bridge the period until the arrival of 13 additional crane operators. The interim measures are of a temporary nature, namely for a period of four months. In addition, further rewards to crane operators are also anticipated.

The Union demanded the immediate elimination of tractor trailers which were not fitted with adequate breaking systems.

A while ago, the major portion (11) of the inappropriate trailers were fitted with new safe breaking systems. The remaining 7 trailers were eliminated from service.

In order to guarantee the occupational safety of subcontractors within the port, the Union demanded that the company take immediate action to ensure all working hours are compliant with the provisions of the Employment Relationships Act RS.

In relation to subcontractors, this demand surpasses the company's competence, and falls within the field of external inspection. By amending its Rules on Internal Order, the company has established better control over the movement of port service providers' personnel within the port zone.

The Union demanded that crane, vehicle and machinery operators, as well as foremen and warehousemen, working in the Fruit Terminal are acknowledged and paid a supplement due to their exposure to more difficult working conditions; this for the entire period since the new collective agreement came into force.

Difficult working conditions are considered within job and work-post evaluation, and the current systematisation of work-posts was corroborated by the adoption of the new collective agreement in 2008. In June 2011, Luka Koper engaged in a further comprehensive review of operative work-posts and the respective working groups include representatives of both unions as well as the Workers' Council.

The Union demanded the immediate enforcement of the provisions of the Employment Relationship Act RS and the company's overtime agreement.

The March 2011 inspection did not establish any major deviations from the statutory provisions.

The Union demand that the Management Board immediately fully implement the findings of the commission for monitoring the enforcement of the collective agreement, and remunerate the pay escalator back-dated to 1st February 2011.

At its session of 20th May 2011, the Luka Koper Management Board endorsed the harmonisation of salaries in accordance with the rate of inflation. Employees will receive this balance with their August salaries.

The Union demanded that all management positions (from foreman and controller upwards) are occupied exclusively by employees of Luka Koper d.d.. In addition, rail track vehicles (locomotives) operating in the port zone should only be operated by drivers employed by Luka Koper d.d.

This demand usurps Management Board competences as to decision-making. In accordance with the human resource management strategy, which was adopted last year and shall remain in force until 2012, Luka Koper employees shall continue to undertake the major portion of working processes within the Port of Koper.

The Union demanded that the Management Board ensures that all work posts less demanding than crane operator and port zone locomotive driver will be harmonised with the human resource management strategy 2010-2012, thereby ensuring the regular employment of an appropriate number of workers by the end of 2012.

As to the issue of personnel, certain employment positions were realised in late 2010 and early 2011. Additional recruitment is currently underway.

The Union demanded that new Luka Koper employees shall be primarily recruited from the staff of port service providers.

This demand usurps with (*sic*) the employer's legal right to select the most suitable candidates for work posts.

The Union demanded that foremen in charge of container movements are classified in a higher salary grade, due to the fact they also perform the tasks of a shift manager. Accordingly, they should be paid a 10% supplement for entire period since the new collective agreement came into force.

In May 2011, the Management Board adopted a resolution that foremen in charge of container movements were provisionally paid a 10% supplement for performing shift management tasks. Further to this, a cost-argued (*sic*) new systematisation, predicated on assessments as to work-load and professional responsibilities, should be prepared.

The Union demanded that the issue of holiday payments for shift workers - which was pointed out during previous industrial action – should be settled according to a standard system of working hours and holiday supplements for all employees (the same as in force for Slovenian Railways - SŽ).

The effective system at Luka Koper in no way breaches the provisions of labour legislation in relation to paid holiday.

The Union demanded that the rail container freight manipulator shall be afforded manager status due to the fact that he has been performing this job throughout his career at Luka Koper.

Said employee does not fulfil the education and qualification criteria to be afforded management status.

As a further background document, we quote in its entirety the document 'A Report to the State Labor inspection by the Union of Subcontracting Workers (SIPS) of Luka Koper (Port of Koper) on Strike', dated 2 August 2011²¹⁹⁰:

Our union is the union of workers, employed by subcontractors of port services (SPPS) in Luka Koper. We have approximately 250 members.

In the port of Koper the unloading and reloading is performed by crane operators and supervisors, but also by workers, employed by so called "subcontractors" (as the management calls them). There are approximately 40 subcontractors, organized as "independent entrepreneurs" (samostojni podjetniki) or "companies with limited responsibility" (družbe z omejeno odgovornostjo). Those subcontractors employ approximately 550 workers that work in unloading and reloading of goods from the ships.

Our union is an urgent response to inhuman and horrifying working conditions that we, the subcontracting workers, have to endure since several years. Let us briefly sum up only the most common and most urgent breaches of the work legislation:

We don't have regular working time, so we have to be at the disposal of the employer 24 hours per day, seven days in a week, for the whole month during the entire year. All the time. We don't have a working schedule, we have to be available "on demand". We have to respond to the call of the employer within one hour. When we arrive to work we don't know when the work will be over. On quite (sic) regular basis we are obliged to make several shifts in a row, also 4 shifts at once, which makes 32 continuous working hours. Sometimes our work lasts for 10 consequent shifts, so that we work continuously for 3 to 4 days. We have to note at this point that the working hours of individual workers are evidenced in detail by entrance cards (the time of the entrance and exit of the worker), but also by port workers on individual work places. The total number of

²¹⁹⁰ Parisien, "A Report to the State Labor inspection by the Union of Subcontracting Workers (SIPS) of Luka Koper (Port of Koper) on Strike", 2 August 2011, <http://www.njnetwork.org/A-Report-to-the-State-Labor>.

working hours of an individual worker amounts to 250 per month, in accordance with the needs of the port, but often we can make up to 300 or even 350 hours per month.

The same "flexibility", valid for the "regular working time", is applied also to the payment of the work done. Work contracts, usually printed on predefined forms, are incomplete, since they do not include provisions on additional payments (dodatki). This means that overtime work is paid (sic) the same as regular work, from 2,5 to 4 Euro per hour. Employers do not pay us transport expenses and our food expenses are "covered" with vouchers for the port canteen (in the value of 3 to 4 Euro). On our pay roll our income is accounted in the following manner: salary is shown as the prescribed minimum wage in regular working hours and the payment for overtime work is presented as transport expenses (even if the worker lives only 200 meters from the port), as additional payment for separate household and food expenses (in the maximum amount).

We believe that the work in the port through subcontractors is illegal. Namely, the working process is under exclusive supervision and leadership of the workers of Luka Koper. Our employer is not in charge of our arrival to work and during the work we have no further contact with him, even if our work place changes.

We are constantly exposed to mobbing from the side of our employers but also from the workers, employed directly by Luka Koper. Any expression of discontent or resistance, even to illegal orders, is sanctioned with temporary or permanent removal from the work place (they force us to quit). All this (sic) circumstances force the workers into obedience, especially those workers that have a temporary work contract or temporary work permit. This is an advantage of employers, that they thoroughly exploit.

Due to the described circumstances it was not realistic to expect that we would be able to establish a worker's union. But we have managed to do it this year. Nevertheless the management of the port was constantly informed about our problems, since it received - together with the labor inspectorate in Koper - regular reports on violations of labor legislation from the Union of Crane Operators (Sindikat žerjavistov). Their only response was silence or incapability to find any irregularities if they would make an inspection. The management of the port does not react to numerous calls (ore (sic) even strike demands) of the Union of crane operators regarding our situation. They continue to push their heads in the sand by claiming that their hands are tied since we are supposedly not employed by them..

You have been probably already informed through the media that the vast majority of subcontracting workers has - parallel to the strike of crane operators that started on July 29th - spontaneously stopped working and gathered in front of the administrative building of the port, where we continue to persist without interruption the fifth day in a row. Workers are tired of the arrogance of the state firm Luka Koper, of inspections and other state bodies and they are fed up. We have informed also the labor inspection in Koper about the situation.

We turn to you since we have no reason to believe, that someone in Koper will reply to our grievances. But we demand that state bodies will not allow such grave breaches of the basic human rights in a country, that is a member of the European union (sic). Namely, this kind (sic) of conditions were outdated even in the 19th century.

On the same day, a delegation of the union IPS presented its case to the Office of the Human Rights Ombudsman in Ljubljana. IPS reported on this meeting in the following terms²¹⁹¹:

A delegation of the IPS Union, the union of the subcontracting Luka Koper (Port of Koper) workers on strike, has presented today at 12.00 the situation of severe breaches of rights of workers in Luka Koper to the Office of the Ombudsman in Ljubljana. Workers of the port, that are hired via subcontractors, are in an unequal position, since they are - due to the systemic arrangements of the labor and migration regime in Slovenia - forced to do the same work for substantially lower wages and higher working hours in intolerable and precarious working conditions. In such a regime of dependency the systematic denial of rights of the workers is manifested in various ways: from overtime and unpaid working hours to increased numbers of work injuries.

The delegation of workers was received by the deputy Ombudsman. During the conversation the workers thoroughly explained the practices of the systematic denial of the rights of the workers in the port. The deputy Ombudsman has promised, among other things, that the Ombudsman office will require detailed information from the state labor inspection about the reasons of its inactivity in the case of Luka Koper. He has also encouraged the workers to regularly inform the Ombudsman about the activities of state institutions in charge of the monitoring of the requirements of labor legislation. The conversation also touched upon the responsibility of the Slovene government and the respective minister for transport, dr. Patrick Vlačič. Workers will establish contact with him and the office will demand an official explanation by the minister about concrete measures of his ministry to enact the rights of the workers in the port of Koper.

The Ombudsman reported as follows on this meeting²¹⁹²:

The representatives of the workers employed by the contractors providing their services for the needs of Luka Koper today visited the Slovenian Human Rights Ombudsman (HRO). They stated that their employers who contractually provide workers for Luka Koper's activities do not observe their rights, contracts and regulations, particularly regarding working hours, breaks and rest, and payment for the work performed. They also said that thus far, the labour inspectorate has been inefficient in its supervision and has not improved their situation; therefore, they feel deprived of their rights. This was also the reason for their spontaneous strike.

In view of the HRO's powers, it was agreed that all irregularities will again be reported to the Slovenian Labour Inspectorate. The HRO expects the Labour Inspectorate to thoroughly examine all their statements and to adopt measures necessary to end the infringements, should it prove that the allegations are true. In this context, the HRO takes the view that the Republic of Slovenia, as the majority owner of Luka Koper, and the port's management should not remain ignorant of the situation and the level of

²¹⁹¹ "Luka Koper workers on strike met with the ombudsman", 2 August 2011, <http://njetwork.org/Luka-Koper-workers-on-strike-met>.

²¹⁹² X., "Ombudsman Receives Representatives of Workers Employed by Luka Koper's Contractors", 2 August 2011, <http://www.luka-kp.si/eng/about-us/employees/education-and-training>.

respect of fundamental rights of the workers employed by contractors. Therefore, the HRO expects the competent ministries and the port's management to assume a more active role in regulating the rights of these workers.

Also on 2 August, the Invisible Workers of the World (IWW) sent the following Open Letter to the President of the Republic of Slovenia²¹⁹³:

Honorable President of the Republic of Slovenia, dr. Danilo Türk!

It has already been brought to your attention that the movement Invisible Workers of the World (IWW) is closely following the situation of migrant workers and that one of the main goals of our effort is the immediate abolition of their discrimination, which is the result of a systemic (state) arrangement of their unequal position in regard to other (citizen and EU) workers. In the past you have already expressed your support for the demands of our movement (in the struggle of the self-organized group of SCT (a construction firm) workers on the 18th of February 2011 and during the rent strike of Vegrad (another construction firm) workers, inhabitants of Vegrad's worker dormitory in Ljubljana on 15th of July 2011). On both occasions you have expressed your desire - since this topic is of your great concern - that we keep you informed about the developments of both struggles and the existing difficulties of workers, who are in their greatest despair completely marginalized and ignored, although their only demand is equality and just payment for their work.

Recently, we have actively supported the strike of workers in Luka Koper (Port of Koper). Our support and active engagement arise out of our deepest belief, that the demands of the workers on strike are just and legitimate, but most of all because of the fact, that Luka Koper employs a large group of people, hired through subcontractors. These workers are subject to similar statutory restrictions and working conditions as other migrant workers in Slovenia, like the ones from SCT and Vegrad for example. This group of workers has joined the strike of other port workers on Friday, the 29th of July. Their demands are equal employment contracts (direct contract, i.e. collective agreement with the Port of Koper) and equal working conditions for all the port workers (the same working hours and payments). Namely, the existing labor regime in the port (with different subcontractors for different jobs) enables the port management to systematically exploit the completely precarious workers, which are - because of their consequent position - pushed into inhumane working and living conditions, with overtime working hours, underpaid wages and substantially lower worker and social rights. Similarly as other workers on strike they are subject to various forms of pressure from the side of the state, the port management and their employers, but their situation is even more difficult.

Despite the ongoing strike the management of the port claims it has no direct responsibility for the workers of its subcontractors and continuously avoids any negotiation with them. For the obvious reasons we feel obliged to repeat the fact, that the Slovenian state is the largest owner of Luka Koper and at the same time the most responsible for the establishment of a labor regime that enables such exploitation.

²¹⁹³ <http://www.njnetwork.org/Open-Letter-of-the-IWW-to-the>

Therefore it must react to the recent events and contribute to the enhancement of the situation of the workers, employed by the port via subcontractors.

The first necessary step in this effort would be the start of the negotiations between the management of the port, the subcontractors and the organized port workers, employed by them. Therefore, we appeal to your authority to intervene within the broadest limits of your jurisdiction into the stalemate of the situation and in this way contribute to the beginning of its unfolding. The subcontracting workers and their demands are surrounded by the silence of the management, the state and the broader public. But your position and your intervention could contribute substantially to overcome their distress.

Reportedly, on 3 August 2011 the President replied with the following words²¹⁹⁴:

Let me express my gratitude for your letter in which you highlight the problem of salaries of workers, employed by various subcontractors in Luka Koper. As you have already mentioned, these workers are - due to their position - forced into very hard labor, frequently overtime and for a much lower payment and less rights than workers, that do the same work and are employed directly by Luka Koper. There can be no reason or excuse for such situation.

I am closely following the strike of crane operators and its economic and other consequences. All legal provisions on the regime of an organization of a strike should be strictly applied. I agree with you that the only solution for the present situation is an immediate agreement between representatives of employers and workers, which would point toward the best solution of the misunderstandings in the framework of legislation and the collective agreement.

As far as the workers that work in Luka Koper via subcontractors are concerned, I believe that the management of Luka Koper is obliged to make such contracts with subcontractors that would prevent salary anomalies and the discrimination of subcontracting workers.

Therefore I appeal to the management of Luka Koper, the subcontractors and the organized port workers to start an open dialog (sic) in good faith in order to find an appropriate solution as soon as possible.

On 5 August 2011, the Human Rights Ombudsman issued a news release on a letter it had sent to the Management of Luka Koper²¹⁹⁵:

After having requested information on the activities of the Labour Inspectorate of the Republic of Slovenia regarding a strike by the employees of companies providing services for Luka Koper d.d. (Port of Koper), the Slovenian Human Rights Ombudsman (HRO) also sent a letter to the port's management. Despite the fact that the operations of companies do not fall within the competence of the HRO, she nevertheless submitted

²¹⁹⁴ <http://njetwork.org/President-of-the-republic-supports>.

²¹⁹⁵ X., "Ombudsman's Letter to the Management of Luka Koper", 5 August 2011, <http://www.varuh-rs.si/media-centre/work-and-news/news/detail/ombudsmans-letter-to-the-management-of-luka-koper/?L=6&cHash=dbe5658761cfe947c84fd5d279577f9a>.

her view on the issue in question, since the Republic of Slovenia is the majority owner of Luka Koper d.d. A copy was also sent to the company's supervisory board and the Ministry of Transport, for their information.

The HRO's assistance was sought by workers employed by Luka Koper contractors; they went on strike due to unbearable conditions. The initiators stated that the provisions of the Employment Relationships Act regulating the employees' right to a break and rest during work (lunch break, a break between two working days, etc.) are as a rule not observed. Moreover, they referred to a monthly workload of over 300 hours and uninterrupted working days sometimes lasting 24 hours and more. They claim that the workers are permanently at the employer's disposal (stand-by), but do not receive adequate reimbursement for this.

In addition, several issues in the field of safety at work allegedly remain unresolved. The ever-increasing workload is reflected in unbearable working conditions. Furthermore, they report several accidents at work in the area of Luka Koper. The initiators also allege certain other irregularities, particularly regarding payment for the work provided.

The HRO welcomed the decision of the Luka Koper management board to actively take part in addressing these issues. She also expressed her satisfaction with the decision that the new contracts concluded with providers of port services would include a provision requiring the observation of the labour legislation. She also suggested that the addressee takes any possible measures in order to ensure that labour and other relevant legislation will be observed regarding employees performing their work in the area of Luka Koper in the future. The implementation of these arrangements will be monitored by the HRO within her competences.

The strike of the crane operators ended with an agreement confirming that the new crane manning system would only apply for a limited period and granting the operators additional pay for it.

The protest action of the subcontractors, which was not an official strike, resulted in the conclusion of an 'Agreement concerning the Conditions to Terminate the Protest' by Luka Koper, the Association of Subcontractors, individual subcontractors and the trade union SIPS. Luka Koper undertook not to discriminate against subcontractors whose workers had been protesting, while the subcontractors agreed that they would not discriminate against protesting workers. Luka Koper also promised that it would no longer order services from subcontractors who do not pay salaries or social contributions, and that it would control respect of working times and remove workers who are found working in the port for more than 12 hours. Even if Luka Koper is not acting as an employer of these workers, it is, by its concession agreement, entitled to take such measures in order to ensure overall safety of port operations. Particularly dangerous situations had been created by workers holding a permit to enter the port area to work for one subcontractor who took on a second 8-hour task for another subcontractor in the port for whom they possess no port permit at all. Not all workers of subcontractors welcomed the new restriction. Luka Koper did not agree to the demand of the union to control compliance by the subcontractors with employment conditions relating to, for example, wage supplements, duration of breaks and rests, leave etc., because Luka Koper is not a party to the employment

contracts between the subcontractors and their workers. Luka Koper accepted to mediate between the parties but declined to participate in collective bargaining between the subcontractors and the union.

1707. In 2012, the Luka Koper Group launched a project entitled *Comprehensive Employee Health and Occupational Safety within the Luka Koper Group* in order to promote a healthy attitude to work and the physical and mental welfare of personnel²¹⁹⁶.

1708. Slovenia is still bound by the outdated ILO Convention No. 32.

9.19.7. Appraisals and outlook

1709. On 1 September 2011, after a meeting with activists from IWW, the President of the Republic of Slovenia issued a press release in which he called the exploitation of migrant workers “a national disgrace” and called for a faster, more effective and dynamic operation of labour inspection services. The press release also mentions that the participants presented the situation of the workers employed by Luka Koper contractors, who participated in the dialogue between the employers and the port's management after the strike had been concluded. They pointed out that the dialogue was not running smoothly. President Türk called for its intensification²¹⁹⁷.

1710. Whereas Luka Koper mentions a number of issues surrounding port labour arrangements in the port (mainly lack of flexibility, working time restrictions, the strong position and privileged conditions of crane drivers and job insecurity of temporary workers), it sees no indication that the current labour regime impacts (either positively or negatively) on the competitive position of the port. Luka Koper informed us that recent safety measures adopted after the 2011 strike have already demonstrably improved the safety record.

Generally speaking, Luka Koper believes that the ideal port labour system is one that enhances productivity and competitiveness while respecting basic rights of workers and preventing their exploitation.

²¹⁹⁶ Luka Koper Group, *Non-audited interim report of Luka Koper d.d. and Luka Koper Group. January - March 2012*, <http://www.luka-kp.si/eng/investors/annual-reports>, 31.

²¹⁹⁷ X., “President Türk describes exploitation of migrant workers as a national disgrace”, 1 September 2011, <http://www.up-rs.si/up-rs/uprs-eng.nsf/dokumentiweb/7ECFD5358C04CB2BC125792E00326E0E?OpenDocument>.

In an interview, one other expert mentioned that the high wages of the strongly organised crane operators are a major competitive issue which is threatening the port's future.

Figure 113. On 1 September 2011, Slovenian President Dr Danilo Türk met activists from the Invisible Workers of the World (IWW) who presented the situation of temporary workers employed by the contractors of Luka Koper (photo: Stanko Gruden/STA).



1711. In January 2012, after a meeting with Luka Koper, the Capital Assets Management Agency of the Republic of Slovenia, which periodically monitors, with due diligence, the operations of state-owned enterprises, reported, *inter alia*²¹⁹⁸:

Given the information on possible abuses supposedly occurring in Luka Koper, d. d., on 9 November 2011 the Agency submitted a request for a special audit of the company to the supervisory board. The request to conduct the audit referred to the real-estate activity at home and abroad, timber terminal operations, business transactions with

²¹⁹⁸ Agencija za upravljanje kapitalskih naložb Republike Slovenije, "A quarterly meeting held with Luka Koper, d.d.", 27 January 2012, http://www.auknrs.si/en/what_new/Expectations_Luka_Koper/.

port-service providers (contracts with port-service providers) and other company contractors, investments, guarantee and pledge transactions, transactions related to the provision of loans and further loan-related activities, purchase and sales of shares and business shares, employment operations.

The request for an audit was rejected by the supervisory board.

The Agency expected that the audit would be carried out nevertheless.

On the 2011 strike, it stated:

Because of the strike, the company suffered irreparable damage, which will be difficult to assess. Subsequently, the workers who are employed with the port-service providers also expressed their dissatisfaction with working conditions. We expect that the company's management board pay on-going attention to all open matters concerning the company workers and, if necessary, take appropriate steps.

1712. In the opinion of several local observers, the port of Koper should in the long run be transformed to a landlord port authority, in order to conform to the model found in most other ports of the EU and to attract a strategic partner with a view to further infrastructure investment projects. At the same time, cargo handling should be entrusted to at least 2 concessionaires and the state stake in the port authority should be reduced to around 25 per cent²¹⁹⁹. To our knowledge, the current Slovenian Government is not intending to launch any such reform scheme however, but in an interview a local expert on port matters supported the idea.

1713. Luka Koper is of the opinion that there is no need or scope for any EU action in the field of port labour.

²¹⁹⁹ See, for example, X., "Port of Koper looking for strategic partners", *Slovenia Times* 23 May 2012, <http://www.sloveniatimes.com/port-of-koper-looking-for-strategic-partners>.

9.19.8. Synopsis

1714.		
SYNOPSIS OF PORT LABOUR IN SLOVENIA²²⁰⁰		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 1 seaport • Service port • 17m tonnes • 17th in the EU for containers • 73th in the world for containers • Appr. 42 employers • Between 758 and 902 port workers • Trade union density: 50% (?) 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • No Party to ILO C137 • CBA for port authority staff • All permanent and temporary workers employed under general labour law • No registration • No pool or hiring hall • No ban on temporary agency work 	<ul style="list-style-type: none"> • Exclusive right of Port Authority to provide all services • Inflexible hiring rules of general labour law • High labour cost of crane drivers • Ban on self-handling • Job insecurity of temporary workers, esp. workers of subcontractors • Proposals to adopt landlord model
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Training by Port Authority • Training by other providers for general jobs (forklift drivers) 	<ul style="list-style-type: none"> • National Professional Qualifications for equipment operators and warehousemen, but not for general port workers 	<ul style="list-style-type: none"> • Lack of qualification system for general port workers
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Accident statistics for the port available (but not for port labour as such) 	<ul style="list-style-type: none"> • No <i>lex specialis</i> (specific regulations abolished 2011) • No Party to ILO C152 	<ul style="list-style-type: none"> • Substandard treatment of subcontractors' staff and inadequacies detected by Labour Inspectorate, but addressed in recent safety measures • Still bound by outdated ILO C32

²²⁰⁰ 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.

9.20. Spain

9.20.1. Port system²²⁰¹

1715. The state-owned port system in Spain consists of 46 Ports of General Interest (*puertos de interés general*), managed by 28 Port Authorities. The overall coordination and control is the responsibility of the public entity Puertos del Estado ('Ports of the State').

The three largest Spanish ports are Barcelona, Valencia and Algeciras.

In 2011, the gross weight of seaborne goods handled in Spanish ports was about 476 million tonnes. As for container throughput, Spanish ports ranked 2nd in the EU and 10th in the world in 2010²²⁰².

1716. Today, Spanish ports operate under a landlord model, with all cargo handling activities being carried out by licensed private sector firms.

9.20.2. Sources of law

1717. Port labour in Spain is governed by the Act on the Ports of the State and on Merchant Shipping, a consolidated version of which was enacted by Royal Decree No. 2/2011 of 5 September 2011²²⁰³ (hereinafter: 'Ports and Merchant Shipping Act'). The Ports and Merchant Shipping Act regulates the granting of licences to cargo handling companies as well as the organisation of port labour.

1718. The main source of general labour law is the Statute of Workers which was adopted in 1995²²⁰⁴ and last revised in 2012²²⁰⁵. The Statute of Workers classifies port labour performed by

²²⁰¹ For general information on Spanish ports, see www.puertos.es; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 389-423; for statistics, see also http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

²²⁰² Container ranking based on UNCTAD, *Review of Maritime Transport 2011*, New York and Geneva, UNCTAD / UN, 2011, http://unctad.org/en/Docs/rmt2011_en.pdf, 201-203.

²²⁰³ Real Decreto Legislativo 2/2011, de 5 de septiembre, por el que se aprueba el Texto Refundido de la Ley de Puertos del Estado y de la Marina Mercante.

²²⁰⁴ Real Decreto legislativo 1/1995, de 24 de marzo, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores.

pool workers among the special employment relationships (*relaciones laborales de carácter especial*) which further comprise the work performed by, among others, senior management staff, domestic servants, prisoners in penal institutions, professional athletes, performing artists and disabled workers in special employment centres²²⁰⁶.

1719. Port labour qualifications are governed by the recent Royal Decree No. 1033/2011 of 15 July 2011²²⁰⁷ which lays down requirements for four professions in the maritime and fishing sector, including that of port workers²²⁰⁸.

1720. Health and safety of workers in Spain is governed by the general Act No. 31/1995 of 8 November 1995 on Labour Risk Prevention²²⁰⁹. This Act also applies to port workers but it does not contain any port-specific provisions.

Spain has enacted National Regulations on the Handling of Dangerous Goods in Ports²²¹⁰ and has transposed Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers²²¹¹.

1721. Spain has ratified both ILO Conventions No. 137²²¹² and No. 152²²¹³. Previously, it was a Party to ILO Convention Nos. 28 and 32.

1722. Port labour in Spain is furthermore governed by collective labour agreements which regulate not only the organisation of work but also holidays, salaries, trade union rights, *etc.*²²¹⁴

²²⁰⁵ See especially Real Decreto-ley 3/2012, de 10 de febrero, de medidas urgentes para la reforma del mercado laboral; see further *infra*, para 1729.

²²⁰⁶ Art. 2 of the Estatuto de los Trabajadores.

²²⁰⁷ Real Decreto 1033/2011, de 15 de julio, por el que se complementa el Catálogo Nacional de Cualificaciones Profesionales, mediante el establecimiento de cuatro cualificaciones profesionales de la familia profesional Marítimo-Pesquera.

²²⁰⁸ See further *infra*, para 1761.

²²⁰⁹ Ley 31/1995, de 8 de noviembre, de Prevención de Riesgos Laborales; see also Real Decreto 39/1997, de 17 de enero, por el que se aprueba el Reglamento de los Servicios de Prevención.

²²¹⁰ See Real Decreto 145/1989, de 20 de enero, por el que se aprueba el Reglamento Nacional de Admisión, Manipulación y Almacenamiento de Mercancías Peligrosas en los Puertos.

²²¹¹ Real Decreto 995/2003, de 25 de julio, por el que se establecen los requisitos y procedimientos armonizados para las operaciones de carga y descarga de los buques graneleros.

²²¹² Instrumento de Ratificación de España [de 22 de marzo 1977] del Convenio número 137 de la Organización Internacional del Trabajo sobre las Repercusiones Sociales de los Nuevos Métodos de Manipulación de Cargas en los Puertos, hecho el 25 de junio de 1973.

²²¹³ Instrumento de Ratificación de 13 de febrero de 1982 del Convenio de la OIT número 152, sobre «Seguridad e Higiene en los Trabajos Portuarios», hecho en Ginebra el 25 de junio de 1979.

²²¹⁴ For an exhaustive analysis of collective bargaining in the Spanish stevedoring sector, see Castro, J.G., Pereiro, J.C., Carbajo, P.R. and Méndez, L.M., *La negociación colectiva en el sector*

The Agreement for the Regulation of Labour Relations in the Port Sector of 27 September 1999 governs labour relations between companies and workers in all the commercial ports of Spain²²¹⁵. An attempt at introducing a new national agreement in 2008 failed, after it was held incompatible with competition law by the Competition Authority and several of its articles were annulled; as a result, the remaining articles are only valid as between the contracting parties. For these reasons, we decided not to analyse the latter agreement in detail and to focus on the 1999 Agreement²²¹⁶.

The national collective agreements are supplemented by collective agreements per port most of which are publicly available on the internet and which are regularly revised. To get a first impression, we browsed the agreements for the ports of Algeciras²²¹⁷, Almería²²¹⁸ and Barcelona²²¹⁹. Most local agreements reiterate provisions of the national agreement and then elaborate on local specificities.

1723. Several collective agreements on port labour²²²⁰ but also general labour law²²²¹ recognise customs and usages as a supplementary source of law.

9.20.3. Labour market

- Historical background

1724. In Spain, too, port labour law rests on a centuries-old tradition. By 1268, a porters' corporation (the *bastia de ribera*) operated in Barcelona, and it continued its existence well into the 19th century. Barcelona, for that matter, was also the cradle of the legislative

de la estiba de buques, Madrid, Ministerio de Trabajo y Asuntos Sociales, 2004, http://www.empleo.gob.es/es/sec_trabajo/cncc/download/Estiba.pdf.

²²¹⁵ III Acuerdo para la regulación de las relaciones laborales en el sector portuario, Madrid, 27 September 1999.

²²¹⁶ See *infra*, para 1776.

²²¹⁷ Convenio Colectivo de Sociedad de Estiba y desestiba del Puerto de Algeciras-La Línea (published on 10 February 2009).

²²¹⁸ Estibadores portuarios Sociedad de Estiba y Desestiba del Puerto de Almería (SESTIALSA). Convenio colectivo (valid from 1 January 2006 to 31 December 2011).

²²¹⁹ Convenio Colectivo de trabajo del sector portuario de la Provincia de Barcelona para el período 18.6.2010-31.12.2014. Whilst this heading refers to the 'Provincia' of Barcelona' the agreement applies to the port of Barcelona only. A separate collective agreement regulates work performed at stevedoring companies by workers who are not registered as port workers (mainly, but not only, office staff): Convenio Colectivo Provincial regulador de las condiciones de trabajo en las empresas estibadoras portuarias de la provincia de Barcelona y los trabajadores de las mismas. Barcelona, 1 de enero de 2008.

²²²⁰ See, for example, Art. 5.2.4 of the Collective Agreement for Algeciras.

²²²¹ Art. 3(4) of the Estatuto de los Trabajadores.

regulation of the commercial responsibilities of masters and merchants with regard to stevedoring operations²²²².

1725. In his World Bank paper on restrictive labour practices in ports²²²³, Alan S. Harding explains that, up to 1986, labour in Spanish ports was organised, under a paternalist policy, through the Port Labour Office (Oficina de Trabajo Portuario, OPT) of the Ministry of Labour, the origins of which can be traced back to 1944. The office allocated labour to the cargo handling firms on the basis of a daily rotation in order to equalize work opportunities²²²⁴, and it paid a fall-back wage when there was no work. This situation proved unsatisfactory on three counts: first, the OPT was not directly concerned with the profitability of cargo operations, so tended to give in to labour's demands; second and related, there was no effective labour discipline; finally, the fall-back wage was paid by the State with an open-ended commitment and without any self-controlling cost-driven mechanism on the size of the labour force²²²⁵. Also, workers' registers were increasingly occupied by relatives of workers who then enjoyed unemployment benefits as well. The system rested on corporatism and nepotism²²²⁶.

²²²² For example, the Consulate of the Sea, the highly influential 15th-century compilation of maritime law from Barcelona, obliged masters to provide merchants with skilled stevedores:

Capitol LXXV: Destibadors e de vitualla quel mercader metra en nau
 Senyor es tengut de donar homnes qui sapien stibar si la nau estiba a trau. Capitol de nau qui stibara a trau

Encara es tengut lo senyor als mercaders de donar homens qui sapien la nau stibar si la nau stiba a trau e los mercaders deuen los pagar e lo senyor de la nau es tengut al mercader de aportarli la sua roba, caxes, vianda de menjar tanta que sia bastant al mercader. Mas si lo mercader volia metre vianda per revendre o altres coses en la companya o hom per ell, deu ne donar nolits a la nau.

²²²³ See already *supra*, para 118.

²²²⁴ In the 1980s, the allocation of jobs was described as follows:

Dockers point with great pride to the rows and columns of tags which each bear one longshoreman's number. Those at the top of the list receive the first jobs that come in. Job dispatchers of the Office for Port Labor (OTP), a division of the Spanish Labor Ministry, then move the tags of those who are hired to the bottom of the list.

If this were all there were to the system, shippers could look at the tags and hold back on a job request if known militants were next in line. To prevent this, there is assignment of work to each employer by chance. The Valencia system involves writing a number on each shippers' job request form, putting ping pong balls with corresponding numbers in an old Clorox bottle, and shaking out the ping pong balls one at a time to decide which employer gets the next set of workers.

(Fitz, D., "Coordinadora - Spanish dock workers build union without bureaucrats", <http://libcom.org>).

²²²⁵ Harding, A.S., *Restrictive Labor Practices in Seaports*, s.l., World Bank, October 1990, 37; see also, briefly, Barzman, J., "States and dockers: from harbour designers to labour managers", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, II, Aldershot, Ashgate, 2000, (627), 648, referring to Ibarz-Gelabert; see also Saundry, R. and Turnbull, P., "Contractual (In)Security, Labour Regulation and Competitive Performance in the Port Transport Industry: A Contextualized Comparison of Britain and Spain", *British Journal of Industrial Relations* 1999, Vol. 37:2, (271), 280-284.

²²²⁶ See Suárez Bosa, M., González de la Fé, P. and Jiménez González, J.L., *Introduction of New Techniques and Changes in Work Organization at the Port of Las Palmas: An Historical Review*, Documento de trabajo 2002-01, La Laguna / Las Palmas de Gran Canaria, Fac. CC. Económicas y Empresariales Universidad de La Laguna / Fac. CC. Económicas y Empresariales Univ. de Las Palmas de Gran Canaria, <http://fceye.ull.es/invest/docum/ull-ulpgc/2002-01.pdf>, 18. For interesting historical background on trade unionism in Spanish ports, see X., "International Dockers' Struggles in the Eighties: Workers of the World, Tonight!", http://www.reocities.com/cordobakaf/blob_docks.html.

1726. In 1986, by Act No. 2/86 of 23 May 1986²²²⁷, as implemented by Royal Decree No. 371/1987 of 13 March 1987²²²⁸, new bodies were created in each of the major ports to take over the labour function from the OTP. These new bodies were constituted as non-profit State Stevedoring Corporations (Sociedades Estatales de Estiba y Desestiba, SEED), with participation from the public sector (51 per cent) and the private sector (49 per cent). Membership in the Sociedad was obligatory for every company that worked in the port. The Sociedades had to fix their tariffs so as to cover their costs including fall-back pay, so that they had an incentive for efficient operation, and it was claimed that successive improvements had been made in the labour agreements concerning gang size. The first activities of the new Sociedades were to compensate by premature retirement a certain number of excess personnel and to authorise the contracting by the individual member companies of a certain number of fixed employees, up to a maximum agreed in each port (for example 38 per cent in the case of Bilbao). Thus the employers had designated a number of registered workers as *fijos* or 'fixed' (permanent) employees, but they were not ready to make the final step to an all permanent labour force; which in any case was strongly resisted by the union, which feared a loss of influence. There were strong differences in working practices between the ports, for example, tonnage (incentive) payments were made at Barcelona but not at Bilbao. Union opposition to the formation of the Sociedades was strong²²²⁹.

1727. Pursuant to Act No. 48/03 of 26 November 2003 on the economic regime and the provision of services of in port of general interest²²³⁰, each Sociedad Estatal De Estiba was due to be converted into a Port Grouping of Economic Interest (Agrupación Portuaria de Interés Económico, APIE). The aim of this reform was to privatise the pools. The port authorities would withdraw from them, and the APIEs were conceived as groupings of private companies only. In practice, however, not all the pools were actually converted into an APIE.

²²²⁷ Real Decreto-ley 2/1986, de 23 de mayo, sobre el servicio público de estiba y desestiba de buques.

²²²⁸ Real Decreto 371/1987, de 13 de marzo, por el que se aprueba el reglamento para la ejecución del Real Decreto-ley 2/1986, de 23 de mayo, de estiba y desestiba.

²²²⁹ Harding, A.S., *Restrictive Labor Practices in Seaports*, s.l., World Bank, October 1990, 37; see also Arroyo, I., *Curso de derecho marítimo*, Barcelona, José María Bosch Editor y Alferal, 2001, 881; Gallais Bouchet, A., "Les réformes des ports espagnols", in ISEMAR, *L'organisation sociale de la manutention: exemples européens*, ISEMAR, Note de Synthèse n° 139, <http://www.isemar.asso.fr/fr/pdf/note-de-synthese-isemar-139.pdf>; Saundry, R. and Turnbull, P., "Contractual (In)Security, Labour Regulation and Competitive Performance in the Port Transport Industry: A Contextualized Comparison of Britain and Spain", *British Journal of Industrial Relations* 1999, Vol. 37:2, (271), 278; Turnbull, P., *Social dialogue in the process of structural adjustment and private sector participation in ports: a practical guidance manual*, Geneva, ILO, 2006, 19.

²²³⁰ Ley 48/03, de 26 de noviembre, de régimen económico y de prestación de servicios de los puertos de interés general. For a commentary, see Ortiz, G.A. et al., *La nueva legislación portuaria*, Barcelona, Consorcio Zona Franca de Vigo / Atelier Libros Jurídicos, 2004, 365 p.

1728. In 2010, the Spanish port sector underwent another legislative reform through Act No. 33/2010 of 5 August 2010²²³¹ which is the main legislative source of the current port labour regime.

1729. General labour law was modernised in 2012. The enactment of these reforms will make it easier and cheaper for employers to lay off workers, will provide incentives for employers to hire younger workers, and is expected to increase employer confidence²²³².

- *Regulatory set-up*

1730. Under the present Ports and Merchant Shipping Act, cargo handling is identified as a separate port service, the providers of which have to obtain a licence from the port authority. For the purposes of the relevant provisions, cargo handling services include loading, stowing, unstowing, unloading, maritime transit and transshipment of goods (Art. 108(2)(d)).

The Ports and Merchant Shipping Act expressly mentions that port services will be organised at the initiative of the private sector and guided by the principle of free competition (Art. 109(1)) and that the holders of a licence enjoy no exclusive right (Art. 109(2)). Practically, licensed cargo handlers will also hold an authorisation or a concession to use state-owned port property (see Art. 72 *et seq.* of the Act).

The Ports and Merchant Shipping Act also states that the port authority may authorise self-handling²²³³ and the integration of port services (Art. 109(2) *in fine*).

In exceptional circumstances, port services may be performed by the port authority (Art. 109(3)).

The Act ensures that port services will be provided at the request of users (Art. 112(1)).

It lays down maximum durations for licences (see Art. 114).

²²³¹ Ley 33/2010, de 5 de agosto, de modificación de la Ley 48/2003, de 26 de noviembre, de régimen económico y de prestación de servicios en los puertos de interés general.

²²³² For an overview, see Caldwell, A.K., "Spain's Employment Law and 2012 Labor Reform", 6 June 2012, <http://www.crossborderemployer.com/post/2012/06/06/Spaine28099s-Employment-Law-and-2012-Labor-Reform.aspx>.

²²³³ 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.*

A number of these provisions seem to be inspired by earlier proposals for an EU Port Services Directive²²³⁴.

1731. Next, the Spanish Ports and Merchant Shipping Act contains elaborate specific provisions on cargo handling and port labour (Art. 130 and 142 *et seq.*).

First of all, the Ports and Merchant Shipping Act specifies that the service of cargo handling comprises the loading, stowage, unloading, and transshipment of goods carried by sea, which allow their transfer between vessels or between these and the land or other means of transport. However, these activities must be performed wholly within the service area of the port and bear a direct and immediate connection to a specific loading, unloading or transfer operation for a given vessel (Art. 130(1)).

The Spanish legislator goes on to define the concepts of loading and stowage in both very broad and detailed terms (same provision). Included are, for example, the collecting of goods from storage areas or warehouses and their horizontal transportation to the ship's side; the hooking up of the goods to lift or transfer the goods directly from a means of transport by land, or from the pier, or jetty, alongside the vessel; the hoisting or transfer of goods and their placement into the ship's holds or on its deck; the stowage of goods in warehouse or on board ship, in accordance with the stowage plans and particulars of the master or officer in whom he delegates this responsibility; the shipment of goods by means of rolling on the vessel; the lashing or securing cargo on the ship to prevent shifting during shipping, provided that such operations are not carried out by the ship's crew (Art. 130(1)(a)).

Various other unloading and unstowing activities are mentioned as well: unlashings (as far as it is not carried out by the crew); the unloading of goods from the ship's holds or from its deck, including all the operations necessary to bring them within reach of the lifting or transferring equipment; the hooking-up of the goods; the hoisting or transfer of the goods and their placement onto a means of transportation or onto the pier or jetty alongside the vessel; the unloading of the goods onto land transport vehicles, or on the dock or jetty for collection by vehicles or other means for horizontal transportation and, where appropriate, their transfer to the storage area or warehouse within the port, and the deposition and stacking of the goods in that area; and the unloading of rolling stock (Art. 130(1)(b)).

The activity of transshipment comprises the unstowing, transfer and stowing of the goods, as well as their unlashings and lashing as far as the latter are not carried out by the ship's crew (Art. 130(1)(c)).

A number of specific cargoes are excluded. These include goods owned by the port authorities, parcel-post packages, fresh fish and ship's waste (Art. 130(2)).

²²³⁴ On these proposals, see *supra*, para 178 *et seq.*

A number of other, very specific, exceptions concern the operation of equipment owned by the port authorities or of goods belonging to the Ministry of Defence; the operation of tractors and mobile cranes which are no part of the normal port equipment and which are manned by their regular drivers; the loading and unloading of lorries, cars and any other kind of motor vehicle with their trailers or semitrailers when realised by the owners, users or regular drivers; the loading and unloading of vehicles without plates; the driving, hooking and unhooking of trailers and semitrailers using tractors, provided there is uninterrupted transportation between the ship and a location outside the port area; the driving of vehicles carrying goods to or from the crane or loading or unloading facility or boarding ramp in a direct operation between land transportation and the ship, provided there is uninterrupted transportation between the ship and a location outside the port area; the lashing and unlashings of the cargo aboard the ship, when performed by the crew; the loading, unloading and transshipment of ship supplies; the loading, unloading and transfer by pipeline; and operations conducted in port facilities used under a concession or authorisation, when such facilities are directly connected to transformation plants or facilities for industrial processing and the packing of self-owned goods which transit through such a marine terminal, unless these services are carried out by a stevedoring company; however, workers engaged in the latter activities must meet the conditions on training and qualifications imposed for port workers, but the employer is not obliged to participate in a SAGEP (Art. 130(3)).

The Ports and Merchant Shipping Act states that all cargo handling activities, as defined above, shall be performed by workers who have the qualifications required by it (Art. 130(5)).

However, the port authority may authorise the manager or operator of a ship to handle cargo using its own crew, without possession of a stevedoring company's licence, on condition that certificates issued by the competent authorities demonstrate the adequacy of the technical means and the personnel, particularly with a view to the prevention of occupational hazards. The port authority may impose conditions to ensure safety of operations and compliance with environmental standards. Under no circumstance may an authorisation be granted for vessels flying the flag of a State appearing in the black list of the Paris Memorandum of Understanding on Port State Control or, regardless of the flag, to ships described as high or very high risk under the applicable inspection regime (Art. 130(4))²²³⁵.

1732. A separate provision authorises the Ministry of Industry, Tourism and Trade to issue technical instructions on specific mechanical equipment, but Puertos del Estado, the private sector organisations and the most representative trade unions must be heard (Art. 131). Such instructions were adopted for mobile cranes²²³⁶.

²²³⁵ U.S. law still mentions an absolute ban on self-handling for all longshore activities in Spanish ports: see 22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals.

²²³⁶ See *infra*, para 1767.

1733. In a separate chapter on port labour, the Ports and Merchant Shipping Act first of all states that In the ports of general interest private commercial limited companies may be created for the provision of workers to their shareholders in order to meet the demand for work. These companies are established through a transformation of the previously existing SEEDs and APIEs. In order to ensure professionalism, they also have as their task to provide permanent training of workers. The companies are designated as 'Limited Company for the Management of Port Stevedores' (Sociedad Anónima de Gestión de Estibadores Portuarios, SAGEP) (Art. 142).

All companies wishing to provide cargo handling services and obtain the corresponding licence must participate in the capital of the local SAGEP. This obligation is however not applicable to self-handlers (Art. 143(1)). It should be noted that, contrary to the former APIEs, the SAGEPs are stock companies.

Fifty percent of the capital of each SAGEP will be distributed proportionally among the number of licensees for the provision of cargo handling services. The remaining fifty percent is distributed among the shareholders on the basis of their respective use of the workforce, calculated by sums invoiced (Art. 143(2)).

The port workers may be employed either by the SAGEP under a 'special labour relationship' (*relación laboral especial*) which is governed by Royal Decree No. 1/1995 of 24 March 1995, or directly, under a 'common labour relationship' (*relación laboral común*), by the holder of the cargo handling licence (Art. 149). Licensed cargo handling companies must employ at least 25 per cent of their workforce on the latter basis, but exemptions may be granted (Art. 150(4)). Pool workers engaged via the SAGEP can only be employed for an indefinite period, and will be assigned to the cargo handlers through a rotation system (Art. 151(1)-(2)). The relationship with the SAGEP may be terminated when the worker repeatedly rejects jobs appropriate to his working status (Art. 151(3)). Where for any reason the SAGEP is unable to offer sufficient workforce, the employer is entitled to employ, for one shift only, other workers who meet the qualifications required by the law (Art. 151(4)). The latter situation occurs regularly.

Licensed cargo handlers who are exempt from the obligation to participate in a SAGEP still must rely on pool workers where their permanent workers are unable to perform the task. If the SAGEP is unable to supply temporary pool workers, the company may hire other workers for one shift (Art. 151(5)).

The SAGEPs bear the responsibility to comply with all obligations in relation to wages and social security of pool workers (Art. 151(6)).

Where workers perform work on the basis of the 'special labour regime', the SAGEP continues to act as their employer, but the powers of direction and control are exercised by the user company. The latter may inform the SAGEP of any breaches of the contract and propose the imposition of a sanction. Concrete proposals for sanctions shall be binding (Art. 151(8)).

1734. As a result of the legislation summarised above, all port labour pools in Spanish ports (except one) are currently constituted as private enterprises under the form of a SAGEP²²³⁷, which are owned by the stevedoring companies and authorised by Spanish legislation to provide cargo handling services in ports. This type of legal entity was specifically created for the ports industry. The Board of Directors of each SAGEP is authorised to increase or reduce the number of port workers on the basis of the agreements between port workers and employers. The pools are financed by the employers.

1735. As a result of the above, port workers in Spain have to be registered in a register within the meaning of ILO Convention No. 137²²³⁸. In Spanish ports, no hiring halls are used (but there are some exceptions in smaller ports).

1736. The Ports and Merchant Shipping Act establishes sanctions for breaches of the provisions on stevedoring services. These are considered as formal (very often severe) sanctions and can result in substantial fines. In addition, provisions of general Spanish labour law may find application. Practically, enforcement is organised by the Labour Ministry, the port authorities, the terminal operators and the trade unions.

1737. The National Collective Bargaining Agreement starts out with a detailed definition of its scope²²³⁹. The definition of its 'functional scope' contains a detailed description of relevant port labour activities²²⁴⁰ which appears to be inspired by the corresponding provisions of the Ports and Merchant Shipping Act (but is not fully up-to-date with its current version)²²⁴¹. For good measure, local collective agreements reiterate these definitions²²⁴².

1738. The National Agreement as well as local agreements confirm that port workers must be used for 'complementary services' (*las labores complementarias*) which are not considered public services and which include the reception and delivery of goods and their horizontal transportation, the sorting, unitisation, consolidation, counting and grouping of goods and the

²²³⁷ The legal status of these entities is based on the general concept of 'Group of Economic Interest' (Agrupación de Interés Económico, AIE).

²²³⁸ However, one responding terminal operator denied that the Spanish regime can be regarded as a registration system in the sense of ILO Convention No. 137.

²²³⁹ Art. 1-4 of the III Acuerdo of 27 September 1999.

²²⁴⁰ Art. 3 of the III Acuerdo of 27 September 1999.

²²⁴¹ On the latter, see *supra*, para 1717.

²²⁴² See, for example, Art. 1-3 of the Collective Agreement for Algeciras; Art. 1-3 of and the 'Disposiciones adicionales' to the Collective Agreement for Almería; Art. 1-3 of the Collective Agreement for Barcelona.

stuffing and stripping of containers (to the extent that these tasks are carried out by stevedoring companies)²²⁴³. Attempts to reinforce the market position of stevedoring companies in this field through a further national agreement failed after an intervention by the national Competition Authority²²⁴⁴.

1739. Some local agreements contain further regulations on self-handling. In Algeciras, for example, a list is maintained of ships on board of which the crew performs the lashing and securing of containers under an agreement between the crew and the ship owner. In the absence of such an agreement, the work is reserved for local pool workers²²⁴⁵.

1740. According to the National Collective Bargaining Agreement on Port Labour, decisions on the admission of additional pool workers will be taken on the basis of the criterion of the average 'optimum employment' of the pool workers, which is set at 85 per cent of the working time at port level²²⁴⁶. Proposals to admit new pool workers may be made by the SAGEP or by the unions²²⁴⁷. Current legislation, however, reserves the right to admit new workers for the Board of Directors of the SAGEP.

1741. Still according to the National Collective Agreement²²⁴⁸, pool workers must be recruited on the basis of the principles of equality, merit and ability, through a public call.

In order to obtain registration as port worker, candidates have to fulfil the following minimum conditions:

- minimum age of 18 years (which is the general age limit under Spanish labour law);
- possession of a school graduation certificate or equivalent (*Título de Graduado Escolar o equivalente*);
- possession of a truck driver's licence.

Equipment operators, cargo controllers and foremen must have secondary education and a driver's licence.

Moreover, candidates have to pass physical, psycho-technical and medical tests, following which candidates are ranked according to their marks. For certain groups, additional

²²⁴³ See Art. 3(4) of the III Acuerdo of 27 September 1999; Annex II to the Collective Agreement for Algeciras; Art. 1(2) of the Collective Agreement for Barcelona.

²²⁴⁴ See *supra*, para 1722 and *infra*, para 1776.

²²⁴⁵ See Annex I to the Collective Agreement for Algeciras.

²²⁴⁶ See Art. 6(1) of the III Acuerdo of 27 September 1999; compare Art. 8 of the Collective Agreement for Almería.

²²⁴⁷ Art. 6(2) of the III Acuerdo of 27 September 1999.

²²⁴⁸ Art. 7 of the III Acuerdo of 27 September 1999; see also, for example, Art. 9 of the Collective Agreement for Almería; Art. 9 of the Collective Agreement for Barcelona.

requirements apply. Candidates are also interviewed by employers' association and the unions. The Ports and Merchant Shipping Act also regulates the training of port workers²²⁴⁹.

The selection process must be carried out by an external recruitment company. Reportedly, this also happens in practice, except when only very few persons have to be selected.

Several stakeholders and experts added that there is an unwritten, factual requirement to be a member of a trade union.

ANESCO adds that proficiency in professional and technical English is required for cargo controllers and foremen. Reportedly, this requirement is not based on any specific legal provision. It is however a prerequisite with a view to promotion of the worker to a higher rank.

1742. The collective agreements confirm that pool workers are employed by the SAGEPs on the basis of a contract of employment for an indefinite term²²⁵⁰ and that, as a rule, the SAGEPs assign the pool workers to individual companies on the basis of a rotation system and only for one shift²²⁵¹. Some local agreements contain Model Clauses for the contract of employment²²⁵².

1743. Some local agreements further regulate the registration of port workers by the SAGEP²²⁵³.

1744. Local agreements set out the procedure for the ordering and assignment of pool workers²²⁵⁴. In Algeciras, Santander and Valencia, pool workers are informed on their next job via electronic communication. The agreements confirm that in the case of a shortage of pool workers, other workers may be employed²²⁵⁵.

1745. The National Collective Agreement describes the procedure which employers must follow if they wish to integrate pool workers as permanent workers or *fijos*. Working conditions must not be lower than those for pool workers²²⁵⁶. If a pool worker joins an individual company as a

²²⁴⁹ See *infra*, para 1759.

²²⁵⁰ See, for example, Art. 44-45 of the Collective Agreement for Barcelona.

²²⁵¹ See Art. 10(1) of the III Acuerdo of 27 September 1999.

²²⁵² See, for example, the additional clauses to the Collective Agreement for Almería and Annex IV to the Collective Agreement for Barcelona.

²²⁵³ See, for example, Art. 48 of the Collective Agreement for Barcelona.

²²⁵⁴ See, for example, Art. 13 of the Collective Agreement for Algeciras; Art. 15 of the Collective Agreement for Almería; Art. 15 of and Annex I to the Collective Agreement for Barcelona.

²²⁵⁵ See, for example, Art. 50 of the Collective Agreement for Barcelona.

²²⁵⁶ See Art. 9 of the III Acuerdo of 27 September 1999; compare Art. 10 of the Collective Agreement for Algeciras; Art. 11 of the Collective Agreement for Almería; Art. 10 and 14 of the Collective Agreement for Barcelona.

permanent worker, his employment relationship with the SAGEP is suspended, and he maintains his seniority rights²²⁵⁷. Some local agreements confirm the obligation on employers to employ 25 per cent of *fijos*²²⁵⁸.

1746. The stevedoring companies exercise authority and control over operations²²⁵⁹. In a number of ports, orders may however only be transmitted to the workers through their immediate hierarchical superior²²⁶⁰.

1747. It is common that local collective agreements regulate working time and shift systems²²⁶¹.

1748. As a rule, workers must not perform double shifts in one day where other workers are available²²⁶². Workers must be available the whole day but they must not be moved to another task unless it is within the scope of their professional group and their qualifications and their initial task is completed²²⁶³. According to some local agreements, handlers of equipment working for one ship may be interchanged²²⁶⁴.

To finish a job, two hours of overtime may be imposed²²⁶⁵.

In order to ensure an equitable distribution of the work, permanent workers have priority except in the case of repeat hiring (*doblaje*)²²⁶⁶. With a view to repeat hiring, and in the absence of other local stipulations, the gang working at a particular ship enjoys priority²²⁶⁷.

The working day ends as soon the job is completed or the operations cease or cannot start for reasons beyond the will of the worker²²⁶⁸.

²²⁵⁷ See Art. 8 of the III Acuerdo of 27 September 1999; compare Art. 10 of the Collective Agreement for Almería; Art. 11, 14 and 46 of the Collective Agreement for Barcelona.

²²⁵⁸ See, for example, Art. 11 of the Collective Agreement for Algeciras; Art. 13 of the Collective Agreement for Almería; Art. 12 of the Collective Agreement for Barcelona.

²²⁵⁹ See, for example, Art. 13 of the Collective Agreement for Algeciras; Art. 51 of the Collective Agreement for Barcelona.

²²⁶⁰ See, for example, Art. 52 of the Collective Agreement for Barcelona.

²²⁶¹ See, for example, Art. 16 *et seq.* of the Collective Agreement for Almería; Art. 16 *et seq.* of the Collective Agreement for Barcelona.

²²⁶² See Art. 10(2)(d) of the III Acuerdo of 27 September 1999.

²²⁶³ See Art. 10(3)(a) of the III Acuerdo of 27 September 1999; compare, for example, Art. 52(6) and 52(9) of the Collective Agreement for Barcelona.

²²⁶⁴ See, for example, Art. 52(13) of the Collective Agreement for Barcelona.

²²⁶⁵ See Art. 10(3)(b) of the III Acuerdo of 27 September 1999; compare, however, Art. 37 of the Collective Agreement for Algeciras; Art. 19 of the Collective Agreement for Almería; Art. 18 of the Collective Agreement for Barcelona.

²²⁶⁶ See Art. 10(3)(c) of the III Acuerdo of 27 September 1999; compare Art. 12(3) of the Collective Agreement for Almería; Art. 52(10) and 52(16) of the Collective Agreement for Barcelona.

²²⁶⁷ See Art. 10(3)(d) of the III Acuerdo of 27 September 1999.

²²⁶⁸ Art. 10 of the III Acuerdo of 27 September 1999; compare further details in Art. 18 of the Collective Agreement for Algeciras.

1749. The National Collective Bargaining Agreement on Port Labour²²⁶⁹ lays down the following basic classification of port workers:

Figure 114. National classification of port workers in Spain (source: National Collective Agreement on Port Work of 27 September 1999, Art. 12(1))

GROUP	CLASS (IN SPANISH)	CLASS (IN ENGLISH)
Group 0	<i>Auxiliar</i>	Auxiliary (trainee)
Group I	<i>Especialista</i>	Specialist
Group II	<i>Oficial Manipulante</i>	Handler of mechanical equipment
Group III	<i>Controlador de Mercancía</i>	Cargo controller
Group IV	<i>Capataz</i>	Foreman

The National Collective Agreement describes in a detailed manner the tasks which may be performed by each of these groups of workers. Under the principles of functional mobility and multi-skilling (*movilidad funcional y polivalencia*), workers can be employed for all the tasks within their specialty. Workers are obliged to carry out all jobs which belong to the tasks of their group, with the sole limitation that, where applicable, they must possess the relevant certification. If no workers of the group are available, jobs may be assigned to workers of another group who possess the required certificate (this rule does not apply to auxiliaries however). Permanent workers may only be used for tasks of another group where no pool workers are available. The professional classification of port workers is the sole remit of the SAGEP. The promotion of permanent and pool workers is organised on the basis of equal opportunities for all.

Local agreements contain further details on job classification²²⁷⁰ and on manning scales²²⁷¹.

²²⁶⁹ See Art. 12 of the III Acuerdo of 27 September 1999; see on this matter also Art. 54 and 97 of the Collective Agreement for Algeciras; Art. 24 *et seq.* of the Collective Agreement for Almería; Art. 30-31 of the Collective Agreement for Barcelona. The national classification was introduced under the 1992 collective agreement which reduced 38 different job categories to just 4 grades (Saundry, R. and Turnbull, P., "Contractual (In)Security, Labour Regulation and Competitive Performance in the Port Transport Industry: A Contextualized Comparison of Britain and Spain", *British Journal of Industrial Relations* 1999, Vol. 37:2, (271), 282-283).

²²⁷⁰ See, for example, Art. 89, 93 and 94 of the Collective Agreement for Algeciras; Art. 30 and 73 of the Collective Agreement for Barcelona.

²²⁷¹ See, for example, Annex II to the Collective Agreement for Barcelona.

1750. Some local agreements contain specific provisions on the productivity of pool workers, in particular on their effective availability for work²²⁷² and on productivity bonuses²²⁷³.

On the other hand, port workers in Spain enjoy an income guarantee for periods of inactivity which is financed by the SAGEPs. In the event of unemployment, general national social security law applies²²⁷⁴.

1751. The National Collective Bargaining Agreement on Port Labour sets out a detailed disciplinary regime on the basis of which various sanctions may be imposed upon workers (warning, suspension or dismissal). Disciplinary authority over permanent workers rests with the individual companies; authority over pool workers is exclusively assigned to the SAGEP²²⁷⁵. Further details are contained in the local agreements²²⁷⁶ which also regulate proceedings in the event of it coming to light that non-registered workers are employed (*intrusismo*)²²⁷⁷.

1752. In practice, cargo handlers in some Spanish ports also employ, in addition to their permanent workers and the temporary pool workers allocated on a daily basis by the SAGEPs, so-called *rojillos* (pinkoes) or *adscritos* (assigned workers). These workers are also members of the pool and hired on a daily basis, but always by the same employer.

In Barcelona, where this alternative form of employment was first introduced, some 25 per cent of all port workers are *rojillos*. The *rojillos* have a position somewhere in between permanent and pool workers.

The collective agreement for Algeciras provides that workers may be assigned to the stevedoring companies for a shift, for a fixed term of between one month and one year, or for an indefinite term; the latter categories are considered as permanent workers for the purposes of meeting the legal 25 per cent minimum of permanent employment²²⁷⁸.

²²⁷² See, for example, Annex VIII to the Collective Agreement for Barcelona.

²²⁷³ See, for example, Art. 25 and also 42 and 45 of the Collective Agreement for Algeciras.

²²⁷⁴ Recently, Barcelona's SAGEP ESTIBARNA had to invoke a third ERE (Expediente de Regulacion de Empleo) or temporary unemployment of workers due to a drop in cargo volumes. Under this scheme, terminal operators pay one part of the salary and the State (via the unemployment benefit) the other one.

²²⁷⁵ See Art. 18 of the III Acuerdo of 27 September 1999.

²²⁷⁶ See, for example, Art. 57 *et seq.* of the Collective Agreement for Algeciras; Annex III to the Collective Agreement for Almería; Art. 32 *et seq.* of and Annex III to the Collective Agreement for Barcelona.

²²⁷⁷ See, for example, Art. 56 of the Collective Agreement for Algeciras; Art. 54 of the Collective Agreement for Barcelona.

²²⁷⁸ See Art. 9.1 and 9.2 of the Collective Agreement for Algeciras.

1753. In the larger ports, cargo handlers call upon general temporary work agencies to meet shortages of regular pool workers (Adecco in Barcelona, Malaga and Seville, Randstad in Gijón, Aviles and Bilbao, Tempo in Valencia and Creyf's in Sagunto). Reportedly, the temporary work agencies are contracted by the SAGEP, and only one such agency is designated per port. According to a trade union representative, the agency workers are mostly used for manual work such as lashing and unlashing and twistlock work and receive a basic training at the SAGEP. Puertos del Estado specifies that temporary agency workers may only perform tasks reserved to Groups I and II (general workers and handlers of mechanical equipment) and that they must be hired by the stevedoring company (not by the SAGEP).

In smaller ports, employers maintain informal lists of occasional workers. In some ports, this system is referred to as *La Bolsa* ('The Exchange'), but it cannot be considered an official second pool.

- Facts and figures

1754. According to the Spanish Association of Stevedoring Companies and Ship Agencies (Asociación Nacional de Empresas Estibadoras y Consignatarias de Buques, ANESCO), there are currently 159 employers of port workers in Spain. ANESCO represents more than 50 per cent of companies, which together employ more than half of all port workers²²⁷⁹.

1755. According to ANESCO, Spanish ports employ approximately 6,500 port workers. The employee organisation TCM-UGT confirmed this estimate. The figure comprises all port workers (permanent and as well as casually employed pool workers).

Puertos del Estado specified that on 31 December 2010 there were 6,659 port workers in Spain. At the time of writing, neither Puertos del Estado, nor ANESCO were able to update these figures.

Table 103. Number of port workers in Spain, 2005-2010 (source: Puertos del Estado)

Year	2005	2006	2007	2008	2009	2010
Number of port workers	6,245	6,343	6,666	5,653	6,564	6,659

²²⁷⁹ See National Competition Commission, 24 September 2009, Expte. 2805/07 Empresas Estibadoras.

1756. For the period 2008 to 2012, available details for individual ports were as follows:

Table 104. Number of port workers registered with the port labour pool in individual Spanish ports, 2008-2012²²⁸⁰ (source: ANESCO)

Port	2008	2009	2010	2011	2012
Alcudia	9	9	n.a.	n.a.	n.a.
Algeciras	1,232	1,204	1,188	1,153	1,566
Alicante	70	82	n.a.	n.a.	n.a.
Almeria	23	21	n.a.	n.a.	n.a.
Arrecife	14	14	13	13	13
Aviles	64	64	63	63	62
Barcelona	1,128	1,109	1,086	1,081	1,078
Bilbao	425	403	387	369	362
Cádiz	86	96	76	64	62
Cartagena	41	31	n.a.	n.a.	n.a.
Castellón	160	162	n.a.	n.a.	n.a.
Ceuta	0	0	n.a.	n.a.	n.a.
Coruña	48	44	42	39	34
Ferrol	20	19	18	18	17
Gandia	16	17	16	16	16
Gijón	46	41	42	42	42
Huelva	90	75	59	56	53
Ibiza	21	21	n.a.	n.a.	n.a.
Las Palmas	511	508	500	497	494
Mahon	16	16	n.a.	n.a.	n.a.
Málaga	173	174	n.a.	n.a.	n.a.
Melilla	20	20	20	18	18
Motril	20	22	n.a.	n.a.	n.a.
P. Mallorca	96	106	n.a.	n.a.	n.a.
Palamos	0	5	n.a.	n.a.	n.a.
Pasajes	144	136	135	128	107
Pontevedra	14	14	n.a.	n.a.	n.a.
Pto. Rosario	11	11	11	10	10
S.C. de La Palma	12	11	11	11	11
Sagunto	162	150	n.a.	n.a.	n.a.
San Carlos	0	11	n.a.	n.a.	n.a.
Santander	85	75	71	68	58

²²⁸⁰ Data as available on 6 November 2012.

Port	2008	2009	2010	2011	2012
Sevilla	68	68	67	65	63
Tarragona	214	206	204	192	179
Tenerife	222	209	208	205	203
Valencia	1,267	1,251	1,239	1,284	1,295
Vigo	134	153	149	140	137
Villanova	0	8	n.a.	n.a.	n.a.
Villagarcia	8	11	n.a.	n.a.	n.a.
TOTAL	6,670	6,577	n.a.	n.a.	n.a.

1757. According to Estibarna, Barcelona's SAGEP, the number of port workers in Spain's biggest port evolved as follows:

Table 105. Number of port workers in Barcelona, 2005-2012 (source: Servicio de Prevención Mancomunado de las empresas estibadores del Puerto de Barcelona, PREVESTIBA)

Year	2005	2006	2007	2008	2009	2010	2011	2012
Number of port workers	957	924	1,069	1,125	1,111	1,108	1,105	1,091

In 2012, the total number of workers in the port of Barcelona (1,091 persons) comprised 1,049 male and 42 female workers. 158 workers were under the age of 30, 909 between 30 and 50 years old and 24 older than 50. Further, the total comprised 156 male container inspectors, and 893 male as against 42 female workers belonging to the categories of twistlock removers, crane or truck drivers, checkers and tallymen and foremen and coordinators. According to a trade union representative, Barcelona employs about 700 pool workers, 300 *fijos* and 120 apprentices.

The table below shows the distribution of Spanish port workers by professional group.

*Table 106. Number of port workers in Spanish ports by professional group, 31 December 2010
(source: Puertos del Estado)*

Port	Group IV	Group III	Group II	Group I	Group 0	Total
	Foreman	Cargo controller	Handler of mechanical equipment	Specialist	Auxiliary (trainee)	
Alcudia	1	0	8	0	0	9
Algeciras	77	121	992	39	0	1,229
Alicante	10	14	43	0	15	82
Almeria	4	2	7	0	5	18
Arrecife	2	0	5	0	3	10
Aviles	9	2	48	33	0	92
Barcelona	98	146	700	3	151	1,098
Bilbao	39	66	298	22	0	425
Cadiz	10	9	33	67	6	125
Cartagena	5	3	29	7	0	44
Castellon	10	12	104	0	20	146
Ceuta	1	0	2	0	0	3
Coruña	4	1	24	20	0	49
Ferrol	0	0	17	4	0	21
Gandia	4	1	11	0	0	16
Gijon	8	3	23	8	0	42
Huelva	10	2	45	40	0	97
Ibiza	2	3	17	0	0	22
Las Palmas	47	62	278	12	120	519
Mahon	2	0	9	0	3	14
Malaga	14	12	69	76	0	171
Melilla	0	0	7	8	5	20
Motril	2	2	9	6	1	20
P. Mallorca	11	16	57	0	9	93
Pasajes	11	5	110	7	0	133
Pontevedra	6	0	11	7	0	24
Pto. Rosario	1	0	6	0	4	11
Sagunto	10	28	65	18	36	157
S.C. de La Palma	4	1	3	0	9	17
Santander	9	6	53	6	0	74
Sevilla	9	5	36	20	0	70
Tarragona	28	27	148	1	0	204
Tenerife	21	35	131	0	15	202
Valencia	172	172	898	12	0	1,254

Port	Group IV Foreman	Group III Cargo controller	Group II Handler of mechanical equipment	Group I Specialist	Group 0 Auxiliary (trainee)	Total
Vigo	11	10	118	3	0	142
Villagarcia	1	0	5	0	0	6
Total	653	766	4,419	419	402	6,659

1758. According to ANESCO, all Spanish port workers are members of a trade union, the biggest union being the independent State Coordinator of Port Workers (Coordinadora Estatal de Trabajadores Portuarios, CETP, commonly referred to as Coordinadora), with a 73.12 per cent share, followed by the State Federation for Transport, Communication and Sea of the General Workers' Union (Federación Estatal de Transportes, Comunicaciones y Mar de UGT (Unión General de Trabajadores), in short TCM-UGT) and the Communist Workers' Commissions (Comisiones Obreras, CC.OO) which represent 16.29 per cent and 7 per cent of port workers respectively. Coordinadora is IDC-affiliated while TCM-UGT and CC.OO are members of ITF. Smaller regional unions of port workers include the Interunion Confederation of Galicia (Confederación Intersindical Galega, CIG), The Basque Nationalist Workers Commission (Langile Abertzaleen Batzordeak, LAB), the Basque Workers' Solidarity (Eusko Langileen Alkartasuna, ELA), which represent 1.76, 1.32 and 0.44 per cent respectively. All these membership percentages were provided by ANESCO, but other sources mention slightly different ones²²⁸¹.

The situation in ports sharply contrasts with the relatively low trade union density in Spain as a whole, which is estimated at a mere 16 per cent²²⁸².

²²⁸¹ Puertos del Estado estimates that 99 per cent of all port workers are union members and stated the following percentages: Coordinadora 77.63, TCM-UGT 10.96, CC.OO 4.57, others 6.85 per cent. TCM-UGT itself claims a 16 per cent share among stevedores (1,000 members). CC.OO asserts that more than 95 per cent of all port workers (stevedores) are unionised and that IDC unites more than 4,000 stevedores, TCM-UGT 500, and 300. A terminal operator reported as follows: Coordinadora almost 80 per cent, CC.OO 4 per cent, UGT 7 per cent, ELA, LAB and CIG the remainder. Yet another company stated that Coordinadora controls at least 95 per cent of the dockers, with CC.OO and UGT only representing white collar workers. Coordinadora gives detailed figures on its representativeness in Spanish port regions on www.coordinadora.org. In September 2009, the Spanish Competition Authority found that Coordinadora represented 73.127 per cent of port workers, CIG 1.763 per cent and LAB 1.322 per cent (National Competition Commission, 24 September 2009, Expte. 2805/07 Empresas Estibadoras). Local container terminal operators confirmed that in Barcelona and Valencia, all port workers have indeed joined a trade union.

²²⁸² See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

9.20.4. Qualifications and training

1759. The Ports and Merchant Shipping Act expressly provides that all port workers must have attended training according to rules issued by the Ministry of Public Works (Art. 153(1)).

However, a large number of exemptions apply, including for workers who have been employed previously (see Art. 154).

The implementing decree was issued on 23 October 2012²²⁸³, only a few weeks after the European Commission had sent a reasoned opinion stating that the Spanish port labour regime is incompatible with freedom of establishment²²⁸⁴.

1760. The National Collective Bargaining Agreement on Port Labour specifies that permanent training programmes must be established²²⁸⁵. All new auxiliary workers (trainees) must be trained for at least six months following which they have to pass an objective test²²⁸⁶. Local agreements specify training requirements and provide, for example, for procedures to organise additional training in the event that new handling technologies are introduced²²⁸⁷.

1761. Today, the training of port workers is governed by Royal Decree No. 1033/2011 of 4 August 2011 complementing the national catalogue of professional qualifications²²⁸⁸. Importantly, this Decree has no mandatory character.

The Decree offers detailed qualification requirements and corresponding vocational training modules for port labour. It also sets out possible requirements on training in technical-maritime English.

So far, the Royal Decree has not yet been fully implemented.

1762. In concrete terms, all training of port workers is organised through the SAGEPs.

²²⁸³ Orden FOM/2297/2012, de 23 de octubre, por la que se determinan las titulaciones de formación profesional exigibles para la prestación del servicio portuario de manipulación de mercancías.

²²⁸⁴ See *infra*, para 1811.

²²⁸⁵ See Art. 13 of the III Acuerdo of 27 September 1999.

²²⁸⁶ Art. 6(3)(f) of the III Acuerdo of 27 September 1999.

²²⁸⁷ See, for example, Art. 29 and 59 *et seq.* of the Collective Agreement for Barcelona; compare Art. 90 *et seq.* of the Collective Agreement for Algeciras; Art. 39 of the Collective Agreement for Almería.

²²⁸⁸ See already *supra*, para 1719.

The Ports and Merchant Shipping Act obliges each SAGEP to reserve at least one per cent of its annual payroll for the purpose of continued training of the workers (Art. 152).

Practically speaking, training is organised by a Training Committee composed of trade union representatives and terminal operators who agree on the training programme based on the needs of the terminal operators.

All four professional groups of port workers²²⁸⁹ have their own specialist training.

1763. In Valencia, for example, training of port workers is organised by the SAGEP SEVASA and is managed by the eight terminal operators. SEVASA has a training division, which caters for the needs of the terminals. The collective agreement for Algeciras expressly charges the local SAGEP, which runs a training centre, with training and safety training of workers and also regulates continued training²²⁹⁰.

1764. The ports of Algeciras, Barcelona, Gijón and Valencia have crane simulators.

1765. Replies to our questionnaire indicate that in Spain (or at least in some individual ports) the following types of formal training are available:

- induction courses for new entrants;
- courses for the established port worker;
- training in safety and first aid; specialist courses for certain categories of port workers;
- specialist courses for certain categories of port workers such as crane drivers, container equipment operators, ro-ro truck drivers, forklift operators, lashing and securing personnel, tallymen, signalmen and reefer technicians;
- training aimed at the availability of multi-skilled or all-round port workers;
- retraining of injured and redundant port workers.

Each of the four professional groups has its own training programme. Whether courses are voluntary or compulsory seems to vary between ports.

²²⁸⁹ See *supra*, para 1749.

²²⁹⁰ See Art. 68.2, 75 and 97 *et seq.* and 107 of the Collective Agreement for Algeciras.

9.20.5. Health and safety

- Regulatory set-up

1766. As we have explained²²⁹¹, safety and health in port work is mainly regulated by the general Labour Risks Prevention Act No. 31/1995²²⁹². The Act establishes the general principles relating to the prevention of occupational risks for the protection of safety and health and also regulates the information, consultation, participation and training of workers. Higher standards may be laid down in collective agreements.

1767. As we have also mentioned²²⁹³, specific national technical instructions on mobile cranes were enacted²²⁹⁴.

1768. The Ports and Merchant Shipping Act expressly states that if a pool worker is employed, the user company bears the responsibility of complying with rules on safety and health (Art. 151(7)).

1769. The detailed National Regulations on the Handling of Dangerous Goods in Ports are based on the IMO Recommendations on this matter²²⁹⁵.

1770. The National Collective Bargaining Agreement on Port Labour and the local agreements also contain provisions on the prevention of labour risks²²⁹⁶.

1771. In practice, safety and health rules are enforced by the Labour Inspection but also by the public prosecutor, the port authorities, the terminal operators and the unions.

²²⁹¹ See already *supra*, para 1720.

²²⁹² For general information on occupational safety and health in Spain, see www.insht.es.

²²⁹³ See already *supra*, para 1732.

²²⁹⁴ Real Decreto 837/2003 de 27-06 por el que se aprueba el nuevo texto modificado y refundido de la Instrucción técnica complementaria "MIE-AEM-4" del Reglamento de aparatos de elevación y manutención, referente a grúas torre móviles autopropulsadas.

²²⁹⁵ On the latter, see *supra*, paras 59 and 110.

²²⁹⁶ See especially Art. 14 of the III Acuerdo of 27 September 1999; see also, for example, Art. 67 *et seq.* of the Collective Agreement for Algeciras; Art. 37-38 of the Collective Agreement for Barcelona.

1772. In Barcelona, terminal operators may wish to seek assistance from the labour risk prevention service PREVESTIBA which is in charge of managing risks at the work place. PREVESTIBA issues a Risk Assessment Document for affiliated terminal operators and assists them in ensuring proper implementation of health and safety regulations. When a port worker encounters an accident, the terminal operator informs the SAGEP ESTIBARNA and at the same time, ESTIBARNA informs PREVESTIBA and the Spanish and Catalan Governments. PREVESTIBA registers the event, investigates the cause and proposes the necessary preventive measures. Finally, PREVESTIBA updates the Risk Assessment Document of the terminal operator concerned in order to prevent future accidents by identifying any measures that might have been omitted.

- Facts and figures

1773. Today, no nation-wide statistics on occupational accidents in ports are available.

Prior to the establishment of the SAGEPs, the governmental agency Puertos del Estado maintained detailed overall statistics on the number, types and causes of occupational accidents in Spanish ports. The most recent figures date from 2001 and are as follows:

Table 107. Accidents in Spanish ports, 2001, by type (source: Puertos del Estado)

	Total number of accidents	Percentage	Number of accidents with leave	Percentage	Number of accidents without leave	Percentage
Fractures	77	4.8	76	6.4	1	0.2
Dislocations	47	2.9	42	3.5	5	1.2
Sprains	483	30.0	388	32.5	95	22.7
Lumbagos	267	16.6	201	16.8	66	15.8
Slipped discs	3	0.2	3	0.3	0	0.0
Concussions	8	0.5	5	0.4	3	0.7
Amputations	1	0.1	1	0.1	0	0.0
Other injuries	210	13.0	170	14.2	40	9.6
Superficial traumatisms	93	5.8	52	4.4	41	9.8
Contusions	363	22.5	223	18.7	140	33.5
Objects in the eyes	29	1.8	15	1.3	14	3.3
Conjunctivitis	7	0.4	1	0.1	6	1.4
Burns	3	0.2	3	0.3	0	0.0
Poisonings	3	0.2	0	0.0	3	0.7
Exposure to the environment	1	0.1	0	0.0	1	0.2
Suffocations	1	0.1	0	0.0	1	0.2
Effects of electricity	0	0.0	0	0.0	0	0.0
Effects of radiations	0	0.0	0	0.0	0	0.0
Multiple injuries	8	0.5	8	0.7	0	0.0
Heart attacks, brain haemorrhages	7	0.4	5	0.4	2	0.5
Total	1,611	100.0	1,193	100.0	418	100.0

A great majority of these accidents (1,588 or 98.6 per cent) were minor. There were few serious (21 or 1.3 per cent) and very serious (2 or 0.1 per cent) accidents. In 2001, no fatal accidents occurred in Spanish ports.

The Spanish Labour Inspectorate informed us that it does not maintain specific accident statistics on port labour.

1774. Recent statistics on accidents involving port workers in the port of Las Palmas are provided in the table below:

Table 108. Accidents in the port of Las Palmas in 2011 (unknown source)

	Pool workers	Permanent workers
Number of workers	496	11
Lost Time Accidents (LTA)	243	0
Incidence rate (number of LTA / number of workers *1,000)	487.14	0.00
Frequency rate (number of LTA / number of hours worked * 1,000,000)	348.14	0.00
Severity rate (number of lost days / number of hours worked *1,000)	9.68	0.00
Duration rate (number of lost days / number of LTA)	27.80	0.00

9.20.6. Policy and legal issues

1775. Despite the implementation of various consecutive reform schemes, the Spanish port labour system has remained both highly restrictive and controversial. Our outline of applicable rules and regulations above²²⁹⁷ indicates issues such as a priority right for port workers belonging to the pool, a broad definition of the notion of port labour, a probable closed shop situation, a (relative) ban on self-handling, an obligation for employers to hold shares in the SAGEP, an obligation to employ 25 per cent of port workers on a permanent basis, and a rotation system for pool workers. Responses to our questionnaire, media reports and interviews reveal that, particularly among terminal operators and port users, overall acceptance of the port labour system remains rather low. Moreover, disagreement over port labour arrangements regularly gives rise to industrial and legal disputes. Finally, whereas Puertos del Estado, ANESCO and CC.OO concurred that applicable rules on employment are properly enforced, trade union TCM-UGT and a number of terminal operators categorically deny this. Below, we

²²⁹⁷ See *supra*, para 1730 *et seq.*

shall report on a number of recent difficulties and on assessments by stakeholders and experts.

1776. In 2007, ANESCO, Coordinadora and two regional trade unions signed a new national collective agreement to regulate the working conditions in the stevedoring sector. The National Competition Authority opened proceedings since it considered that the agreement established wages and working conditions that affected not only the stevedoring companies and the port workers but also providers of liberalised ancillary services such as the handling of frozen fish, horizontal intra-port transportation and the unloading of cars and trucks from ro-ro ferries, which could be carried out by other companies as well. In September 2009, the Competition Authority fined the stevedoring companies because they had infringed the prohibition on anti-competitive agreements laid down in the Spanish Competition Act and (current) Article 101 TFEU²²⁹⁸. The Authority found that the objectives of the agreement went beyond the defence of the social rights of port workers and that it also aimed at reserving the market of ancillary services for the stevedoring companies by erecting entry barriers to competitors who had not been able to take part in the negotiations over the collective agreement yet were forced to comply with its provisions. The decision of the Competition Authority was appealed before the competent court (Audiencia Nacional) but finally upheld in September 2010²²⁹⁹. In addition, a number of provisions of the new agreement were annulled by the courts, so that the remaining articles only apply to the signatories and the previous National Collective Agreement on Port Labour remained in force until this day²³⁰⁰. The decision of the Competition Authority confirms that collective agreements on port labour are not *per se* beyond the reach of competition law²³⁰¹.

1777. In 2010, Hanjin Shipping was forced to cancel the inaugural call at its new container terminal in Algeciras after port workers refused to work following a row over manning levels. Management and unions were at odds over the organisation of work teams in the semi-automated terminal, the first of its kind in Spain²³⁰². Mid-2012, the company was still struggling with the manning level issue. According to a representative of the terminal, costs for shipping lines in Algeciras are 50 per cent more expensive than at Tanger-Med. "We therefore have to make a major effort to offset this difference. We need to attract more shipping lines and the best way of doing that is by offering good prices, whilst also providing service and productivity.

²²⁹⁸ National Competition Commission, 24 September 2009, Expte. 2805/07 Empresas Estibadoras.

²²⁹⁹ Audiencia Nacional, 30 September 2010, No. 815/2009; for a summary of the case, see OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>, (185), 187-188.

²³⁰⁰ See, *inter alia*, Tribunal Supremo, Sala de lo Social, 11 November 2010, Recurso de casación No. 153/2009, http://www.iustel.com/diario_del_derecho/noticia.asp?ref_iustel=1047458; see already *supra*, para 1722.

²³⁰¹ See *supra*, para 176.

²³⁰² X., "Strike halts Algeciras box terminal", *Turkish Maritime* 29 April 2010, http://www.turkishmaritime.com.tr/news_detail.php?id=6079.

However, if we can't offer the prices lines are looking for, really, there's no point!", the terminal operator said. The port authority had already done a lot of work in getting rates down, but there was still a 10 - 15 per cent differential to be overcome. The terminal was therefore aiming to cut labour costs. Its workforce consisted of 1,200 permanent stevedores, with 420 more casual workers seeking to join this pool. But labour gangs, which consisted of 14-15 members, were larger than at either Barcelona or Valencia, with the Algeciras operator stressing that just 10 are needed. "Anything above that represents an additional cost for us," he said. Unless this downsizing could be achieved, a Phase B development would be dubiously profitable. "To go ahead, we either need a guarantee that gang sizes will fall or, at the very least, a stable functioning baseline that is acceptable to our business – and that will only come through an agreement with the workers," he said, adding that Algeciras' big plus is that, to date, it has had labour peace. Nevertheless, he emphasised that quite how much reliability will feature in any negotiations with potential new shipping line customers was hard to say²³⁰³.

1778. In 2011, trade union Coordinadora and their French colleagues from CGT took action in order to force the operators of a Motorways of the Seas line between Gijón and Nantes to use port workers for lashing and securing work instead of what was termed "unskilled and temporary staff", *i.e.* the ship's crew²³⁰⁴.

1779. In 2012, an old debate flared up again over whether port workers must be used to handle new cars without plates²³⁰⁵.

1780. In its reply to our questionnaire, Puertos del Estado identified the following restrictions on employment and restrictive working practices:

- mandatory use of port workers for non-port work;
- exclusive rights for certain categories of workers;
- mandatory composition of gangs;
- exclusive right of trade union members and control of the registration of new workers by the trade unions (closed shop);
- unjustified interruptions of work and breaks;
- unauthorised absences;

²³⁰³ X., "Algeciras weighs up development potential", *Port Strategy* 25 June 2012, <http://www.portstrategy.com/features101/area-survey/europe/west-and-central-mediterranean/west-med-transshipment-box>.

²³⁰⁴ See Valenmar, "The dockers from Barcelona and Nantes continue to work together to strengthen ties", *Odiseo* 8 June 2011, <http://www.2e3s.eu/odiseo/2011B01/ENn0.05.port.noti1.html>.

²³⁰⁵ See CdS, " Los sindicatos estibadores se reúnen el jueves con Llorca para que les explique dónde no se cumple la Ley de Puertos", *Cadena de Suministro* 22 May 2012, <http://www.cadenadesuministro.es/noticias/los-sindicatos-estibadores-se-reunen-el-jueves-con-llorca-para-que-les-explique-donde-no-se-cumple-la-ley-de-puertos/>; X., "La estiba de vehículos", May 2012, <http://www.laestiba.com/spip.php?article923>.

- inadequate composition of gangs.

For Puertos del Estado, these restrictions hardly need any further explanation and are major competitive issues. Corrective measures are impossible due to immediate threats to open an industrial conflict. Port workers do not feel any tie, either to the companies, or to their financial result.

1781. Also on the basis of the questionnaire, a terminal operator in the port of Valencia reported the following restrictions on employment:

- prohibition on employment of temporary workers through employment agencies;
- prohibition on self-handling;
- prohibition on employment of non-nationals or workers employed by employers from other EU or non-EU countries;
- exclusive rights for certain categories of workers;
- mandatory composition of gangs;
- exclusive rights of trade union members (closed shop).

The company confirmed that in Valencia only one temporary work agency is recognised (Tempo), that it supplies truck drivers and lower categories of workers. In practice, they only send relatives and friends of the port workers.

The mandatory composition of gangs was expressly abolished under the Second National Collective Bargaining Agreement on port labour²³⁰⁶ as well as Valencia's local collective agreement²³⁰⁷. Moreover, a Court sentence expressly confirmed the sole authority and responsibility of the employer to decide on the organisation of work at its terminal and stressed that no rule of law imposes any minimum number of gang members²³⁰⁸. Yet, in this respect too, the factual situation may not be in perfect conformity with the legal requirements.

As regards the closed shop, the terminal operator specified that not only is trade union membership a factual requirement to become a port worker, candidates also have to be "a friend or relative" of the union leaders.

The same employer mentions that whereas employers are supposed to set the number of pool workers, the unions time and again force them to increase it.

Exchanges of workers between employers are exceptional, and temporary transfers of workers between ports never happen as the port authority, the employers and the unions all have to agree.

²³⁰⁶ Art. 6 of the II Acuerdo para la regulación de las relaciones laborales en el sector portuario.

²³⁰⁷ Disposiciones Adicionales, Segunda - Designación del personal necesario, Convenio colectivo para la regulación de las relaciones laborales del sector portuario del puerto de Valencia.

²³⁰⁸ Generalitat Valenciana, Administración de Justicia, Sentencia n° 236/2001.

The same terminal operator furthermore mentions the following restrictive working practices which harm competitiveness:

- late starts, early knocking off;
- unjustified interruptions of work and breaks;
- unauthorised absences;
- overmanning;
- ban on mobility of labour between hold and hold, ship and ship, ship and shore and between shore jobs;
- limitations on use of new techniques.

The same terminal operator provided the following additional information:

- *The unions are obsessed by rejecting every initiative / proposal made by the terminals to change the gang composition or job definition*
- *Modern techniques, like L.E.D.'s for machines on the cranes are rejected*
- *The dockers systematically refuse to do jobs, like surveying / watching the crane movements on board of the ships, in order to avoid damage*
- *A shift in Spain is 6 hours: in the port of Valencia, most dockers are only 3 hours present (sic), especially at night and in the weekends.*

Furthermore, enforcement of rules on employment is controlled by the unions who stop operations whenever they do not agree. Enforcement efforts by employers are not very successful. Many provisions of applicable agreements are not respected by the unions. They only apply what is in their favour. It is impossible to impose disciplinary sanctions and as a result, the quality of the workforce cannot be improved.

Health and safety rules (as well as ISPS rules) are inadequately enforced because the workers lack discipline. If an employer insists on discipline, conflicts arise. On the other hand, the unions abuse safety rules for go-slow strikes.

1782. A terminal operator in another port reports that the current situation in most Spanish ports is not in line with legal requirements and that recent reforms had no practical effect whatsoever.

Although cargo handlers are obliged by law to employ a minimum of 25 per cent of their workforce on a long term contract, this is almost nowhere the case in practice. Our interviewee stated that for the whole of Spain, workers under a long term contract form only a small minority of the total work force. Figures provided by Anesco suggest that in 2009, only 89 out of 6,564 port workers, or 1.35 per cent, were *fijos* (however, Puertos del Estado claims that in 2010, 574 out of 6,659 workers had a long term contract, which represents 8.62 per cent). Still according to our interviewees, employers are not keen on employing staff on the basis of long-term contracts, as this staff can be up to three times more expensive than pool workers, which

is due to pressure from the unions who oppose fixed employment²³⁰⁹. Also, loopholes were created in order to enable employers (and unions) to comply with the said minimum. The system of *rojillos* or *adscritos* only offers a partial, precarious solution. Practically speaking, fixed contracts are reserved for special functions (for example, one company is reported to employ approximately 100 white collars and 300 dockers but only 11 fixed dockers, among which 3 foreman and 8 crane drivers). From a legal perspective, the status of the *rojillos* and *adscritos* seems rather ill-defined. Some, but not all interviewees, complained that various unwritten restrictions on the employment of *rojillos* apply (*e.g.* on the duration of assignments, shifts, working days, *etc.*).

Our terminal operator further complains that, while the pool companies or SAGEPs are fully owned and financed by the users, the employers have no real say in the organisation of port labour. The monopoly of the dockers, the obligation to negotiate collectively, *i.e.* together with competing firms, cost factors, the overall rigidity of the system, the fear of strikes and the strike funds of the unions result in an extremely weak bargaining position for employers. In the Spanish port sector, collective bargaining has no real meaning. All the power is in the hands of the unions but the employers have to bear all the costs of the system as well as its possible deficits.

Moreover, employers have no control over membership of the pool, and such membership is not granted on a transparent basis. In practice, membership is more often than not granted to relatives.

It is also observed that the Spanish port labour regime suffers from legal uncertainty, for example over the exact definition of cargo handling services (which was denied by Puertos del Estado). Collective agreements are not respected and everything is time and again subject to new negotiations. Many rules only rest on unwritten practices.

The terminal operator informed us of the following restrictions on employment:

- lack of control on membership of the pool (*cf. supra*);
- the employer has no say in the selection of its staff. The rotation system decides who works where and when, and under the current shift system, gangs are renewed four times a day;
- the employer has no control over pool workers working in his own terminal. In Valencia, the employer cannot give direct instructions to the pool workers but can only give instructions to the chief foreman who is then supposed to forward instructions to the next level and so on, which results in severe inefficiencies;

²³⁰⁹ Comp. the assessment of the situation under Act 2/86 by Saundry and Turnbull:

As individual employers must guarantee their permanent workers a minimum of paid days each year (for example 222 days in the port of Bilbao), it is more cost-effective to hire casual labour from the Estiba and share the costs of surplus labour with other employers if traffic volumes will not support guaranteed employment (Saundry, R. and Turnbull, P., "Contractual (In)Security, Labour Regulation and Competitive Performance in the Port Transport Industry: A Contextualized Comparison of Britain and Spain", *British Journal of Industrial Relations* 1999, Vol. 37:2, (271), 282).

- also in Valencia, it is reported that yard checkers decide where the containers are stacked, resulting in software planning systems remaining unused;
- mandatory composition of the gang, combined with overstaffing. The full gang must be paid even if a much smaller gang would be sufficient to cope with the work (as explained above²³¹⁰, under the letter of collective agreements, rules on the composition of gangs are abolished);
- a cargo handler is obliged to hire and pay 1 foremen and 2 workers for the unloading of a grain bulker with the help of an elevator at a silo terminal, even if these employees perform no work whatsoever;
- the right to employ external workers in the event of a shortage of pool workers is never exercised in practice because this would not be accepted;
- in practice, pool workers are almost never removed from the pool; recently, 0.3 per cent of the complaints by the terminal operator have led to a sanction, which is considered a tremendous increase over the previous figure of 0.0 per cent.

Furthermore, the following restrictive practices were reported:

- ban on mobility of labour between ships, which means that if one ship is finished, the workers cannot be transferred to another ship;
- workers are always hired for a given ship; where this ship unexpectedly does not arrive on time, workers cannot be transferred to another job;
- pool workers must be hired either for a land-based job or for a job on board; as a result, a worker hired for quayside work can never be obliged to perform services on board and *vice versa*;
- similarly, workers (for example, straddle carrier drivers) hired in a given gang cannot be transferred to another gang if their shoreside crane runs down; as a result, software-based planning of terminal operations is often useless;
- limitations on the use of new and more reliable technologies such as OCR and GPS, given the mandatory composition of gangs per crane;
- cases of foremen enjoying the privilege of having a private car driver.

In addition, complaints on the behaviour of workers lodged with the pool by employers are not effectively dealt with. Although collective agreements describe numerous offences and provide for severe sanctions, the imposition of sanctions is in practice a matter of negotiation with the unions. On average, a complaint results in a sanction in only 2.5 per cent of the cases.

The workers do not identify with any of their employers, they believe that they only belong to themselves, and their productivity is poor in comparison with ports in other countries. Lack of personal commitment and identification with the employer contributes to poor quality of service and is conducive to errors, for example by container checkers. The poor performance of dock work in Spain is the main reason why massive cargo flows continue to be directed through North European ports. The inadequacy of the prevailing port labour regime has a devastating effect on the competitive position of Spanish port terminals, where labour costs can amount to 60 per cent of the overall cost of operations.

²³¹⁰ See *supra*, para 1781.

The same terminal operator notes the lack of a safety culture in Spanish ports. Port workers hold on to their traditional macho culture and are willing to take unacceptable risks. Safety measures, such as the requirement to wear helmets, are not always complied with. Alcohol tests are refused. Furthermore, the risk of accidents is increased by the inadequately high number of workers per gang and by the continuous rotation of personnel who do not specialise in one company and, as a result, cannot be trained adequately. Rotation dockers have a much higher accident rate than fixed dockers. The intervention of independent safety prevention services is banned by the unions. On the other hand, national safety inspections are very stringent and employers have been rendered criminally responsible for occupational accidents by Act No. 5/2010 on the criminal liability of legal persons²³¹¹.

There are no qualifications for trainers. In practice, a trainer is a privileged docker who has received an exemption from daily port work. Training by independent service providers is not permitted. The national port work training programme is laid down in the law but is not implemented.

1783. Yet another company running a container terminal and belonging to a major international group reported that the port labour system in the port of Barcelona is functioning quite well and that port labour is highly productive at this port. This respondent states that no particular issues deserve priority attention from policy and law makers and that the current regime offers sufficient legal certainty. Moreover, it describes the current relationship between port employers and port workers and their respective organisations as good and sees a positive competitive impact of the labour system. On the latter point, the company elaborates as follows:

Port workers in Barcelona enjoy high salaries but at the same time, the system ensures high productivity. Port workers have a basic salary which is complemented on the basis of moves per container. As a result worker's salaries are high but they also translate into high levels of productivity and efficiency. The good training and selection regime of the pool system has resulted in dedicated and hard workers. This, plus a good retention and remuneration structure of skilled workers have benefited the port, operators and customers in achieving high productivity and efficient operations.

The same operator reports that recruitment via an employment agency is exceptional. In 2006-2007 a temporary working agency provided general port workers as well as a few mechanics and goods controllers in order to cope with growth in demand. This has been the only case to date (which information was disputed by Puertos del Estado who mention a regular use of temporary employment agencies²³¹²). Accordingly, the same company mentions, among prevailing restrictions on employment, a prohibition on employment of temporary workers

²³¹¹ See Ley Orgánica 5/2010, de 22 de junio, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal.

²³¹² See *supra*, para 1753.

through employment agencies. Other such restrictions include a prohibition on self-handling, a prohibition on the employment of non-nationals or workers employed by employers from other countries (but only to the extent that the employer must become a member of the SAGEP), the mandatory use of port workers for non-port work, exclusive rights for certain categories of port workers, the mandatory composition of gangs and the exclusive rights of trade union members (closed shop). No restrictive working practices were reported however, and the reported restrictions on employment are not considered a major competitive disadvantage. Here, the respondent commented as follows:

The linkage between salaries and productivity as well as to the possibility of sharing the costs with the other terminal operators attenuates the situation. The port of Barcelona is very efficient and the quality of services is very high and improves our competitive position with other alternative ports. However, if the port operator would have the possibility to hire the vessel crew to perform the lashing/unlashing works the port of Barcelona could be more competitive.

With respect to the latter issue, Puertos del Estado added that lashing and unlashing is performed by the crews in Huelva and the Balearic Islands, whereas it is done by port workers in Algeciras and Santander. According to the law, stevedores may only perform lashing and unlashing operations where the crew is not carrying out this task. Practically speaking, the situation would often depend on the ship owner's own preference.

Asked which port labour regime can be considered a model or a best practice, the Barcelona terminal operator reacted as follows:

Each model is different and has advantages and disadvantages but we value the existence of different systems that use pools as well as their own staff. In both cases staff training and labour conditions are extremely important for workers. This ensures an efficient operation. Every port is different and every terminal is different and it is essential to ensure that labour arrangements suit the particularities of each port.

The company also stated that rules on health and safety as well as the level of their enforcement are satisfactory.

1784. In yet another talk with a global container terminal operator we noted again that the trade union Coordinadora is extremely powerful and that the most recent reform of port labour legislation had been a great success for them, because their monopoly is now entrenched in the law, whereas, in real terms, the privatisation of the SAGEPs changed nothing at all. Even if the local agreements do not impose manning scales, these matters are the subject of unwritten customs, so that there is very little room to manoeuvre. Because every change is subject to new negotiations, it is hard to implement new technologies and automation. Whereas a labour pool is an instrument of flexibility, its current monopolistic organisation leads to the opposite result. Opening up the market could be a first step towards real change. However, the current

infringement procedure against Spain may take several years, following which our interviewee expects further political delay, difficult negotiations and social unrest. A major difficulty is that Coordinadora is not interested in improvements of productivity and flexibility which will result in extra work volumes and job creation, and that it only defends the interests of existing workers. However, with the current unemployment rates in the country, the union is unlikely to find much support in public opinion.

1785. In a further interview, a major ro-ro operator in Valencia said that, with the exception of foremen who are employed on a permanent basis, it only uses pool workers. The foremen compose the gangs. Manning scales are rigorously enforced and strict job classifications apply, under which, unlike in many other ports, truck and tugmaster drivers do not belong to the same category. Lashing and securing of rolling stock is performed by the ship's crew, but for containers port workers must be hired.

1786. An individual ship owner replying to the questionnaire complained about the inflexibility of the shift system.

1787. According to still another interviewee, the exceptions to the exclusive rights of pool workers for lashing by the ship's crew and the handling of cars and trailers and of cargoes at industrial plants such as steel mills or refineries, which are laid down in express provisions of the current Ports and Merchant Shipping Act, have been accepted by the unions and are not controversial. It is also accepted that new, unmanned cars without plates can be loaded and unloaded by (fixed or temporary) non-pool workers recruited by cargo handlers on the private labour market. Discussions on such technicalities can be time-consuming and often result in irrational compromises. Recently, unions attempted to oblige cruise operators to hire pool workers for the loading of supplies onto cruise vessels.

Due to opposition by the unions, the possibility of allowing port users to self-handle, which is enshrined in the Ports and Merchant Shipping Act, has remained merely theoretical. As a result, the legally safeguarded exceptions to the prerogative of the SAGEPs to provide workers to cargo handling companies are leading nowhere.

The allegation by one terminal operator that fixed workers are more expensive than pool workers was vigorously denied by our interviewee, who moreover pointed out that non-compliance with the 25 per cent minimum of permanent employment can be sanctioned by heavy penalties and even the loss of the company's license to operate. Still, terminals prefer to recruit 5 or 15 per cent only of permanent workers, rather than the legally required minimum of 25 per cent, firstly because they do not want to disturb the peace with Coordinadora and secondly because the additional cost is passed on to the clients (*i.e.* the ship owners) anyway.

Furthermore, the full privatisation of the APIEs into SAGEPs has not resulted in any real control of the labour market by the employers. The withdrawal from the ownership and management of the pools by the port authorities has virtually transferred power to the trade unions. Moreover, in some SAGEPs powerful terminals dominate the others, which results in big employers striking bargains with unions to the detriment of the smaller ones, their competitors.

For all these reasons, the various modernisation and liberalisation measures contained in the 2010 Ports and Merchant Shipping Act have not resulted in any major change in the system. But generally speaking, most employers do not seem to suffer too much from current restrictions on employment and restrictive working practices, because maritime traffic to and from Spanish ports is a captive market, transshipment is of relatively limited importance and intra-port competition is weak. Moreover, port employers shrink away from the threat of collective actions which would disrupt their operations. The unions for their part resist the employment of workers outside the pool, because the latter is their main power base. Allegedly, this situation results in poor overall efficiency of the Spanish port system, which lags behind in the adoption of new technologies as well.

We should add that several container terminal operators vigorously denied that Spanish ports do not compete with ports in other countries. While some ports such as Barcelona, Bilbao and Valencia indeed handle considerable volumes of import and export traffic, many ports including, again, Barcelona and Valencia, but also Algeciras, Las Palmas and Málaga deal with transshipment cargo in direct competition with foreign ports. As a result, the port labour system is a major competitive factor.

1788. As a result of the rotation system, port workers (except the *fijos*) are assigned to different port employers. However, they cannot be transferred temporarily to another port (with one exception, namely Gijón and Aviles, which are very close and used to be managed by the same port authority).

1789. According to one trade union there are no sub-standard or otherwise unacceptable labour conditions in Spanish ports. This union does however confirm the ban on self-handling.

1790. In an interview, a representative of trade union Coordinadora explained that the legal requirement to employ 25 per cent of port workers on the basis of a permanent employment contract is not realistic for companies who do not have ships every day. He confirmed that in Barcelona, no *fijos* but only *rojillos* are employed, who are then counted as permanent workers in order to meet the legal minimum, while, to mention another example, the percentage of *fijos*

in Bilbao dropped from 60 to only 20 over the past eight years or so. Our interviewee also said that there is no reason why SAGEPs should allow only one temporary work agency per port and confirmed that container terminals at Barcelona are considerably more productive than those in Valencia.

1791. Replying to the questionnaire, trade union CC.OO confirmed that the present legal definition of port labour is inadequate and has caused too many conflicts and strikes.

1792. Puertos del Estado, ANESCO and CC.OO concur that health and safety rules are properly enforced, but TCM-UGT disagrees. As we have mentioned above²³¹³, several terminal operators complain that workers refuse to comply with safety and/or security standards.

1793. To our knowledge, the National Regulations on the Handling of Dangerous Goods in Ports have not yet been adapted to the latest version of the relevant IMO Recommendations on which they are based.

1794. For completeness' sake, we should recall that back in 2003, the European Committee of Social Rights, informed by ILO of certain shortcomings in the regulations on port handling facilities, asked what measures the Spanish Government intended to take in this connection. It also asked whether workers called upon to handle dangerous or unhealthy substances were sufficiently well informed of the risks involved. Pending receipt of this information, the Committee nevertheless concluded that Spain complied with Article 3 of the European Social Charter on the right to safe and healthy working conditions²³¹⁴. We are unaware of any further developments in this respect.

9.20.7. Appraisals and outlook

1795. First of all, it should be observed that over the past decades, the Spanish port labour regime underwent several reforms.

Saundry and Turnbull commented as follows on the 1986 reform:

²³¹³ See *supra*, paras 1781-1872.

²³¹⁴ See <http://hudoc.esc.coe.int/esc1doc/escsec/doc/200305/c-10-2-en/c-10-2-en-50.doc>.

Given the economics and logistics of port transport and the history of industrial relations on the Spanish waterfront, it would be surprising if the system of labour regulation were without its critics or indeed without inherent tensions. Employers would like to employ more permanent workers; the Coordinadora vehemently defends the principle of rotation. Employers would like to introduce greater temporal flexibility; the dockers want to protect overtime earnings and 'job-and-finish'. Employers would like to reallocate workers to different grades within any given shift; the unions argue that this will deny other pool workers the opportunity to work (e.g. if crane drivers are allocated to forklift trucks midway through a shift, rather than qualified forklift drivers being hired from the pool at the start of the shift). As the manager of a general stevedoring firm in Bilbao remarked somewhat wryly, 'In principle there is complete flexibility, as long as you're prepared to pay for it' (interview notes). In some respects, therefore, employers are 'resigned' to the port labour system – the manager of Bilbao's main container terminal suggested that to abolish the Estiba 'would be a declaration of war' (interview notes), a sentiment confirmed by one of the port's union officials, who proclaimed that 'We would die to defend the Estiba' (interview notes). But there was also widespread and very positive support for a system of labour regulation that provided highly skilled and productive workers on an 'as-and-when' basis²³¹⁵.

Other commentators noted that reforms of the Spanish port labour regime have resulted in a substantial reduction of the workforce and in a modest deregulation of working practices²³¹⁶.

1796. The inventory of present-day policy and legal issues provided above suggest that, even if today some individual terminal operators do not seem to encounter major problems, none of the consecutive reforms has eased the broad dissatisfaction with the Spanish port labour regime.

1797. Replying to our questionnaire, Puertos del Estado described the relationship between employers and unions as satisfactory and also informed us that, at this stage, it is not considering a denunciation of ILO Conventions No. 137 and No. 152.

1798. A neutral expert described the current system as unsatisfactory and as a serious competitive handicap. First of all, it is not conducive to competition between stevedoring companies, because the latter jointly manage the labour factor, which represents around 60 per cent of total costs. As the organisational model is determined at port level, there is little room

²³¹⁵ Saundry, R. and Turnbull, P., "Contractual (In)Security, Labour Regulation and Competitive Performance in the Port Transport Industry: A Contextualized Comparison of Britain and Spain", *British Journal of Industrial Relations* 1999, Vol. 37:2, (271), 283.

²³¹⁶ See Díaz, J.J., Martínez, E. and Jara, S., "Parametric estimation of efficiency in cargo handling in Spanish ports", September 2007, <http://www.cnc-logistica.org/congreso-cnc/documentos/118.pdf>.

for differentiated offers for the same service. Furthermore, the current arrangements are largely obsolete because they do not take into account the increasing regularity of ship traffic. As a result, trade today has to adapt to the labour regime whereas in a normal situation it should be the other way round. Our expert also notes a lack of legal certainty resulting from the excessive ambiguity of applicable rules, with labour disputes often being solved before the public administration.

In an interview, the expert doubted the present-day justification of the entire Spanish port labour regime, because today cargo handling in ports shows no special features which distinguish it from any other sector of the economy. The technological equipment of ports – such as gantry cranes – is used in other workplaces as well. Instability of demand is not a particularity of the port sector either: sectors such as car manufacturing and tourism have to cope with peaks and troughs as well. In order to underpin the view that the port sector has no characteristics that warrant the continuation of an exceptional labour regime, a thorough comparison of labour demand fluctuations in ports and other branches of the economy was suggested. Whatever the case, our interviewee asserted that, probably, some 95 per cent of Spanish port workers could be employed permanently.

1799. On the other hand, ANESCO asserts that the relationship between port employers and port workers and their respective organisations is satisfactory. ANESCO is "not dissatisfied" with the current port labour regime, because it has evolved in the course of the years and adapted itself to the European model. Some individual terminals however complained that ANESCO does not have a sufficiently strong impact on negotiations at national level.

1800. Several terminal operators complain that the current port labour regime does not make the Spanish ports competitive and that it does not offer sufficient legal certainty, because there is too much room for interpretation. Furthermore, the relationship between port employers and port workers and their respective organisations is considered unsatisfactory. In this regard, mention is made of a 'cold war situation' and, as we have mentioned, the unions are allegedly not respecting existing agreements. The terminal operators and port users in general are frustrated with the monopoly and abuses of the port workers. Terminals see no room to hire motivated and responsible port workers, while bad workers earn approximately 85,000 EUR annually. One terminal operator furthermore argues that the port labour regime is inflexible and not adapted to the needs of the modern container and ro-ro market. Short sea traffic is impossible to develop due to the high labour costs. Also, port workers are undisciplined, show no respect and continue to belong to the same families (nepotism). The police and the port authorities should take more action to enforce safety, discipline and ISPS rules.

1801. Trade union TCM-UGT is 70 per cent satisfied with the port labour system and describes the relationship between port employers and port workers and their respective organisations as good. The system impacts positively on the competitiveness of Spanish ports because workers are professional and, as the income varies substantially with their activity, also productive.

1802. For the trade union FSC-CC.OO, the current Spanish port labour regime is unsatisfactory and offers insufficient legal certainty, but these issues have no anticompetitive effect. The relationship with employers can be termed satisfactory because there is a permanent dialogue and it has been possible so far to avoid major strikes.

1803. One responding ship owner considers the current port labour system unsatisfactory because it is a monopoly. The company did not identify this as a major competitive handicap however.

1804. Puertos del Estado refers to Antwerp, Hamburg and Rotterdam as best models and believes that EU action is necessary to create a common legal framework guaranteeing equal competitive conditions. The peculiarities of port labour arrangements should be removed and port labour should follow the same rules as any other economic sector.

1805. According to ANESCO, legal and policy issues in the field of port labour should be solved through the conclusion of national and local agreements. It is not sure whether EU action is desirable or not.

1806. Opinions on the need for EU action differ among responding and interviewed terminal operators, with a clear majority insisting on the urgent need to intervene however. One company warned that the unions are "intimidating" Spanish politicians but insists that the port labour system must be "privatised" so as to enable employers to hire their own workers, like in all other industries. It also explained that the difference with the – equally restrictive – Belgian Port Labour Act is that in Belgium, the unions cooperate with the employers because otherwise Antwerp would lose traffic to Rotterdam; in Spain, the unions boycott all initiatives, using safety as an excuse. Still the same terminal stressed that the EU must act, otherwise it would be another proof of its incapacity to act, as shown with the two previous liberalisation initiatives.

1807. Trade union TCM-UGT perceives the Spanish and Belgian port labour regimes as best practices. It notes that there is fierce competition in EU ports, which are also more competitive than ports in America, India and Japan. It would be interesting to investigate and compare the costs of cargo handling and productivity rates. The result would probably confirm that European ports perform better.

1808. In the same vein, the trade union FSC-CC.OO does not see any need or scope for EU action and is of the opinion that any EU intervention would be counterproductive. It did not mention any specific national model either.

1809. One terminal operator does not see major issues where action at EU level would be necessary. However, another terminal operator fears that without an initiative at EU-level, the national Government will not take any measures to address the current problems at all. It also noted that there is no budgetary incentive for the national Government to change the current port labour regime, as the system's financial burden is in essence carried by private companies.

1810. Another terminal operator confirms that the reform of port labour will never be a priority for the national Government and that no real change can be expected unless it is imposed by the European Commission.

According to our interviewees, priorities should include:

- the abolition of the monopolistic market structure which makes collective bargaining an illusion;
- the effective implementation of the minimum of 25 per cent (or more) of fixed workers, with rotation becoming the exception and pools only serving to respond to peak demand;
- the possibility of employing permanent staff for sophisticated and dangerous jobs, or an EU-wide ban on temporary work for such jobs;
- the possibility of relying on private employment agencies;
- the introduction of independent training.

1811. On 27 September 2012, the European Commission sent a reasoned opinion to Spain. The press release²³¹⁷ reads as follows:

The Commission has sent today a reasoned opinion to Spain for obliging cargo-handling companies in several Spanish ports to financially participate in the capital of private companies managing the provision of dockers and not to allow them to resort to the market to employ their staff, unless the workforce proposed by this private company is not suitable or not sufficient. Cargo-handling providers from other Member States wishing to establish themselves in Spain might be discouraged from doing so because of the barrier this provision raises on the market for cargo-handling services. This is the second stage in the infringement procedure. If Spain fails to react satisfactorily, the Commission may refer the matter to the EU Court of Justice.

The EU rules

Treaty rules on freedom of establishment fully apply to the activities carried out by the entities in charge of recruiting port workers, so called "pools". The European Union requires the elimination of restrictions on freedom of establishment. In particular, the Treaty precludes any national measure which, even though not discriminatory on grounds of nationality, is liable to hinder or render less attractive the exercise of the freedom of establishment that is guaranteed by the Treaty. Therefore, while "pools", often provide sound training to workers and are an efficient tool for employers, they should not be used to prevent suitably qualified individuals or undertakings from providing cargo-handling services, or to impose on employers the workforce they don't need.

The reason for lodging a formal complaint

Spanish Royal Legislative Decree 2/2011 of 5 September 2011 foresees that private companies recruiting and putting the dockers at the disposal of cargo-handlers, SAGEP (Sociedad Anónima de Gestión de Estibadores Portuarios), should be set up in "ports of general interest". These ports comprise, among others, the port of Barcelona, Algeciras, Valencia and Bilbao. The same law obliges all companies wishing to provide cargo-handling services to join and financially participate in the capital of a SAGEP. Cargo-handling companies can be exempted from this obligation only in very limited cases and if they provide services exclusively for themselves. Furthermore, regardless of whether the cargo-handling company is a member of SAGEP or not, it has to rely on workers recruited and put at its disposal by SAGEP. Only if the dockers proposed by SAGEP are not sufficient or not suitable, the cargo-handling companies may recruit workers from the market, but only for one working shift.

According to the assessment made by the Commission, there are other instruments, such as policies and strategies aiming at ensuring training for dockers and improving

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IP/12/1022,
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/1022&format=HTML&aged=0&language=EN&guiLanguage=en>.

their competencies, to attain the claimed objective of protection of dock workers which are not in contradiction to the freedom of establishment and that are therefore more proportionate to that objective. Likewise, policies oriented towards the mobility of workers between ports in the same country or across the border, as well as flexible working arrangements, may have positive impact on dock labour.

The practical effect of a restriction on the freedom of establishment

Under the Spanish law the cargo-handling companies wishing to establish themselves in a Spanish port of general interest are obliged to gather sufficient financial resources to participate in a SAGEP and to hire SAGEP workers under conditions which they do not control. This causes a forced alteration of the companies' existing employment structures and recruitment policies. Such changes may entail serious disruption within companies and have significant financial consequences. Cargo-handling companies may consequently be discouraged from establishing themselves in Spanish ports of general interest.

9.20.8. Synopsis

1812.		
SYNOPSIS OF PORT LABOUR IN SPAIN²³¹⁸		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 46 ports of general interest • Landlord model • 476m tonnes • 2nd in the EU for containers • 10th in the world for containers • 159 employers • Appr. 6,500 port workers • Trade union density: 100% 	<ul style="list-style-type: none"> • <i>Lex specialis</i> (Ports and Merchant Shipping Act) • Party to ILO C137 • National and local CBAs • Reforms between 1986 and 2010 • All port operators must be licensed • All cargo handlers must participate in Pool Company • 3 categories of workers: <ul style="list-style-type: none"> (1) permanent workers employed by individual operator (2) pool workers employed by Pool Company (3) other workers only in the case of shortage of pool workers • Pool workers are assigned to operators based on rotation • Authorisation system for self-handling • Criminal sanctions 	<ul style="list-style-type: none"> • Compulsory participation of operators in Pool Company (EU infringement procedure) • Exclusive right of pool workers • Last national CBA partly annulled due to anti-competitive effect • Obligation to employ 25% permanent workers not observed • Closed shop and nepotism • Broad definition of port labour • Disputes over scope of exclusive right of port workers • Detailed classification of workers • Mandatory manning scales • Restrictions on self-handling • Exclusive right of 1 temporary work agency per port • Restrictive working practices • Weak employer's authority • Low acceptance among terminals • Reform no priority for Government
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • All training organised through Pool Companies 	<ul style="list-style-type: none"> • All workers must be qualified • National regulations on qualifications exist • Truck driver's licence needed • CBAs promote multi-skilling 	<ul style="list-style-type: none"> • National qualification system voluntary and not fully operational • Exclusive right of Pool Companies to provide training • Trainers are privileged workers
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No specific national accident statistics available 	<ul style="list-style-type: none"> • Party to ILO C152 • Rules on dangerous goods • Technical rules for mobile cranes 	<ul style="list-style-type: none"> • Lack of statistics • Weak enforcement at places • Lack of safety discipline

²³¹⁸ 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.

9.21. Sweden

9.21.1. Port system²³¹⁹

1813. Sweden has the longest coastline of all the EU countries (more than 2,000 km) and the largest number of ports of all the Baltic Sea countries. Currently, some 50 public ports and 30 industrial ports are in operation. These include large universal, ferry and oil ports, and also small regional and local wharves. Almost all the foreign trade of the country passes through its ports.

In 2011, the gross weight of seaborne goods handled in Swedish ports was about 145 million tonnes. Gothenburg is by far Sweden largest international cargo port. As for container throughput, Swedish ports ranked 10th in the EU and 46th in the world in 2010²³²⁰.

1814. In Sweden three models of seaport governance co-exist. Most public seaports are owned by the municipality but managed by a (totally or partially) municipality-owned port company, which also provides cargo handling services under a service port model. In a minority of public ports, a landlord model is followed, under which the port authority is either part of the municipal administration or a (totally or partially) municipality-owned port company, while cargo handling services are provided by private companies, but there are only few such private port terminal operators. A third category of ports is formed by industrial ports, some of which also offer port services to third parties. Conversely, some public ports also handle industrial port traffic.

²³¹⁹ For general information on Swedish ports, see <http://www.transportgruppen.se/templates/MultiMaster.aspx?id=31769>; Sveriges Hamnar, *Swedish Ports, A linchpin in Swedish industry*, <http://www.transportgruppen.se/c71d6c6f-3c7e-40fd-8728-55f429f952f4.fodoc>; Wihlborg, M. and ECOTEC, *Employment trends in all sectors related to the sea or using sea resources, Country Report – Sweden*, European Commission. DG Fisheries and Maritime Affairs, August 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/sweden_employment_trends_en.pdf, 7-9; ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 133-142. For statistics, see <http://www.transportgruppen.se/templates/Page.aspx?id=53767> and http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

²³²⁰ Container ranking based on UNCTAD, *Review of Maritime Transport 2011*, New York and Geneva, UNCTAD / UN, 2011, http://unctad.org/en/Docs/rmt2011_en.pdf, 201-203.

9.21.2. Sources of law

1815. The construction and operation of ports is governed by the Environmental Code²³²¹ which requires a permit to operate and the preparation of an environmental impact assessment.

A port can also be designated as a public port by Act (1983:293) on the Establishment, Enlargement and Closure of Public Waterways and Public Ports²³²², which *inter alia* requires the preparation of an environmental impact assessment before new port facilities are opened or expanded.

The Public Order Act²³²³ authorizes the Government to issue regulations on public order and safety in ports and to direct municipal authorities to issue such regulations (§ 10).

Neither of these instruments touches upon port labour.

We are unaware whether the historically important 1908 Port Labour Ordinance²³²⁴ is still in force. Ports of Sweden doubts whether that can be the case.

1816. Port labour is governed by general labour law, which is not brought together into a comprehensive labour code however²³²⁵.

Ports of Sweden drew attention to the particular importance to the port sector of the Employment (Co-Determination in the Workplace) Act²³²⁶. Under this Act, workers are free to form and join unions without government intervention. Unions have strong collective bargaining rights and, if conflicts arise, they may litigate or resort to industrial action.

1817. Health and safety at work is governed by the Work Environment Act²³²⁷ and the Work Environment Ordinance²³²⁸.

The only piece of specific national legislation on port labour is the Provisions of the Swedish Work Environment Authority on Dock Work and the General Recommendations on the Implementation of the Provisions, which was adopted on 13 December 2001²³²⁹.

²³²¹ Miljöbalk (1998:808).

²³²² Lag (1983:293) om inrättande, utvidgning och avlysning av allmän farled och allmän hamn.

²³²³ Ordningslag (1993:1617).

²³²⁴ See *infra*, para 1823.

²³²⁵ For an overview of these laws, with some English translations, see <http://www.sweden.gov.se/sb/d/3288/a/19565>.

²³²⁶ Lag (1976:580) om medbestämmande i arbetslivet (Medbestämmandelagen, MBL).

²³²⁷ Arbetsmiljölagen (1977:1160).

²³²⁸ Arbetsmiljöförordningen (SFS 1977:1166).

Other relevant health and safety regulations of a more general nature include the Provisions on Use of Work Equipment²³³⁰; Use of Trucks²³³¹; Use of Lifting Gear and Lifting Equipment²³³²; and Temporary Personnel Hoists using Cranes and Trucks²³³³.

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 2003²³³⁴.

Finally, mention should be made of the Ship Safety Act²³³⁵.

1818. Sweden has ratified both ILO Conventions No. 137²³³⁶ and No. 152²³³⁷. Previously, Sweden was bound by ILO Convention No. 32.

1819. The main source of port labour law is the national collective agreement called the Port and Stevedoring Agreement. We consulted the agreement for 2008-2011²³³⁸, which has, to our knowledge, been renewed twice. It appears that the national agreement is not a publicly available document.

In quite some detail, the Port and Stevedoring Agreement regulates issues such as the employment of workers, working hours and shifts, wage scales, overtime, holidays, sick leave and sick pay, sanctions and bargaining procedures. The national agreement is binding upon some 56 individual employers who are all members of Ports of Sweden and who are mentioned by name in the agreement. It governs all work performed at these stevedoring companies, including, *inter alia*, the loading and unloading of ships, terminal work, tally work, opening and closing of containers, lashing operations and mooring of vessels (§ 1).

The national agreement is supplemented by numerous local, company-specific agreements²³³⁹. There is also a separate national agreement on the Port and Stevedoring School.

²³²⁹ Arbetsmiljöverkets föreskrifter om hamnarbete samt allmänna råd om tillämpningen av föreskrifterna (AFS 2001:09).

²³³⁰ Användning av arbetsutrustning (AFS 2006:04).

²³³¹ Användning av truckar (AFS 2006:5).

²³³² Användning av lyftanordningar och lyftredskap (AFS 2006:6).

²³³³ Tillfälliga personlyft med kranar eller truckar (AFS 2006:7).

²³³⁴ Lag (2003:367) om lastning och lossning av bulkfartyg; Förordning (2003:439) om lastning och lossning av bulkfartyg; Sjöfartsverkets föreskrifter om lastning och lossning av bulkfartyg.

²³³⁵ Fartygssäkerhetslagen (2003:364).

²³³⁶ Kungl. Maj:ts proposition angående vissa av internationella arbetsorganisationens allmänna konferens år 1973.

²³³⁷ Regeringens proposition 1979/80:133 med anledning av beslut fattade av internationella arbetskonferensen år 1979 vid dess sextiofemte möte.

²³³⁸ Hamn- och Stuveriavtalet mellan Sveriges Hamnar och Svenska Transportarbetareförbundet (Port and Stevedoring Agreement between Ports of Sweden and Swedish Transport Workers' Union), valid from 1 April 2008 through 30 June 2011. The agreement also has a 'Supplement'.

²³³⁹ We consulted one example for the port of Oxelösund, signed on 5 November 2012. The agreement mainly regulates working time, sick pay and daily rest.

9.21.3. Labour market

- Historical background

1820. As in most countries, the port labour system cannot be understood without its historical context²³⁴⁰.

1821. In the past, all public ports in Sweden were municipal property and governed by the municipal administration, while local stevedoring companies were private businesses owned by port users. A major player in the stevedoring sector was the Swedish Shipowners' Association (Sveriges Redareförening).

1822. At the end of the 19th century, unions fought for the right to negotiate collective agreements, the exclusive right for unionised port workers to work in the port and a fair system of job distribution among the dockers to make sure that everyone would get a fair share of the work and thus a fair wage. In 1900, a majority of the ports had rules of preference for union members, but later this situation was reversed²³⁴¹.

1823. In 1908, the famous Swedish Stevedoring Ordinance was adopted, the aim of which was to maintain only one stevedore in each port, who would operate on a neutral and non-profit basis. This stevedore would offer its services to all ships in port and ensure that ship owners could always rely on a sufficient complement of port workers, even in the light of the considerable seasonality of port traffic.

The Stevedoring Ordinance rested on an Agreement between the Swedish Employers' Association and the Swedish Shipowners' Association. Its main principles were:

²³⁴⁰ Our overview is largely based on data in the Swedish chapter in the excellent study by Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 120-160, especially 133 *et seq.*

²³⁴¹ See Hamark, J. and Thörnqvist, C., "Docks and Defeat – The 1909 General Strike in Sweden and the Shipping Ports Problem", www.gu.se, 8-9; see also the speech by Bjorn Borg of the Swedish Dockworkers Union at the Liverpool 2nd Anniversary Rally, 27 September 1997, <http://www.labournet.net/docks2/9709/BORG.HTM>.

- in every port, a stevedoring company must be established, the shares whereof must be offered to all port customers;
- in order to ensure neutrality towards all port users, no shareholder is allowed to hold a majority of shares;
- the stevedoring companies must operate in the general interest and not seek profits; the articles of association must regulate the payment of a limited dividend;
- members of the Swedish Shipowners' Association undertake to rely exclusively on the stevedoring company. However, services shall be provided in a non-discriminatory way to foreign ships and other port customers²³⁴².

1824. In the 1960s, when considerable investments were necessary in order to keep up with technological developments, many stevedoring companies were taken over by the municipalities²³⁴³. In the 1980s, port authority and stevedoring functions were merged into integrated autonomous port companies established under private law.

1825. Today, the bulk of cargo is handled in integrated ports. In most cases, the move towards a service port system strengthened the competitive position of the port, because operations were better coordinated and became more flexible. In the next phase, the private sector (shipping lines and/or stevedoring companies) acquired shares in a number of port companies. In most cases, the municipality still controls around 50 per cent of the shares. In the largest non-integrated ports, municipalities still hold (mostly minority) shares in the stevedoring company. Practically, the Stevedoring Monopoly (*stuverimonopol*) has remained in force to this day.

- *Regulatory set-up*

1826. Employers of port workers do not need a specific licence and neither are they obliged by law to join an employers' association or any other organisation.

However, in most Swedish ports only one company offers stevedoring services. This arrangement is referred to as the Stevedoring Monopoly. It is not based on any legislative or regulatory provision, but only on the Port and Stevedoring Agreement, a collective agreement

²³⁴² Our account of the Stevedoring Ordinance is based on Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 151-152.

²³⁴³ The transfer of all port operations to the municipalities was also advocated by the Communist Party (see, for example, Tell, K., "Hamnarbetarna i kamp (1954)", <http://www.marxistarkiv.se/sverige/skp-v/hamnarbetarna54.pdf>).

between the employers' organisation Ports of Sweden and the employees' organisation Swedish Transport Workers Union, and on tradition²³⁴⁴. The unique stevedoring company is responsible for all handling of goods in the port, from arrival by land transport until the goods are stowed on board and *vice versa*. As we have mentioned²³⁴⁵, the Port and Stevedoring Agreement covers all workers employed by the stevedoring companies which are listed in the agreement which applies to all work performed at these companies. As a result, the Stevedoring Monopoly has a particularly broad scope. We should immediately add, however, that in an increasing number of ports, the Stevedoring Monopoly is being replaced by a more varied and competitive model, and that industry representatives deny that the Monopoly still exists²³⁴⁶.

1827. Port workers in Sweden are employed by terminal operators or other companies. In one case, port workers are employed by a shipping line (Stena in Gothenburg). There is no pool system in Sweden. Neither is there a legal obligation on port workers to be registered, although the Port and Stevedoring School maintains a register of certificates issued to trainees. The latter is, however, not register within the meaning of ILO Convention No. 137. Temporary workers are not recruited in hiring halls.

1828. The Port and Stevedoring Agreement mentions three categories of port workers: permanent employees (*tillsvidareanställda*), temporary employees (*visstidsanställda*) and probationers (*provanställda*) (§ 3(1)). The temporary employees are used to temporarily replace permanent employees. The probationers are employed for a probationary period of six months (§ 3(2)).

In addition, the Agreement also mentions the possibility of agreement on the employment of short-term casual workers (*behovsanställda*) in the event of extra demand. The proportion of working hours performed by the latter category of workers must not exceed 20 per cent of the total hours worked per calendar year. Where an employer decides to hire additional permanent workers, he must give priority to these casual workers (§ 3(4)). The system of casual employment is used frequently.

Practically speaking, most Swedish cargo handlers employ permanent workers as well as temporary and casual workers. On average, port authorities and private terminals hire approximately 20 per cent of their workforce on a daily basis. The casual workers do not form an official pool however. Every employer has its own list of available casual workers, most of

²³⁴⁴ Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 153. Back in 1953, Halvar Sundberg accepted that municipalities could establish a stevedoring company but denied them the right to create a Stevedoring Monopoly (Sundberg, H.G.F., "Den kommunala kompetensen efter 1948 års kommunalreform", *Statsvetenskaplig Tidskrift* 1953, (334), 348).

²³⁴⁵ See *supra*, para 1819.

²³⁴⁶ See *infra*, para 1861.

which also have other jobs such as taxi or bus driver. The casual workers also enjoy certain unemployment benefits the organisation of which is said to be rather complicated. These benefits are paid by the Unemployment Benefit Fund (Ersättning från a-kassan) to their members.

1829. In their replies to the questionnaire, Ports of Sweden, the Swedish Transport Workers Union and the Swedish Dockworkers Union mentioned few specific conditions to become a port worker. Apparently, a minimum age of 18 applies. The supposed existence of a requirement to spend 3,200 hours of on-the-job training as a probationer and to attend induction training at the Port and Stevedoring School was denied by Ports of Sweden. Apparently, no specific training requirements apply.

1830. The Port and Stevedoring Agreement confirms the right of the employer to manage and distribute the work, to freely hire and dismiss workers and to deploy them, whether they are organised or not (§ 2 (2)).

Workers are under a duty to accurately and diligently carry out their tasks and to be sober and well-behaved; they may not leave the workplace without permission and must operate equipment carefully (§2 (3)).

They may be moved to another task in the course of their work. Manning levels must correspond with the actual needs and are determined by the employer (§ 5).

Workers must be deployed in a rational way, taking into account training levels and safety requirements (§ 2 of the Annex to the Agreement).

1831. Under the Port and Stevedoring Agreement (§ 2(4)), port workers may be obliged to work at other ports. There is also no prohibition on transfers of workers between employers. Such exchanges only take place in very rare cases, however, and specific collective arrangements may apply to this matter.

1832. The Port and Stevedoring Agreement contains an elaborate scheme called 'Dock Side 4 Ett' which is aimed at personal development through education and learning at work and which comprises a differentiated pay system based on job classification (Annex 2 to the Agreement).

1833. The Port and Stevedoring Agreement contains provisions on disciplinary sanctions (warning and suspension) and on the termination of employment contracts (§ 11). If the demand for labour drops, the employer may lay off workers (§ 14). According to Ports of Sweden, the latter never happens.

1834. The Port and Stevedoring Agreement regulates the settlement of disputes (§ 16).

1835. Practically, enforcement of labour laws is ensured by the public prosecutor, the port authority, the terminal operator and the trade unions.

- Facts and figures

1836. Some 57 port companies have joined forces in Ports of Sweden (Sveriges Hamnar), an industry and employers' organisation. Almost all Sweden's port companies are members. As an industry organisation, Ports of Sweden also represents and assists around 15 port administrations, but these cannot become full members.

1837. Ports of Sweden informed us that their members currently employ approximately 3,000 port workers. According to the Swedish Dockworkers Union, Swedish ports employ some 2,500 permanently employed port workers and 1,500 temporarily employed casual port workers, while the Swedish Transport Workers Union mentions a total of 3,450 unionised members. Other interviewees accepted these estimates as reasonable and mentioned a figure of no more than 3,700 blue collar workers.

1838. Almost all port workers in Sweden are reported to be members of a trade union (approximately 100 per cent according to Ports of Sweden, approximately 90 per cent for the Swedish Dockworkers Union). There are two national unions: the Swedish Transport Workers Union (Svenska Transportarbetareförbundet) and the IDC-affiliated Swedish Dockworkers Union (Svenska Hamnarbetareförbundet), a splinter union founded in 1972.

The former union informed us that it has approximately 1,900 members, while its counterpart has 1,550 members. As a result, the Swedish Transport Workers Union would represent 55 per

cent of all port workers in Sweden. The Swedish Dockworkers Union reported having 1,430 members and claims that each union represents approximately one half of the workers.

9.21.4. Qualifications and training

1839. Today, there are no legal requirements regarding skills and competences of port workers in Sweden.

Until the late 1990s larger port operators and stevedoring companies organised training of port workers locally, either internally or externally. In 1997, discussions over a centralised training programme materialised in an agreement between the then Port and Stevedoring Association of Sweden (now 'Ports of Sweden'), the Swedish Transport Workers Union and the Vocational Training and Working Environment Council (Transport Trades) (TYA). The latter organisation is a joint body of private enterprises, governmental bodies and the Transportworkers Union. Pursuant to the agreement, a centralised training facility was created which is financed by a levy on the port workers' salaries (currently, this levy is 0.2 per cent). Preference is given to new employees. Today, this Port and Stevedoring School (Hamn & Stuveri Skolan) offers training for, among others, port workers, port crane operators, cargo securing workers and signalmen. The management board of this school is composed of three representatives from the employers and three representatives from the trade union side. The courses offered by the school are often company-based. Trainees receive a certificate²³⁴⁷.

In Gothenburg, terminal operator APMT is said to employ 4 port workers as trainers.

1840. Information according to which port workers only acquire professional qualifications after 3,200 hours (2 years) in the industry, provided they have also undertaken the approved induction training, was disputed by Ports of Sweden²³⁴⁸. Other informants mentioned that students at the age of 15-16 who want to become port workers can choose a Vehicle Engineering Programme, specialising in transport.

²³⁴⁷ On the Port and Stevedoring School, see www.hamnskolan.com and <http://www.tya.se/tya/branscher/hamn/omhamn.asp>. On port training in Sweden, see also Sandström, S., "New form of professional training for port and terminal labour", in Vainio, J. (Ed.), *Port training innovation*, Turku / Åbo, University of Åbo / University of Turku, 2000, 33-39; Sveriges Hamnar, *Swedish Ports, A linchpin in Swedish industry*, <http://www.transportgruppen.se/c71d6c6f-3c7e-40fd-8728-55f429f952f4.fodoc>; Turnbull, P., *Training and Qualification Systems in the EU Port Sector: Setting the State of Play and Delineating an ETF Vision*, July 2009, <http://www.itfglobal.org/files/extranet/-75/17739/Final%20report%20EN.pdf>, *passim*, especially 18 *et seq.* In Malmö, cooperation with Copenhagen was envisaged back in 2001 (see *supra*, para 686).

²³⁴⁸ See already *supra*, para 1829.

1841. According to the responses to our questionnaire, the following types of formal training exist in Sweden:

- continued or advanced training after a regular educational programme;
- induction courses for new entrants;
- courses for the established port worker;
- training in safety and first aid;
- specialist courses for certain categories of port workers such as crane, ro-ro truck, forklift and container equipment operators, lashing and securing workers, tallymen, signalmen and reefer technicians;
- retraining of injured and redundant port workers.

9.21.5. Health and safety

- *Regulatory set-up*

1842. Health and safety at work is governed by the Work Environment Act. The purpose of this Act is to prevent ill-health and accidents at work and generally to achieve a good working environment (Section 1). The Act does not contain any port-specific provisions.

1843. Health and safety in ports is governed by the Provisions of the Swedish Work Environment Authority on Dock Work of 2001.

Directions on Dock Work had previously been issued by the National Board of Occupational and Safety Health, under powers conferred by the Workers' Protection Act. Provisions and General Recommendations on Dock Work were subsequently issued pursuant to the Work Environment Act. The current Provisions are a revision of the previous Directions and Provisions. Parts of the Directions and Provisions which were repealed are now covered by the Provisions of the National Board of Occupational Safety and Health on Use of Work Equipment. Unlike their predecessors, the new Provisions do not deal with chemical and biological hazards. These are now addressed, for example, in the Provisions of the National Board of Occupational safety and Health on Chemical Hazards in the Working Environment, Work in Confined Spaces and Work Involving Infection Risks.

The Work Environment Act applies to the loading and unloading of ships, *i.e.* to dock work. On the other hand it does not apply to ship work other than work on warships (Chap. 1, Section 4). The safety of work on board a vessel is regulated in the Ship Safety Act.

1844. The current Provisions²³⁴⁹ apply to:

- *loading, unloading, mooring, casting off and bunkering of ships,*
- *cargo handling or other terminal work directly connected with the foregoing, and*
- *handling of ships' stores and equipment.*

These Provisions apply solely within dock areas, shipping lanes or the equivalent (Sec. 1).

In connection with work on board ship, an on-shore employer shall co-operate with a representative of the ship in order to achieve co-ordination of the work of shipboard and on-shore employees (Sec. 2). Prior to work on board ship, the party conducting dock work shall transmit written instructions to the ship's representative. The instructions shall describe the rules of safety applying to the harbour visit (Sec. 3). Communication between representatives of a ship's crew and representatives of on-shore employees shall as far as possible be conducted in a common language (Sec. 4). Before work begins, both regular and outsourced workers shall have received the instructions which are necessary in order for the work to be done safely (Sec. 5).

The full division of chapters of the instrument is as follows:

Scope

General

Requirements on the workplace

Organisation

Technical devices

Conduct of work

General

Deposition of goods etc. on a quayside, dockside and suchlike

Hatches etc.

Work with vehicles, railway trucks etc.

Stowing, stacking, section loading, handling of containers and bulk, oil and chemical cargoes etc.

Work involving more than one team in the same hatch opening or cargo hold

Handling of load carriers

Personal protective equipment etc.

First-aid material, ambulance transport, life-saving equipment etc.

Provisions applying to harbour owners

Entry into force

²³⁴⁹ The English translation was provided by the Work Environment Authority.

1845. The Provisions are supplemented by General Recommendations of the Work Environment Authority on the implementation of the Provisions on Dock Work issued by the Work Environment Authority. The General Recommendations are not mandatory. Instead they serve to elucidate the meaning of the Provisions (*e.g.* by explaining suitable ways of meeting the requirements, instancing practical solutions and procedures) and also to provide recommendations, background information and references.

1846. The above instruments (*e.g.*, the Guidance on Section 11) expressly refer to the provisions on Safety and Health in Dock Work issued by the ILO in 1977²³⁵⁰.

1847. Practically speaking, health and safety rules may be enforced by or at the initiative of the public prosecutor, the police, the Work Environment Authority, the port authority, the harbour master, the terminal operator and the trade unions.

- Facts and figures

1848. Statistics on the number of occupational accidents in Swedish ports are maintained by the Swedish Work Environment Authority.

Based on the Swedish NACE code 52441 for 'Hamngodshantering' (cargo handling in ports), figures for the last five years are as follows:

Table 109. Number of accidents and diseases in cargo handling (NACE code 52441) in Swedish ports, 2007-2011 (source: Swedish Work Environment Authority)

	2007	2008	2009	2010	2011	Total
Accidents ²³⁵¹	78	55	62	68	73	336
Diseases ²³⁵²	17	8	7	9	4	45
Total	95	63	69	77	77	381

Over the same lustrum, accidents and diseases were distributed as follows by gender and age groups:

²³⁵⁰ On the latter instrument, see *supra*, para 96.

²³⁵¹ Reported accidents with at least one day absence.

²³⁵² Reported diseases with or without absence.

Table 110. Number of accidents and diseases in cargo handling (NACE code 52441) in Swedish ports 2007-2011, by gender and age groups (source: Swedish Work Environment Authority)

Age Group	Female	Male	Total
18-24	7	19	26
25-34	2	40	42
35-44	5	69	74
45-54	8	105	113
55-59	2	61	63
60-64	2	58	60
65-	0	3	3
Total	26	355	381

Between 2007 and 2011, no fatal accidents occurred in Swedish ports²³⁵³.

9.21.6. Policy and legal issues

- The Stevedoring Monopoly and registration of port workers

1849. Replying to the questionnaire, the Swedish Dockworkers Union mentioned that there is "maybe a factual obligation" on port employers to join Swedish Ports, but not a legal one. Swedish Ports and the Swedish Transport Workers Union mentioned no such factual obligation.

Swedish Ports further stated that there is no competition between port employers in Swedish ports. The Swedish Dockworkers Unions confirmed that competition only takes places in very few ports and mentioned Stockholm. The Swedish Transport Workers Unions asserted that Swedish terminals do compete.

1850. Although in the course of our research not a single respondent or interviewee made any specific mention of it, it appears that the Stevedoring Monopoly is today by far the most pressing issue in the regulation of port labour in Sweden.

²³⁵³ For official statistics on fatal occupational accidents in Sweden, see <http://www.av.se/statistik/faktarapporter/dodsolyckor.aspx>.

As the below account of policy and legal positions on the Stevedoring Monopoly reveals, this fundamental principle underlying the Swedish port regime has been highly controversial for at least two decades. Moreover, issues arose over the way in which Sweden is implementing ILO Convention No. 137.

1851. First of all, numerous proposals for the abolition of the Stevedoring Monopoly were put before the Swedish Parliament. The proponents argued that the Stevedoring Monopoly hampers technological development, leads to expensive stevedoring operations and irrational and obsolete management practices and discourages working in ports and environmentally friendly maritime shipping, that no one can understand why ports cannot be deregulated when post and telecom are, and that Sweden should denounce ILO Convention No. 137 and support the proposal for an EU Port Services Directive. Time and again, the Labour Committee of the Parliament referred to a decision by the Swedish ILO Committee from 1996 stating that the Stevedoring Monopoly finds no basis in ILO Convention No. 137. Be that as it may, all proposals to repeal the Stevedoring Monopoly through a legislative intervention have fallen on deaf ears²³⁵⁴. Competent Ministers confirmed that, as the Stevedoring Monopoly is not based on any specific legal provision but on collective agreements, the legislator is unable to intervene, and suggested that complainants have recourse to the Competition Authority, even if the latter cannot test collective bargaining agreements against competition law²³⁵⁵.

²³⁵⁴ See, for example, *Parliamentary documents*, Arbetsmarknadsutskottet 1997/98:AU6, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Vissa-arbetsrattsliga-fragor_GL01AU6/; Arbetsmarknadsutskottets betänkande 1998/99:AU8, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Vissa-arbetsrattsliga-fragor_GM01AU8/, 23-24; Transportpolitik för en hållbar utveckling, Trafikutskottet betänkande 1997/98:TU10, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Transportpolitik-for-en-hallbar-utveckling_GL01TU10/; Arbetsmarknadsutskottets betänkande 1999/2000:AU5, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Lonebildning-och-arbetsratt_GN01AU5/, 65-66; Arbetsmarknadsutskottets betänkande 2000/01:AU7, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Arbetsratt-och-lonebildning_GO01AU7/, 35-37; Arbetsmarknadsutskottets betänkande 2001/02:AU6, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Arbetsratt_GP01AU6/, 95-96; Motion med anledning av skr. 2003/04:60 Berättelse om verksamheten i Europeiska unionen under 2003, http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Motioner/med-anledning-av-skr-200304_GR02U19/?text=true.

²³⁵⁵ See *Parliamentary documents*, Protokoll 1993/94:38, 7 December 1993, http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Protokoll/Riksdagens-snabbprotokoll-1993_GH0938/; Riksdagens snabbprotokoll 1993/94:57, 9 February 1994, http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Protokoll/Riksdagens-snabbprotokoll-1993_GH0957/; Riksdagens snabbprotokoll 1993/94:73, 22 March 1994, <http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Protokoll/GH0973/>; Riksdagens snabbprotokoll 1998/99:34, 11 December 1998, http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Protokoll/Riksdagens-snabbprotokoll-1998_GM0934/; Riksdagens snabbprotokoll 1998/99:74, 24 March 1999, <http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Protokoll/GM0974/>; EU-namndens stenografiska uppteckningar, 22 March 2002, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/EU-namndens-stenografiska-uppteckningar/Fredagen-den-22-mars-2002_GP0A25/.

1852. The Swedish port labour system repeatedly attracted the attention of the ILO Committee of Experts on the Application of Conventions and Recommendations, *in casu* ILO Convention No. 137.

In 1993, the Committee noted:

Article 3, paragraph 2, of the Convention. The Committee notes, in particular, the Government's statement to the effect that dock workers employed on an indefinite-term basis who are registered by the stevedoring companies concerned have priority for all work provided by these companies, and that registered fixed-term dock workers also have priority for employment and are obliged to keep themselves available. The Committee also notes from the Government's report that the Swedish Dock Workers' Union made observations concerning the application of this Article, which, according to the Union, is sometimes flouted. The Union states that in such cases the work is done by other categories than registered dock workers. The Committee therefore would be grateful if the Government would refer to these observations in its next report, making such comments as it considers appropriate. Please also supply information on practical application of the Convention, including for instance extracts from reports, particulars of the numbers of dock workers on the registers and of variations in their numbers during the period covered by the report, as requested by point V of the report form²³⁵⁶.

The Committee's report of 1997 mentions the following:

2. The Committee notes the information contained in the Government's report on the discussions held within the ILO Committee set up under Convention No. 144 on the possibility of denouncing the Convention, following a request from the Swedish Employers' Confederation (SAF). The SAF asserts that there is a monopoly of stevedoring activities in Swedish ports resulting, among other things, from the ratification of the Convention. It alleges that the monopoly situation hinders the development of new cargo-handling methods and impairs competitive capacity in the sector. Furthermore, it alleges that the Government does not give effect to the provisions of Article 3 of the Convention which requires that registers of dockworkers be established and maintained in accordance with the Article. The Swedish Trade Union Confederation, for its part, contends that provisions of the Convention do not create or maintain a stevedoring monopoly in ports. At the end of the discussions, the ILO Committee decided that the Convention did not imply introduction or maintenance of a monopoly. It decided that the Convention did not impede the establishment of more than one stevedore contractor in every port. Nor did it prevent an enterprise with another principle activity from carrying on connected activities in the ports. The ILO Committee resolved not to recommend that Sweden avail itself of the opportunity for repudiation of the Convention.

²³⁵⁶ Direct Request (CEACR) - adopted 1993, published 80th ILC session (1993), http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO::P13100_COMMENT_ID:2115602.

3. In its communication addressed to the ILO in November 1997, the Swedish Trade Union Confederation states that the Convention is one of the pillars of stevedoring activities in Swedish ports which are renowned for their efficiency. To try and alter such a positive situation would, in the Confederation's view, be a mistake in political and industrial terms.

4. The Committee appreciates the information supplied in the Government's report on the discussions that took place. Noting that the Government supplies no express comments on the observations of the Swedish Dockworkers' Union referred to in its previous direct request, the Committee asks the Government to make such comments as it considers appropriate on the observations made by the Swedish Trade Union Confederation. Furthermore, noting that government and employers' representatives of the ILO Committee consider that the keeping of registers of dockworkers by the unions or the stevedoring companies cannot be regarded as giving effect to Article 3 of the Convention, the Committee recalls that the purpose of maintaining registers, as required by both this Article and Recommendation No. 145, is the regularization and stabilization of the employment and income of dockworkers, regardless of the authority or authorities responsible for maintaining them, since this is determined by national law or practice. Therefore, the Committee asks the Government to provide information on the effect given to Article 3 of the Convention and Recommendation No. 145 above-mentioned and to supply, as requested in point V of the report form, information on the practical application of the Convention, including for instance extracts of reports, particulars of the numbers of dockworkers on the registers and of variations in such numbers during the period covered by the report²³⁵⁷.

The 2004 report mentions:

The Committee notes the Government's report received in December 2002, which contains indications on the provisions adopted in order to improve the safety of work in ports. It asks the Government to provide information on the effect given to Article 3 of the Convention (establishment and maintenance of registers for all occupational categories of dockworkers) and to supply, as requested in Part V of the report form, information on the practical application of the Convention, including, for instance, extracts of reports, particulars of the numbers of dockworkers on the registers and of variations in such numbers during the period covered by the report²³⁵⁸.

In its 2002 survey of the implementation of Convention No. 137, the ILO mentioned Sweden among the countries where the task of registering port workers falls to employers²³⁵⁹.

²³⁵⁷ Direct Request (CEACR) - adopted 1997, published 86th ILC session (1998), http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2161844.

²³⁵⁸ Direct Request (CEACR) - adopted 2004, published 93rd ILC session (2005), http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2242060.

²³⁵⁹ International Labour Conference (90th Session 2002), *General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/rep-iii-1b.pdf>, 54, para 123.

1853. In a decision of 1999, the Swedish Competition Authority could find no objection to the Stevedoring Monopoly.

However, several concerned parties had expressed their discontent with the Stevedoring Monopoly before the Authority. The Stevedoring Association, for one, argued that the list of stevedoring companies in the preamble to the relevant collective agreement on port labour makes it difficult for new stevedoring companies to establish themselves in a port where another stevedore is already operating. The Association denied that its members had reached an agreement to maintain the monopoly and rejected the prevailing order. It considered the current scheme a pure trade union monopoly maintained by the Transport Workers Union and added that the Association also opposed the ban on self-handling by the ship operators.

In the same vein, the Shipowners' Association explained that the Stevedoring Monopoly is a result of the refusal by the Transport Workers' Union to conclude collective agreements with more than one stevedoring company per port and insisted that it is a barrier to free competition.

The Federation of Swedish Industries, too, considered the Stevedoring Monopoly the result of an anti-competitive agreement prohibited by the Swedish Competition Act, with the Transport Workers' Union acting as an undertaking. The current monopoly situation had serious adverse effects because existing technologies and rational handling methods were not fully utilised. For example, the union imposed the use of the stevedoring company to load and unload self-unloading ships (*självlossare*). Also in other circumstances, there were instances when the port user had to pay the stevedoring company even if its personnel did not perform any work; in other words, payment was due for services that are unnecessary. Further, loading and unloading operations were governed by the stevedoring company's working hours, which meant that no operations could take place when the stevedores had a break or their working was over, regardless of whether stevedoring personnel were needed or not. Further examples of the cost-increasing effects concerned the stuffing and stripping of containers outside the port area and the mandatory intervention of stevedores to load ro-ro loads of forest products arriving at ports in trucks driven by staff of the exporter. The Federation concluded that handling and transport costs for shipping companies and shippers could be cut if they were allowed to stuff and strip containers within the port area or if other stevedoring companies were allowed to establish themselves in ports.

On the other hand, the Transport Workers Union argued before the Competition Authority that the Stevedoring Monopoly was fully justified as a measure to combat sub-standard working conditions. It resulted from a refusal by the union to conclude collective agreements with companies unwilling to invest in better equipment or to hire older workers. The trade unions did not require that stevedoring companies join the Stevedores' Association or any other employers' association and explained that it had signed tie-in agreements with several third companies engaged in stevedoring or related activities. It was not aware of any agreement between the stevedoring companies to keep new companies out of the market. In sum, the

trade union's policy was to conclude collective agreements with reputable companies that show a willingness to carry out investments ensuring safe and sound operations.

The trade union National Swedish Union (Landsorganisationen i Sverige, LO) declined to support the Stevedoring Monopoly.

The Competition Authority did not find sufficient proof that the stevedoring companies had entered into agreements or other concerted practices to restrict competition in the market for port services. However, the list of individual companies in the preamble of the relevant collective agreement resulted from a decision taken by the Stevedoring Association as an association of undertaking, within the meaning of the Swedish Competition Act.

Further, the Competition Authority found that no new stevedoring companies had established themselves in ports where a service provider was already active and that opportunities for the shipping companies or other undertakings than the established stevedoring company to load or unload ships or carry out any other port work activity were extremely limited. As a result, the existing stevedoring companies enjoyed a factual exclusive right.

However, the Competition Authority also noted that the list of signatory companies in the preamble to the collective agreement on port labour did not rule out that other companies might also be covered. Further, the agreement contained no other terms which reflected an exclusive right for existing companies to perform stevedoring services. Restricting competition would not be a natural or obvious consequence of the mere insertion into the agreement of a list of the companies to which it applies. The fact that no newcomers had tried to obtain access to the cargo handling market could just as well find an explanation in excess capacity. The absence of cases where a new entrant had actually been denied access indicated that the exclusive right of the stevedoring companies depends on factors other than a decision by the Stevedoring Association. For these reasons, the Competition Authority saw no grounds to conclude that the decision by the Association was intended to prevent, restrict or distort competition in the relevant market²³⁶⁰.

In a comment, Malmberg rejects the suggestion to the effect that the immunity of collective agreements from the prohibition on cartels would not apply to a decision by an employers' association, or an agreement or concerted practice among its members, which precedes the conclusion of the agreement, because *all* collective agreements must inevitably be based on such a preliminary decision, agreement or practice. At least insofar as the agreement relates to wages and other conditions of employment, the exception for collective agreements must

²³⁶⁰ Swedish Competition Authority, 28 June 1999, No. 161/1999, Sveriges Hamn- och Stuveriförbund; see also OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>, (191), 192-193; X., "Competition concerns in ports and port services – Sweden –", [http://www.konkurrensverket.se/upload/Filer/Om_Konkurrensverket/Internationell%20roll/oecd/DAF-COMP-WP2-WD\(2011\)31_Competition_concerns_in_ports_and_port_services.pdf](http://www.konkurrensverket.se/upload/Filer/Om_Konkurrensverket/Internationell%20roll/oecd/DAF-COMP-WP2-WD(2011)31_Competition_concerns_in_ports_and_port_services.pdf).

equally cover decisions by the social partners on each side, as well as the cooperation arrangements between the members of the organisations²³⁶¹.

1854. The 2001 proposal for a Port Services Directive was immediately seen as a threat to the Swedish Stevedoring Monopoly. The trade unions were deeply concerned that deregulation would lead to wage dumping. Since firms would be able to select their employees without restriction, it was possible that current agreements with the employers' organisation Ports of Sweden would not be respected and that employees would be recruited who accepted lower wages than the present dockworkers. Critics observed that there was in fact fierce competition in the industry already, but it was between ports. The deregulation proposal was based on the assumption that stevedoring is inefficient, but many in the industry believed that to be wrong. The port of Gothenburg, for instance, competed with Hamburg and other major ports. However, that level of competition would be constrained if 10 to 15 firms were to share stevedoring between them, which would be the case in a port the size of Gothenburg if deregulation became a reality²³⁶².

In 2002, the Swedish Government decided not to support the proposal for an EU Port Services Directive, because it would erode the Stevedoring Monopoly.

The unions voiced concern that low-paid Asian sailors would take jobs from Swedish port workers²³⁶³, while the Confederation of Swedish Enterprise (Svenskt Näringsliv) stressed that Sweden was the only Member State not to support the Directive and that the Stevedoring Monopoly resulted in inefficiency and lower growth. The monopolies in European ports dated back to the times of the guild system, and the Swedish system obliged exporters bringing goods to port to use dockers to take over the truck for the last 100 meters or so, which is inefficient and contrary to rational management. These nostalgic rules were unsustainable for the Swedish industry. The principles of competition and transparency should give the industry the opportunity to unload a ship with its own competent and authorised personnel, utilising its own resources²³⁶⁴.

²³⁶¹ Malmberg, J., "Collective Agreements and Competition Law in Sweden – a report to the COLCOM project", in Bruun, N. and Hellsten, J., *Collective Agreements on the Competitive Common Market. A Study of Competition Rules and Their Impact on Collective Labour Agreements*, COLCOM Report, June 2000, (160), 168).

²³⁶² See European Parliament, Written Question E-3295/01 by Jonas Sjöstedt (GUE/NGL) to the Commission of 28 November 2001 and the Answer by Commissioner de Palacio of 22 January 2002, *OJ* 18 July 2002, 172E, 33.

²³⁶³ Wallberg, P., "EU luckrar upp svenskt stuverimonopol", *SvD Näringsliv* 18 June 2002, http://www.svd.se/naringsliv/eu-luckrar-upp-svenskt-stuverimonopol_1039979.svd.

²³⁶⁴ Hallsten, L., "Avskaffa stuverimonopolet", *Transport iDag* 2003, No. 6, http://www.svensktnaringsliv.se/material/debattartikel/avskaffa-stuverimonopolet_3462.html; see also *Svenskt Näringsliv, A Swedish Business Agenda for Europe*, 2002, http://www.svensktnaringsliv.se/multimedia/archive/00000/A_Swedish_Business_Age_125a.pdf, 15.

1855. In his masterly study on the ownership and organisational structure of Baltic ports of 2004, Kimmo Naski wrote that the Stevedoring Ordinance and, later, ILO Convention No. 137, created stable and rational relationships in the ports. Today, many ports still have only one stevedoring company which operates port facilities on a commercial basis and also provides stevedoring services. Majority shareholdership is no rarity, and in most cases it is in the hands of the municipality. But also where the municipality rents the infrastructure out to a port company, the provision of services at these integrated ports is characterised by a monopolistic market structure. In unintegrated ports, where a mix of landlord and tool port models applies, stevedoring services continue to be ensured by a single stevedoring company as well. Under the present circumstances, the Stevedoring Monopoly is only upheld by the trade unions, while, still according to Naski, the employers' associations deny that port operations are based upon any monopoly. The fact that, today, two trade unions exist, has not weakened the Stevedoring Monopoly either. Both unions continue to refer to the Stevedoring Ordinance of 1908 and ILO Convention No. 137, which precludes port operations performed by the ship's crew and which reserves all port work for registered port workers. The unions refuse to conclude agreements with more than one stevedoring company per port. They assert that this is the best means to ensure efficient stevedoring operations and optimum employment conditions. However, Kimmo Naski also reports that, currently, the Stevedoring Monopoly cannot be based on any Swedish legislative instrument, and that a number of ship owners and industrial companies voice severe criticism about it. At the time of writing, all their hopes centred on the proposal for a EU Port Services Directive – even if in 1999 the Swedish Competition Authority saw no objections against the Stevedoring Monopoly²³⁶⁵. Kimmo Naski concludes that the hard stance taken by the unions prevents competition within ports and threatens efficiency and cost levels, but also raises the question whether market access for third operators would be in the interest of the integrated port companies²³⁶⁶.

1856. An EC-supported 2006 report on the maritime sector in the Baltic region confirmed that the Stevedoring Monopoly continued to be "strictly adhered to in many Swedish ports"²³⁶⁷.

1857. In recent years, experts and stakeholders continued to mention the Stevedoring Monopoly among the critical issues in Swedish ports policy²³⁶⁸.

²³⁶⁵ Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 152-153.

²³⁶⁶ Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 159-160.

²³⁶⁷ Institute of Shipping Analysis, BMT Transport Solutions and Centre for Maritime Studies, *Baltic Maritime Outlook 2006*, Gothenburg, Hamburg and Turku, March 2006, http://tentea.ec.europa.eu/download/MoS/2006_baltic_maritime_outlook.pdf, 79.

²³⁶⁸ See, for example, Vierth, I., *Samhällsekonomiskt underlag för hamnpolitiken*, <http://www.vti.se/sv/publikationer/pdf/samhallsekonomiskt-underlag-for-hamnpolitiken.pdf>, Linköping, 2010, 21-22, 31 and 33.

1858. Recently, the Swedish Competition Authority focused on municipal ports broadening their market scope. Municipal ports now offer services traditionally provided by the private sector. Municipal ports allegedly take advantage of their respective market powers and the Stevedoring Monopoly in, for example, the markets for forwarding and shipping agents and shipbrokers²³⁶⁹.

1859. The Swedish Stevedoring Monopoly is a perfect example of how exclusive rights for port workers can be inextricably intertwined with exclusive rights of port service providers. Despite the fact that the latter type of restriction is beyond the scope of our study²³⁷⁰, we would like to draw particular attention to the following issues.

First of all, we should recall that, from a historical perspective, the exclusive right of port workers is part and parcel of a broader set-up which reserved all stevedoring operations for a single port service provider who acted as an employer of pool workers, whose exclusive right was officially backed by municipal port authorities.

Secondly, several commentators observed that ILO Convention No. 137 does not require the granting of an exclusive right to a single cargo handling provider per port. The opposite arguments put forward by the trade unions rest on an extremely liberal, and indeed indefensible interpretation of the Convention²³⁷¹.

Thirdly, the absence of any legislative confirmation of the Stevedoring Monopoly and of any penal sanctions on infringements does not prevent the unions from strictly enforcing this rule. Companies who attempted to break the Monopoly would face immediate industrial action²³⁷².

Fourthly, it would appear that the Stevedoring Monopoly may distort competition in that some shipping lines own and operate their own stevedoring company while, due to the Monopoly, other companies are dependent on an external service provider²³⁷³.

1860. Ports of Sweden, the Swedish Transport Workers Union and the Swedish Dockworkers Union all confirmed that Swedish port workers do not have to be registered.

²³⁶⁹ OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>, (191), 193.

²³⁷⁰ See *supra*, para 25.

²³⁷¹ Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 153, footnote 421.

²³⁷² See already Bergman, L. *et al.*, "Vägen till välstånd", *Konjunkturrådets rapport 1999*, 60.

²³⁷³ Such a situation is mentioned in Garberg, B., *Value-adding services in ro-ro-shipping. Present demand and future possibilities*, master thesis Logistics and Transport Management, No. 2001:23, Graduate Business School, Gothenburg University, https://gupea.ub.gu.se/bitstream/2077/2444/1/Garberg_2001_23_inlaga.pdf, 42.

In an interview, IDC stated that in Sweden, ILO Convention No. 137 is not complied with. According to IDC, any port worker who is employed by a *bona fide* cargo handling company is *de facto* regarded as a registered worker. IDC considers this a particularly lax and unacceptable interpretation of the Convention.

Otherwise, Ports of Sweden, the Swedish Transport Workers Union and the Swedish Dockworkers Union concurred that labour arrangements in Swedish ports are properly enforced.

1861. Replying to a request for information on their current position, Ports of Sweden and the Confederation of Swedish Enterprise (Svenskt Näringsliv) said that there is today no longer any Stevedoring Monopoly in the ports, as there are many examples of ports where more than one company is operating, such as Gothenburg and Gävle, while no one would reasonably expect competition to take place in small ports where only 3 dockers are used. As a result, the Stevedoring Monopoly is no longer considered a political issue.

- *Other restrictions on employment and restrictive working practices*

1862. It would appear that, factually, port labour in Sweden is organised as a closed shop. In a 2012 interview, a Swedish ITF inspector said:

*In Sweden every docker is a member of a union, 100% is a member. It's very very important*²³⁷⁴.

Ports of Sweden added that in Sweden many port workers are still members of the same family.

Depending on the source, trade union density in Sweden as a whole is estimated at over 70 or 80 per cent²³⁷⁵.

²³⁷⁴ X., "Inspectors speak", GNT Bulletin, February 2012, http://www.itfglobal.org/files/extranet/-1/33687/SJ_GNT%20DRAFT%20FEB%202012%20_Layout%201.pdf. Compare, for a view of the Swedish Dockworkers' Union, Rothelius, L., "Enigt och starkt fack i Helsingborgs hamn", 5 April 2012, <http://www.proletaren.se/inrikes/enigt-och-starkt-fack-i-helsingborgs-hamn>.

²³⁷⁵ See Carley, M. "Trade union membership 2003–2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

1863. Despite these facts, national collective agreements are only concluded with one of the two unions, namely the Swedish Transport Workers Union. The Swedish Dockworkers Union is not a party to the National Collective Agreement²³⁷⁶. While its members enjoy all the benefits of the agreement, they are not under an obligation to guarantee social peace. Ports of Sweden explained to us that this results in a high strike propensity among the members of this union. Quite remarkably, in its turn, the Swedish Dockworkers Union complains that it is denied a seat at the negotiating table²³⁷⁷. In the past, the non-recognition of the union attracted the attention of the European Committee of Social Rights²³⁷⁸, but it appears that no further steps were undertaken to alter the situation.

1864. The Swedish Transport Workers Union responded that self-handling is prohibited in Swedish ports but did not identify this as a negative competitive factor²³⁷⁹. In an interview, Ports of Sweden said that, whilst self-handling is allowed by port authorities, it does not occur very often in practice because the labour unions impose compliance with the National Port and Stevedoring Agreement²³⁸⁰.

1865. The port workers' unions concur that in Swedish ports, a ban on the use of temporary agency workers applies. We are unaware of the legal basis of this prohibition²³⁸¹. In an interview, Ports of Sweden and Ports of Stockholm denied the existence of such a ban but admitted that temporary agency work is not relied on frequently. In another interview, a representative of the Swedish Dockworkers Union mentioned that in small industrial ports in the North of Sweden, a number of grey companies hire just anyone and that, in Stockholm, Lithuanians unload timber. In Gothenburg, which is run by big terminal operators, such practices do not occur. The union said that it has been demanding a national certification and training system for almost twenty years.

²³⁷⁶ See, earlier, Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 155.

²³⁷⁷ See, for example, Nylander, J., "Swedish port workers goes on strike" [sic], *The Swedish Wire* 14 August 2009, <http://www.swedishwire.com/nordic/736-swedish-port-workers-goes-on-strike>; X., "Öppet brev till Sveriges hamnarbetare inför avtalsrörelsen", 11 June 2011, <http://www.hamn.nu/avtal/264-oepet-brev-till-sveriges-hamnarbetare-infoer-avtalsroerelsen.html>.

²³⁷⁸ See http://hudoc.esc.coe.int/esc1doc/escsec/doc/201005/6_conclusions_vi_eng/00000151.doc; <http://hudoc.esc.coe.int/esc1doc/escsec/doc/200825/c06EN/00000177.doc>; http://hudoc.esc.coe.int/esc1doc/escsec/doc/200839/07_conclusions_vii_en/00000184.doc.

²³⁷⁹ A ban on self-handling in Swedish ports is also mentioned in Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 152. U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) confirms that the following longshore work by crewmembers aboard U.S. vessels is prohibited:

(a) *All longshore activities.*

²³⁸⁰ In essence, this seems to corroborate the information in European Sea Ports Organisation, *Factual Report on the European Port Sector*, Brussels, 2004-2005, 166.

²³⁸¹ An expert on the implementation of the Temporary Agency Work Directive writes that in Sweden, no restrictions of any kind have been laid down by law or collective agreement on the use of temporary agency workers (Eklund, R., "Who Is Afraid of the Temporary Agency Work Directive?", in Eklund, R., Hager, R., Kleineman, J. and Wängberg, H.-Å. (Eds.), *Skrifter till Anders Victorins minne*, Uppsala, Iustus, 2009, (139), 158).

1866. Interviewees from Ports of Sweden and Ports of Stockholm pointed to the obsolescence and the complexity of the Port and Stevedoring Agreement which essentially dates from 1972. The agreement does not meet the needs of cargo handling companies today. First and foremost, it states that normal working hours last from 7h00 to 16h30 (§ 4(A)(1)), which is totally inadequate in a 24/7 port economy. Before and after normal working hours, port labour can only be performed on the basis of a specific collective agreement. As a result, the trade unions have a very strong bargaining position. For example, while there are no mandatory manning scales during normal working hours, the unions are said to be able to impose any conditions whenever the employer wishes to continue operations after 16h30²³⁸². However, the Port and Stevedoring Agreement also regulates alternative working time systems (scheduled work and shift work) (§ 4(B) and (C)) and the performance of overtime (§ 5). According to Ports of Sweden, these arrangements offer no realistic solution as they are subject to negotiations and costs are exorbitant.

In its response to our questionnaire, the Swedish Transport Workers Union confirmed the restrictive working practices of limited working days and hours and late starts and early knocking off. It said that these practices have no major competitive impact. In an interview, Ports of Sweden and Ports of Stockholm commented that the limitation on working hours is indeed an issue, while the non-respect of working times should not be considered a widespread problem. The Port and Stevedoring Agreement expressly obliges workers to comply with the agreed hours (§ 2(3)).

- *Qualification and training issues*

1867. In 2006, ECOTEC assessed the training system as follows:

The skills demands on people working in cargo handling are comparatively low, however, they vary widely between seaport companies depending on what kind of cargo handling they are involved in. It should be noted though that demands for specialised skills are continuously increasing and more and more companies are demanding that their employees have a three-year higher secondary education, driver's license (sic) and appropriate language skills.

The education and experience of workers in seaports is highly transferable to other sectors. Most of the workers have a licence to operate a number of machines and forklift trucks, which are also used in other industries. There are relatively good development opportunities for workers in seaports due to the introduction of the

²³⁸² Compare, on the earlier introduction of a three shift-system in Gothenburg, which increased productivity by 20 to 25 per cent, Naski, K., *Eigentums- und organisationsstrukturen von Ostseehäfen*, Turku / Åbo, University of Åbo / University of Turku, 2004, 152, footnote 421.

Seaport and Stevedoring School (see the main report). Moreover, there are opportunities to become a supervisor, production manager and operational manager. Notably, most employees do not leave the occupation until they retire and thus it can be quite difficult for young people to get a job in the sector²³⁸³.

Ports of Sweden confirmed that this description remains accurate.

1868. In its reply to the questionnaire, the Swedish Transport Workers Union mentions that there still is a need to improve continued training of port workers. Other stakeholders raised no specific training-related issues.

- Health and safety issues

1869. In 2009, ILO's Committee of Experts on the Application of Conventions and Recommendations noted, with reference to observations submitted by the Swedish Transport Workers Union in 2002, that the Swedish Government had not yet commented on the concerns expressed by the union regarding increasing work-related stress in the ports due to increased efforts to improve the productivity and efficiency of dock work. In the union's view all dock work on and around ro-ro vessels has become more hazardous as the requirement of swift handling makes it impossible for work to be done according to the regulations. In view of the potential dangers that the required speed in handling could cause, the Committee requested the Government to comment on the union's observations as well as to provide a general appreciation of the manner in which ILO Convention No. 152 is applied in the country, and to attach extracts from the reports of the inspection services, information on the number of workers covered by the legislation, the number and nature of contraventions reported and the resulting action taken, as well as the number of occupational accidents and diseases reported²³⁸⁴. Ports of Sweden has no indications that this request was acted upon.

1870. Yet in their response to the questionnaire, Ports of Sweden and the Swedish Transport Workers Union state that rules on health and safety in port work are adequate and properly

²³⁸³ Wihlborg, M. and ECOTEC, *Employment trends in all sectors related to the sea or using sea resources, Country Report – Sweden*, European Commission. DG Fisheries and Maritime Affairs, August 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/sweden_employment_trends_en.pdf, 9.

²³⁸⁴ International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), 98th Session, 2009, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_103484.pdf, 670-671.

enforced. However, the latter also responded that unsafe working conditions arise as a result of poor education and induction on safety matters. In addition, the Swedish Dockworkers Union denied that the health and safety level is satisfactory. It explained that the regulations are insufficiently detailed and that the factual situation differs from port to port, depending on how seriously the local employer takes these issues and on the strength of the local trade union. In an interview, a union representative said that, in Sweden, the employer bears the full responsibility to prevent work-related injuries and illnesses. Following a work related accident, the employer's representatives, often the CO or top management, are not infrequently prosecuted *e.g.*, for failing to make sure that the working environment is safe, that safety regulations are enforced, because the necessary impact assessments have not been made *etc.* In such cases resulting in severe or fatal accidents, prison sentences (usually suspended) are often imposed. This does, however, also mean that employees must follow safety rules and regulations that have been decided in the safety committees and that failure to do so can result in dismissal.

9.21.7. Appraisals and outlook

1871. Even if stakeholders did not identify it as a separate issue, the Stevedoring Monopoly continues to be a fundamental and quite controversial component of work organisation at Swedish ports.

1872. Ports of Sweden considers the current port labour regime unsatisfactory but terms the current relationship between port employers and port workers and their respective organisations satisfactory. The port labour system is not seen as a major competitive factor.

1873. The Swedish Transport Workers Union considers the current port labour regime unsatisfactory.

1874. The Swedish Dockworkers Union, too, considers current arrangements unsatisfactory. It states that casual port workers have "a very unsafe form of employment". Moreover, there is insufficient legal certainty, as there is no registration or authorisation of port workers. The current relationship between employers and unions is said to be satisfactory, but the union regrets that it is denied a role in the collective bargaining process at national level.

1875. More in particular, the port workers' unions complain about substandard employment conditions in Swedish ports. Unacceptable labour conditions include temporary unemployment, an unhealthy and unsafe working environment, lack of training and, as regards the Swedish Dockworkers Union, insufficient involvement in collective bargaining. Interviewees from Ports of Sweden and Ports of Stockholm categorically denied these allegations and insisted that statistics demonstrate that port labour in Sweden is neither unsafe nor unhealthy and that moreover the unions are highly involved in the regulation of these matters. A 2006 report for the European Commission mentions that, compared to other countries, salaries for workers in Swedish ports are significantly higher. For the workers, this is an advantage; however, from a competitive perspective it may be seen as a weakness²³⁸⁵. In an interview, Ports of Sweden confirmed that wages in the sector are very high, which is indicative of an attractive working environment in ports.

1876. Ports of Sweden, the Swedish Transport Workers Union and the Swedish Dockworkers Union do not see any need or scope for EU action in the field of port labour.

²³⁸⁵ Wihlborg, M. and ECOTEC, *Employment trends in all sectors related to the sea or using sea resources, Country Report – Sweden*, European Commission. DG Fisheries and Maritime Affairs, August 2006, http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/sweden_employment_trends_en.pdf, 8.

9.21.8. Synopsis

1877.		
SYNOPSIS OF PORT LABOUR IN SWEDEN²³⁸⁶		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 80 ports, 50 public and 30 industrial • Mix of management models • 145m tonnes • 10th in the EU for containers • 46th in the world for containers • Appr. 72 employers (?) • 3000-4000 port workers • Trade union density: 90-100% 	<ul style="list-style-type: none"> • No <i>lex specialis</i> • Party to ILO C137 • National CBA and company CBAs • 'Stevedoring Monopoly' based on national CBA • 4 categories of workers: <ul style="list-style-type: none"> (1) permanent workers employed by individual company (2) temporary (replacement) workers (3) probationers (4) casual workers • No pool system • No hiring halls 	<ul style="list-style-type: none"> • 'Stevedoring Monopoly' (?) • Vain attempts at abolishing the Monopoly through legislation and competition procedures • Industry denies continuing existence of Monopoly • Union concerns over non-compliance with ILO C137 as workers are not registered • Closed shop • One union does not participate in collective bargaining • Factual ban on self-handling • Ban on temporary agency work • Limited working times
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • National Port and Stevedoring School 	<ul style="list-style-type: none"> • No national requirements on skills and competences • CBA on jointly managed Ports and Stevedoring School 	<ul style="list-style-type: none"> • Training can still be improved
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Detailed national statistics available 	<ul style="list-style-type: none"> • Specific national Provisions on Dock Work • Specific national Recommendation on Dock Work • Party to ILO C152 	<ul style="list-style-type: none"> • Diverging opinions on safety level

²³⁸⁶ 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.

9.22. United Kingdom

9.22.1. Port system²³⁸⁷

1878. There are more than 650 ports in the UK which have been granted statutory harbour authority powers. Of these, 120 are commercially active. The UK's geography, together with cost and environmental advantages of maritime transport over other modes of transport, has resulted in its ports industry being the largest in Europe in terms of freight tonnage.

More than 50 ports handle at least 1 million tonnes of cargo. The Port of Grimsby and Immingham is the UK's largest port by tonnage, with 57.2 million tonnes of goods handled in 2011. The second port of the UK is the Port of London, which handled 48.8 million tonnes. Felixstowe and Southampton are the UK's largest container ports, and Dover is a major ro-ro and passenger port. UK container ports ranked 6th in the EU and 16th in the world in 2010²³⁸⁸.

In 2011, the gross weight of seaborne goods handled in UK ports was 519 million tonnes.

1879. The ports industry in the UK comprises a mixture of private²³⁸⁹, trust²³⁹⁰ and municipal²³⁹¹ ports which operate as self financing commercial entities, in competition with one another. The trust and municipal ports operate on a stand alone basis, but most of the private ports belong to groups, such as Associated British Ports which operates 21 ports.

A number of ports offer a fully integrated service, whereby the port provides the cargo handling and other services which the shipowner requires. Other ports operate on the landlord model whereby the port authority provides the infrastructure but cargo handling and other services are provided by independent companies. Some ports operate a mixture of the two systems.

²³⁸⁷ For general information on UK ports, see www.ukmajorports.org.uk; www.britishports.org.uk; see also ISL, *Public Financing and Charging Practices of Seaports in the EU*, Bremen, 2006, http://ec.europa.eu/transport/maritime/studies/doc/2006_06_eu_seaports_study.pdf, 153-192; OECD Directorate for Financial and Enterprise Affairs, Competition Committee, *Competition in Ports and Port Services*, DAF/COMP(2011)14, 2011, <http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>, 207-230; for statistics, see http://www.dft.gov.uk/statistics?post_type=release&series=ports-parent-series&topic=ports and http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database#.

²³⁸⁸ Container ranking based on UNCTAD, *Review of Maritime Transport 2011*, New York and Geneva, UNCTAD / UN, 2011, http://unctad.org/en/Docs/rmt2011_en.pdf, 201-203.

²³⁸⁹ For example, Associated British Ports, Forth Ports and Hutchison Ports.

²³⁹⁰ For example, Port of Dover and Milford Haven.

²³⁹¹ For example, Portsmouth and Sullom Voe.

9.22.2. Sources of law

1880. Broadly, port labour is not segregated from general UK employment law or singled out for specific arrangements. Port workers enjoy the same employment rights and responsibilities as the rest of the UK workforce.

1881. The National Dock Labour Scheme was abolished by the Dock Work Act 1989²³⁹².

1882. Health and safety in port work is regulated in general laws and regulations on occupational health and safety, the Docks Regulations 1988 and further sector-specific regulations and guidance instruments issued by the Government and the industry²³⁹³.

Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers was transposed by the UK in 2003²³⁹⁴.

1883. The UK has ratified neither ILO Convention No. 137, nor ILO Convention No. 152²³⁹⁵. However, it is still bound by ILO Convention No. 32²³⁹⁶.

1884. Collective labour agreements are typically arranged between the union concerned and the individual employing organisation. These arrangements are therefore generally confidential between the parties; as a result, we were unable to analyse the content of collective agreements on port labour in the UK. Reportedly, collective agreements will cover, as a minimum, pay, hours of work and holidays. There are no collective labour agreements on port labour at national level.

²³⁹² An Act to abolish the Dock Workers Employment Scheme 1967 and repeal the Dock Workers (Regulation of Employment) Act 1946, to make provision for the dissolution of the National Dock Labour Board and for connected purposes; see more *infra*, para 1900.

²³⁹³ See *infra*, para 1920 *et seq.*

²³⁹⁴ Merchant Shipping (Safe Loading and Unloading of Bulk Carriers) Regulations 2003.

²³⁹⁵ See more *infra*, paras 1939 and 1958.

²³⁹⁶ The Convention was adopted on 27 April 1932 (Cmd 4115).

9.22.3. Labour market

- *Historical background*²³⁹⁷

1885. Far more interesting than the UK experience with old-style corporations – in London, for example, portage brotherhoods had been in operation since the middle ages²³⁹⁸ – are developments in 19th-century English ports, which paved the way for international dock labour trade unionism, the first attempts at decasualisation of modern port labour and the joint management of port labour relations across Europe. What is more, the UK was also one of the first EU countries to radically reform its port labour regime, a move which culminated in the outright abolition of the specific regulation for the control of port labour – known as the National Dock Labour Scheme – in 1989. Throughout its long history, the UK port labour regime has thus served as an international benchmark and a major source of inspiration to other EU Member States. More in particular, several pressing policy and legal issues that arise today in other Member States appear to have been at the heart of discussions on earlier British reform initiatives. For these reasons, a retrospective of the UK port labour pool regime and a discussion of the motives behind its abolition is a particularly fruitful exercise. Of course, we will pay attention to current port labour arrangements in UK ports as well.

²³⁹⁷ An abundance of studies deals with the history of port labour in the UK. See, for example, Adams, G., *Organisation of the British Port Transport Industry*, London, National Ports Council, 1973, 116 *et seq.*; Brown, B.M., "The effects upon the workforce of technological change of the U.K. waterfront", *Australian Transport Research Forum Papers* 1986, 355-381; Carter, C., Clegg, S., Hogan, J. and Kornberger, M., "The polyphonic spree: the case of the Liverpool Dockers", *Industrial Relations Journal* Vol. 34 (4), 2003, 290-304, https://www.st-andrews.ac.uk/management/media/carter_et_al-IRJ-polyphonic_spree.pdf; Davies, S., "The history of Hull dockers, c. 1870-1960", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, 180-212; Davis, C.J., "New York city and London, 1945-1960", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, 213-230; Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 222 p.; Gillès de Pélichy, Ch., *Le régime du travail dans les principaux ports de mer de l'Europe*, Louvain / Brussels / Paris, Polleunis & Ceuterick / Louis Lagaert / Guillaumin & Cie, 1899, Partie spéciale, 3-123; Lord Howie, "Dock labour history", in Nicholson, G. et al., *Dockland. An illustrated historical survey of life and work in east London*, London, North East London Polytechnic, 1986, 71-80; Jackson, M., *Labour relations on the docks*, Farnborough, Saxon House, 1973, 146 p.; Jensen, V.H., *Hiring of Dock Workers and Employment Practices in the Ports of New York, Liverpool, London, Rotterdam, and Marseilles*, Cambridge (Mass.), Harvard University Press, 1964, 121-214; Kenefick, W., "A struggle for recognition and independence: the growth and development of dock unionism at the port of Glasgow, c. 1853-1932", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, 319-339; Lovell, J., *Stevedores & Dockers. A Study of Trade Unionism in the Port of London 1870-1914*, London, Mamillan, 1969, 270 p.; Mankelov, R., "The port of London, 1790-1970", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, 365-385; McCarthy, T., *The Great Dock Strike 1889*, London, Weidenfeld and Nicholson, 1988, 254 p.; McKelvey, J.T., *Dock labour disputes in Great Britain*, Ithaca, New York, New York State School of Industrial and Labor Relations, Cornell University, 1953, 59 p.; Taplin, E., "The history of dock labour: Liverpool, c. 1850-1914", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, II, Aldershot, Ashgate, 2000, 442-470; X., "International Dockers' Struggles in the Eighties: Workers of the World, Tonight!", http://www.reocities.com/cordobakaf/blob_docks.html.

²³⁹⁸ See briefly Davis, C.J., "Formation and reproduction of dockers as an occupational group", in Davies, S. et al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (542), 544.

1886. In England, too, port labour at the end of the 19th century was characterised by casual employment. A select number of English dockworkers who possessed various degrees of expertise, such as stevedores or lightermen²³⁹⁹, were employed on a permanent basis and were considered the labour aristocrats of the port. The vast majority of dockworkers, however, were casual labourers who never knew whether they would be hired on a given day, and who unloaded whatever cargo a ship brought in. These men looked for work outside the dock gates every morning, often bribed foremen for a day's work with a fraction of their scanty earnings and, then, were forced to run while unloading ships, and to labour for twenty-four hours or more at a stretch²⁴⁰⁰. Those who did find work often faced severe danger.

Recently, Dempster summarised the situation as follows:

The fact that dock work was largely unskilled, coupled with the casual system of employment, meant that dock work was among the most poorly paid and least attractive ways of earning a living. Some dockworkers worked regularly in the docks but other men who were otherwise unemployed would go to the docks as a last resort looking for work. Frequently there were more men looking for work than there was work available and bribery and abuse were rife. The foremen who hired the dockworkers were in a position of great power, which they used every opportunity to exploit. The daily "call" led to degrading scenes where men struggled to catch the foreman's eye in the hope of securing just half a day's work²⁴⁰¹.

The Great Dock Strike of 1889 was one of the labour movement's most famous victories. In an unprecedented display of solidarity for a group of casual workers thought to be unorganisable, the dockers of London's East End walked out en masse and paralysed the docks. The strike was led by, among others, the legendary Ben Tillett, who later became one of the first Labour MPs. The settlement reached helped many other workers and sowed the seeds of the modern trade union movement²⁴⁰².

Nevertheless, nearly every week during the year 1900 a London dockworker was crushed by a heavy cargo, or broke his neck falling into a ship's hold or from a winch or crane he had climbed to repair. A report commissioned by the Home Secretary and published in October 1900, listed 115 deaths in British docks during the previous year and 4,591 non-fatal accidents²⁴⁰³.

²³⁹⁹ Lightermen transferred cargo from boats moored in the river to dock quay or wharf via small barges called "lighters". They had to know the principles of navigation, and the peculiarities of the river, its tides, shoreline, undercurrents, bridges, obstacles and so on. See Schneer, J., "London's Docks in 1900: Nexus of Empire", *Labour History Review* 1994, (20), 21.

²⁴⁰⁰ Schneer, J., "London's Docks in 1900: Nexus of Empire", *Labour History Review* 1994, (20), 21.

²⁴⁰¹ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 7.

²⁴⁰² See especially McCarthy, T., *The Great Dock Strike 1889*, London, George Weidenfeld & Nicholson, 1988, 254 p.

²⁴⁰³ Schneer, J., "London's Docks in 1900: Nexus of Empire", *Labour History Review* 1994, (20), 21.

1887. The movement for the reform of the casual system of employment on the docks first turned its attention to schemes of registration. Only men who were registered would be offered employment on the docks, so that men would not hang around the docks when there was obviously no work for them, and that the docks would cease to be the last resort for the unemployed labourer when trade was slack in other industries.

The first registration and decasualisation scheme in the UK was instituted in the port of Liverpool in 1912. It introduced registration and gave registered dockers a preference for employment; clearing houses were set up; and centralised weekly payment of wages was introduced. The register was periodically reviewed by a joint committee. There were weaknesses in the system, however: (1) not all employers came into the scheme; (2) too many men were given registration; (3) registered workers were not obliged to present themselves for work, so that there was a constant shortage of workers in the port, obliging employers to employ non-registered men; and (4) nothing was done to reduce the number of call-stands. Despite these problems, registration schemes spread across the country. During World War I, similar schemes were set up in other UK ports and during the interwar years these were further adjusted. By the early 1920s, registration systems applied in most British ports²⁴⁰⁴.

1888. Following the Dock Workers (Regulation of Employment) Act 1946, the National Dock Labour Scheme (NDLS) was introduced by the Labour Government in 1947²⁴⁰⁵. The NDLS was, at that time, a modern instrument designed to reform the system of casual employment.

The Scheme was a radical change for port workers. Their registration aimed at providing a stable supply of experienced labour for employers and regular employment for dockworkers, in addition to medical welfare services and training through a financial levy on port employers²⁴⁰⁶.

The key features of the NDLS were:

- a statutory definition of dock work²⁴⁰⁷ and a designation of ports where the scheme applies;

²⁴⁰⁴ See Jackson, M., *Labour relations on the docks*, Farnborough, Saxon House, 1973, 8 *et seq.*; see also Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 5 *et seq.*

²⁴⁰⁵ Statutory registration, accompanied by guaranteed fall-back pay, was first introduced in WWII, to ensure an adequate supply of labour in the ports during the war. The 1947 Scheme put the wartime arrangements on a permanent footing.

²⁴⁰⁶ House of Commons Transport Committee, *Ports. Ninth Report of Session 2002-03*, I, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmtran/783/78302.htm>, 14, para 43-44.

²⁴⁰⁷ Under the Dock Workers (Regulation of Employment) Act 1946 a dock worker was defined as "a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading, movement or storage of cargo or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or for leaving port" (see also Adams, G., *Organisation of the British Port Transport Industry*, London, National Ports Council, 1973, 76).

- the establishment of a National Dock Labour Board (NDLB) supplemented by a further 20 local Boards across the country consisting of 50 per cent union and 50 per cent employer representatives which in practice gave the unions veto over dismissal and control over recruitment and discipline;
- the compulsory registration of employers and workers who thereupon are deemed to have accepted the obligations of the scheme;
- a prohibition on registered workers from engaging for work with a registered employer except as weekly workers or being selected by a registered employer or allocated to him in accordance with the Scheme;
- a corresponding obligation on the employers to accept the daily workers so allocated and on the workers to accept the employment; in other words a statutory monopoly of dock work, with the employment of non-registered dockworkers constituting a criminal offence;
- the control of wages paid by the employers and entitlement of workers in the reserve pool to payment from the National Board (remuneration due from employers in respect of daily workers being paid to the National Board);
- disciplinary powers (including provisions for disentitlement of workers to payment for non-compliance with certain provisions of the scheme) and provisions for the termination of employment of daily workers, for appeals by persons aggrieved to appeal tribunals, and for the cost of the operation of the scheme;
- involvement of the NDLB in functions such as training, welfare and administration of severance schemes, financed by a levy on employers²⁴⁰⁸.

As a result, the NDLB administered the register as the holding employer or labour pool in each port, to which the dockers would be returned when the job was finished. Only registered labourers were permitted to work in the docks. Registered dockers received a guaranteed wage, supplemented by payments for work actually done.

In 1949, the labour force totalled 74,850 registered dockworkers. Membership of the union was a condition of dock employment²⁴⁰⁹. The employers were said to pay the highest wages known in any UK industry. In 1950, a working party concluded *inter alia* that the workpeople, fearing the introduction of machinery because of possible unemployment, clung to practices prejudicial to the use and extension of mechanical equipment; the working party recommended that all concerned should aim at "complete flexibility of labour as between ship and shore, and also between gang and gang"²⁴¹⁰.

1889. From early on there was a certain degree of discontentment with the NDLS and in the mid 1960s the scheme was the subject of a review. In 1964 the Devlin Committee was set up as

²⁴⁰⁸ Comp. Jackson, M., *Labour relations on the docks*, Farnborough, Saxon House, 1973, 36.

²⁴⁰⁹ McKelvey, J.T., *Dock labour disputes in Great Britain*, Ithaca, New York, New York State School of Industrial and Labor Relations, Cornell University, 1953, 56.

²⁴¹⁰ Bown, A.H.J., *Port economics*, London, The Dock and Harbour Authority, 1953, 82, 87-88 and 90.

a means of resolving an immediate pay dispute in the docks²⁴¹¹. The Committee's first report, published in November 1964, was devoted to the pay dispute, but the Committee members promised to look more deeply into the causes of the chronic problems which beset the industry. The results of this work were contained in a second report, published in July 1965. The Committee noted that the 1947 scheme had been only partially successful in eliminating casual employment in the docks and listed the following issues²⁴¹²:

- lack of income security for registered dockworkers;
- preferential treatment for 'blue-eyed boys', that is men who were the favourites of employers and could be sure on most occasions that they would obtain work (the other categories were the 'perms', *i.e.* regular or 'weekly' workers, and the 'floaters' or 'drifters' who were only given work after the needs of the other two categories had been satisfied; a half or more of all dockworkers fell under the third category)²⁴¹³;
- lack of responsibility on the part of the dockworkers, especially with regard to strike action;
- deficiencies in management (from 1947 all dock employers had to be registered, but the only qualification for registration was the wish to employ dock labour);
- time wasting practices, such as the use of the continuity rule (by which a dockworker is entitled to complete any job that he has begun), bad time-keeping, and excessive manning; all these practices were protective devices, designed to ensure the maximum amount of employment for the maximum number of dockers;
- the use of piecework rates;
- overtime issues;
- poor welfare, amenities and working conditions;
- trade union organisational difficulties.

To further illustrate the situation, Jensen reported in 1964 on the following characteristic practice in the port of London:

Whether gangs are hired as such, the men who work on the ships and at ship side are formed into gangs in accordance with the terms of the industrial agreements and practices at the place of work. In times of short labour supply an anomalous situation may occur. An employer is not allowed, or will not be permitted to work short-handed. He may not get a full complement of men for a gang at the free call. There may not be enough at the control for him to get the needed men by allocation. Furthermore, he is not allowed to merge gangs when he has several that are not up to full strength. He must pay the men even though they are not actually doing work – that is, the men have been hired and are on continuity and must be paid. (On one day at the Royal docks in the summer of 1960, the employers were short some four hundred men, whereas, at the same time, there were eight hundred who could not work because the employers could

²⁴¹¹ See *inter alia* Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 20 *et seq.*

²⁴¹² See also Jackson, M., *Labour relations on the docks, o.c.*, 79 *et seq.*; comp. McKelvey, J.T., *Dock labour disputes in Great Britain*, Ithaca, New York, New York State School of Industrial and Labor Relations, Cornell University, 1953, 52 *et seq.*

²⁴¹³ See also Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 17-18.

not fill out the gangs.) Obviously this can go on for several shifts if the labor market is tight. Nor is the situation an unmixed blessing. The men are paid only daily wages, which may be only half, or even less than half, the amount they might be earning under piece rates. They would rather be working. It is said that the contracting stevedores do not care. They pass the cost on to the steamship companies and shippers²⁴¹⁴.

In addition, the strike record in the docks was the worst of any industry²⁴¹⁵.

The Devlin Committee identified decasualisation as a prerequisite for change. It proposed that all registered dockworkers be brought into weekly, *i.e.* permanent, employment and that the number of employers be reduced by means of licensing. Moreover, the Committee recommended that all dockworkers be employed by one employer, which would result in a very limited (almost non-existent) reserve pool²⁴¹⁶.

The Devlin proposals were enacted in statutory form in the Docks and Harbours Act 1966 and the Dock Workers (Regulation of Employment) (Amendment) Order 1967. Under the new regime, every registered dockworker was to be allocated to permanent employment ('jobs for life'²⁴¹⁷), including sick pay and a pension scheme, with a licensed and registered employer. Most features of the NDLS, such as the provisions on discipline and the size of the dockworkers' register, remained unaltered however. The 1966 Act designated 43 port authorities as licensing authorities for port employers, and laid down the criteria to be used in awarding licences. These criteria were designed to restrict licences to employers who were sufficiently large to be able to offer weekly employment to a significant number of workers and to ensure that the casual employers (for example, employers with no proper company structure or permanent presence in the port, who would hire some workers when they had a job and then disappear when they did not) would be eliminated. A condition of licences was that the employers in a port should be prepared, in total, to take on sufficient workers to eliminate any surplus, thereby achieving the goal of bringing all dockworkers into permanent (*i.e.* weekly) employment.

Yet, the 1967 Scheme still established three different categories of workers. The majority became permanent workers employed by a single registered employer. A second group were registered with an employer for a limited period only, usually for the completion of a particular task such as the loading and unloading of seasonal cargoes. The final group were members of the 'Temporarily Unattached Register' (*i.e.* men who would be paid by the Dock Labour Board),

²⁴¹⁴ Jensen, V.H., Jensen, V.H., *Hiring of Dock Workers and Employment Practices in the Ports of New York, Liverpool, London, Rotterdam, and Marseilles*, Cambridge (Mass.), Harvard University Press, 1964, 205-206.

²⁴¹⁵ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 18 and 28.

²⁴¹⁶ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 23-24.

²⁴¹⁷ Hanson, C., "Time to End the National Dock Labour Scheme", *Economic Affairs* June/July 1988, (34), 34.

but it was envisaged that this register would be used only on a genuinely temporary basis, pending reallocation to another employer²⁴¹⁸.

1890. The aspiration of the 1967 Scheme was that decasualisation would resolve the labour problems in docks. However, the introduction of modern cargo handling methods, such as unitisation and containerisation, meant that the industry experienced a prolonged decline in employment. The rapidity of these changes created an increasing number of workers who were termed 'surplus to requirements'. This became a particular problem for the industry as the number of registered dockworkers could only be adjusted under a voluntary severance agreement²⁴¹⁹. Under the Aldington Jones Agreements of 1974, if a cargo handling company ceased operations, its labour force had to be re-assigned to other employers in the port. As a consequence, stevedoring companies were failing one after another like dominoes, and under the 'employer of last resort', the port authorities were forced to employ men for whom they had no work²⁴²⁰. Private stevedoring companies virtually disappeared²⁴²¹.

1891. When the Scheme was established in 1947 it covered 83 ports which comprised all the ports in the country where casual labour was used. However, as time passed new ports began to flourish, such as Portsmouth and Felixstowe, which were outside the Scheme and which began to attract traffic from the Scheme ports. On account of the port of Felixstowe's freedom to adopt efficient working practices, coupled with energetic and far-sighted management, the port became the largest UK container port²⁴²². The unions proposed that non-scheme ports should be required to pay the Dock Labour Board levy. They furthermore complained about the safety and other standards at small wharves and argued that such wharves should be forbidden to handle international traffic²⁴²³.

²⁴¹⁸ See Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 26-28; see also Sapsford, D. and Turnbull, P., "Dockers, Devlin and industrial disputes", *Industrial Relations Journal* 1990, (26), 28.

²⁴¹⁹ See House of Commons Transport Committee, *Ports. Ninth Report of Session 2002-03*, I, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmtran/783/78302.htm>, 15, para 45.

²⁴²⁰ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, ix-x.

²⁴²¹ Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 6.

²⁴²² Harding, S., *Restrictive Labor Practices in Seaports*, Washington, World Bank, October 1990, http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/1990/10/01/000009265_3960929231915/Rendered/PDF/multi_page.pdf, 12, para 28.

²⁴²³ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 39; see also Hanson, C., "Time to End the National Dock Labour Scheme", *Economic Affairs* 1988, (34), 34. Turnbull and Wass however argue that working practices and levels of labour productivity at scheme and non-scheme ports were remarkably similar (see Turnbull, P., and Wass, V., "The great dock and dole swindle: Accounting for the costs and benefits of port transport deregulation and the dock labour compensation scheme", *Public Administration* 1995, (513), 521).

1892. The rapid development of containerisation moreover led to continuous disputes about whether the stuffing and stripping of containers constituted dock work. A number of employers set up clearance and groupage depots outside port areas (*e.g.* at Glasgow, Leeds, Manchester, Birmingham, Liverpool and London) where containers were packed and unpacked by non-dockworkers for much lower pay. The unions however argued that these inland activities constituted dock work and should therefore be reserved to registered dockworkers²⁴²⁴. Under the 1947 Scheme, several cold storage operators had claimed for exemption from the obligation to employ registered dockworkers as well, but, in most cases, to no avail²⁴²⁵.

1893. In response to a Government consultation paper, dock work, port reorganisation and an extension of the Dock Labour Scheme were debated in the House Commons on 14 April 1975²⁴²⁶. The report indicates that the above measures had certainly not soothed discontent.

James Prior MP, the opposition spokesman on employment matters, said that there is "a great deal wrong with the efficiency of our docks. In London a 12-man gang moves 50 tons per shift. The equivalent gang in Antwerp moves 350 tons per shift". He went on to say that merchants avoid storing goods in premises staffed by dock labourers at the scheme ports. They do so because of the fear of strikes, higher costs, lower productivity and general inefficiency. Turning to the subject of the non-scheme ports, where there has been great development in recent years, he said that one reason for this was the bad labour at the dock labour scheme ports. He was assured that the dockers of Felixstowe or Shoreham did not wish to join the dock labour scheme, because they do not wish to have anything to do with it at all²⁴²⁷. Alexander Fletcher MP added that if warehousing and container companies preferred to operate outside the dock areas, they and their employees must have good reasons for doing so. These companies enjoy good industrial relations with their employees, many of whom are former dockworkers who have moved voluntarily, without compulsion on either side, into this new employment. The MP said that the Government should be aware of their responsibilities towards companies engaged in warehousing, cold storage and container work, many of which play an important part in the preparation and distribution of food supplies at competitive prices to consumers. In relation to "groupage" work, which dockworkers claim to be their work – in other words, work involving the

²⁴²⁴ See especially Jackson, M., *Labour relations on the docks*, Farnborough, Saxon House, 1973, 112 *et seq.* and 128 *et seq.*; see also Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 29; Sapsford, D. and Turnbull, P., "Dockers, Devlin and industrial disputes", *Industrial Relations Journal* 1990, (26), 28.

²⁴²⁵ See Jackson, M., *Labour relations on the docks*, Farnborough, Saxon House, 1973, 60-61. For example, the United Cold Storage Company Limited based its case on three separate arguments: firstly, the Company argued that their labour requirement should not be met from the Scheme, as specialised labour was needed; secondly, it said that when casual labour was allocated to the company by the Dock Labour Board, it often arrived late and was unenthusiastic about the work; thirdly, it argued that it could offer all its employees permanent work. Its conditions of employment were therefore better than those guaranteed by the Scheme and as a result the Scheme was inappropriate. In a 1959 Report of Inquiry, each of these arguments was dismissed. Importantly, permanent employment and the NDLS were not considered incompatible. The arguments of one other company in a similar situation were accepted, because their operations were not primarily concerned with international trade and they were based a good distance from the docks area.

²⁴²⁶ <http://hansard.millbanksystems.com/commons/1975/apr/14/dock-work-and-port-reorganisation>.

²⁴²⁷ The dockers of Felixstowe indeed voted against joining the Scheme (see Baird, A., "Analysis of private seaport development: the port of Felixstowe", *Transport Policy* 1999, Vol. 6, (109), 114).

stuffing and stripping of containers which do not go from manufacturer to the docks but are loaded at places outside the dock industry, in conditions which are by no means comparable with those obtaining in the docks and at quite different wages, Eddie Loyden MP commented as follows:

The situation reached such a point that at one time we were stuffing and stripping containers with prisoners. Is it any wonder that dock workers became concerned about developments? Against that background dock workers began to seek some form of legislation to protect existing jobs and, if necessary, to bring back work to the industry which had been taken away. The best way to deal with this is by extending the scheme. This does not mean that the dockers are saying that non-registered workers who are doing the job now should become unemployed, except in those circumstances where the employer has established a "cowboy" outfit in order to undermine the position of dock workers and their employment. One reason why they are asking for an extension of registration is so that the conditions that prevail in their industry can be guaranteed outside dockland.

While the latter speaker insisted that "sanity" had to be brought "into what has virtually become a jungle", Ian Lloyd MP could not understand why the guarantee given to the dockworkers should be so much greater and more specific than that given to employees in the aerospace industry, and be enshrined in legislation. Keith Stainton MP stressed that the port of Felixstowe was doing extremely well, precisely because it had been free from all those inhibitions that so constrained and constricted the activities of Liverpool, London and Hull over recent years. Peter Rees proposed that one "should look with extreme distaste and suspicion on any monopoly, particularly on any extension of an existing monopoly", and suggested that the redefinition of the scope of the Dock Labour Scheme be referred to the Monopolies Commission to apply the test of "the national interest" – not just the interest of the Transport and General Workers' Union – to the proposals. The same speaker said that if the Dock Labour Scheme were extended to Dover the costs of handling freight would increase by at least 50 per cent, that the real reason for the extension was "in deference to the susceptibilities of registered dock workers", and that it seems "that the docks are to be run by and for registered dock workers". Marcus Fox MP added that "every time the London docks are brought to a standstill the dockers in Rotterdam must be drinking champagne" He described the situation at non-scheme ports in the following terms:

In the non-scheme ports the men will work week-ends. They will work to suit the shipping and the tides. There are no restrictive practices. The men allow interchangeability between jobs if necessary. They allow interchangeability during all hours between ships. The men will discharge one hold and load another simultaneously. The ships are not undermanned. Under the conditions in the scheme, however, ports would require extra men not fully employed. We all know that in London, Hull and Liverpool there is rigidity of hours of work especially at weekends. There is adherence to historic and outworn practices, and rotation of labour across the broad spectrum of activity dilutes efficiency.

1894. Port labour in the scheme ports indeed continued to be subject to numerous restrictive rules and practices²⁴²⁸, including:

- the exclusive right of registered employers to engage workers on dock work;
- the exclusive right of registered dockworkers to be engaged for dock work²⁴²⁹;
- disputes over the exact definition of dock work²⁴³⁰;
- job demarcation between various categories of dockworkers, resulting in an obligation to assign workers to particular tasks;
- rigidity of manning scales, resulting in over-manning, *i.e.* providing an employer with more personnel than necessary;
- 'bobbing': establishing an inflated gang size (actually twice as many as are needed) and letting half of them 'bob off' home for the day)²⁴³¹;

²⁴²⁸ See also Hanson, C., "Time to End the National Dock Labour Scheme", *Economic Affairs* June/July 1988, (34), 35 and the triumphant 1990 speech by the former director of Britain's National Association of Port Employers, Nicholas Finney OBE, published online on <http://www.labournet.net/docks2/9706/NDLS.HTM>:

Restrictive practices, all thoroughly familiar to you, developed a folk lore of their own. Ghosting was popular; allocating and paying dockers to do a job which couldn't be done by dockers and ensuring they never appeared to do the job. The trouble is they had real pay packets and the shippers, importers and exporters had to pay. Other practices such as welting and bobbing were endemic. I also heard the mention of 'spelling'. All these practices involved establishing an inflated gang size and letting half of them "bob off" home for the day. Disappointment money, embarrassment money; all sorts of money for fictional hardships. Above all morale was always poor because everybody knew management could not manage in this straightjacket. There was a terrible sense of demoralisation and morbid unreality about everything. It reminded me in a strange way of a little text found on a gravestone deep in the heart of the English countryside.

*Here lies all that remains of Charlotte
born a virgin, died a harlot
for sixteen years she kept her virginity
a marvellous thing for this vicinity.*

It was the depth of plundering by the docker; the abuse of monopoly power which eventually sowed the seeds of their own destruction.

²⁴²⁹ Clause 10(1) of The Dock Workers Employment Scheme 1967 provided, under the heading of 'Restriction on employment':

No person other than a registered employer and the National Board shall engage for employment or employ any worker on dock work nor save as hereafter in the Scheme provided shall a registered employer engage for employment or employ a worker on dock work unless that worker is a registered dock worker.

A contravention of the preceding provision was a criminal offence (see Clause 10(2)).

²⁴³⁰ See again Jackson, M., *Labour relations on the docks*, Farnborough, Saxon House, 1973, 112 *et seq.*, especially commenting at 113 on the legal definition of dock work as it was laid down in 1947:

This definition of 'dock worker' (and thus the definition of 'dock work') is, in parts, a little vague. There is, for example, a degree of uncertainty about exactly what is meant by 'in the vicinity' of a port. How far away from the port can the work be in order for it still to be covered by this phrase – 1 mile, 2 miles or 3 miles? Again, the Act states that the storage of cargo is 'dock work'; cargo is defined as 'anything carried in a ship or other vessel'. Does that mean, then, that storing anything that has at any time been carried on board a ship is dock work? Or is there a time limit involved? Does it mean that only storing goods that have recently been carried on board a ship is dock work? Clearly the 1947 Act does not provide an unequivocal answer to these questions.

In his speech from 1990, Finney commented as follows:

In the sixty UK ports governed by a national dock labour scheme it was a criminal offence to employ anyone other than a registered dock worker on work which was legally defined as dock work. The obscurity of the dock work definition gave the legal profession a wonderful living for over forty years. In fact, it was nothing short of a national tragedy to the legal profession to learn the historic announcement by the UK government on the 6th April 1989 – it's all over.

- 'ghosting': allocating and paying dockworkers to do a job which they could and did not perform;
- 'welting' or 'spelling': taking turns to give members of a gang a break, whereby only half of a gang worked at any one time, which had the effect of increasing the requirement for overtime²⁴³²;
- 'ca'canny' or going slow;
- 'disappointment money': demanding a compensation for bonuses lost from the employer when a ship failed to dock or a cargo was cancelled;
- kin-based recruitment or nepotism: familial connections being the chief determinant in obtaining a job on the docks and in gang composition²⁴³³;
- 'moonlighting': registered dockworkers, who were guaranteed fallback pay when there was no work for them to do, earned extra by, say, driving a minicab or running a market stall.

A *cause célèbre*, which was highlighted by the Government in its 1989 White Paper supporting the abolition of the Dock Labour Scheme, concerned the construction and transportation of the Thames Barrier Gates:

The gates for the Thames Barrier were built by a company on Teeside [sic]. To get these large structures to London to be in place by autumn 1982 they had to be loaded on barges and towed down to the Thames. Weather conditions restricted the times of year when this could be done and special floating cranes had to be hired from Holland to lift the gates from the barges onto the barrier. Loading the gates at the Cleveland Bridge works on Teeside [sic] was a highly skilled job which only specialist staff could carry out. This was accepted by all concerned. However, under the definitions of dock work on the Tees this work appeared to be dock work. As had become customary the

²⁴³¹ In his speech, Finney also elaborates on how the employers used press and media in their attempt to have the NDLS abolished:

We constantly searched out and supplied the media with anti-docker stories, headlines such as "welcome return even if the man's a thief" or "ghosts who keep vanishing"; "twenty things you never knew about fiddling dockers", "they can't be fired". These headlines were all designed to make it easier for the dockers to be isolated. By the time government acted every national newspaper at one time or another had published an editorial calling for the government to end the dock labour scheme.

We had a Times columnist write headlines like "dock ages on the docks", "queer seaside customs", "legalised extortion racket", "time to end it", "block those dock rip offs". We also encouraged radio and television to do documentary programmes on the docks scandal.

On this public relations campaign see also Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 65 *et seq.*

²⁴³² Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 22. See also Davies, S., "The history of Hull dockers, c. 1870-1960", in Davies, S. et. al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (180), 188; Jackson, M., *Labour relations on the docks, o.c.*, 123-124 and Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 18.

²⁴³³ See also *Report of the Committee of Inquiry into the Major Ports of Great Britain*, London, HMSO, 1962, 145, para 407; see also Davis, C.J., "New York city and London, 1945-1960", in Davies, S. et. al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (213), 224; Mankelov, R., "The port of London, 1790-1970", in Davies, S. et. al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (365), 384; Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 19.

company requiring the work to be done had to pay for a number of registered dock workers, though they were not needed for the job.

In November 1981 however the dockers employed by the port authority went on strike over a pay claim. That meant there were no dockers available to be paid to watch the specialist employees load the barge. Had the specialists gone ahead their employer would have been liable to a criminal prosecution brought by the NDLB and the unions might well have called a national strike because of this breach of the Scheme.

Meanwhile the gates were strike bound, the weather window was closing, and the crane hire period running out. London was threatened with a further winter without adequate flood protection because no dockers were available to be paid for work which others were doing. The installation of the gates had to be rescheduled at great cost. On March 1st the strike was settled and loading began the day after, several months late²⁴³⁴.

In short, there developed a labour allocation system of extreme inflexibility, which made it impossible to switch dockers to different tasks in order match labour supply with labour demand²⁴³⁵.

In normal circumstances market forces and competition would have eliminated these absurd practices – also dubbed 'Spanish customs' – but the existence of the National Dock Labour Scheme prevented this outcome²⁴³⁶.

According to Hanson, the five main elements of the NDLS – joint control and management, a guaranteed minimum weekly wage, the determination of the size of the register by the NDLB, the reservation of dock work for registered workers and, from 1967, the allocation of all registered workers as permanent workers to registered employers – created in all scheme ports "a totally rigid employment arrangement which becomes more anachronistic with every passing year". In particular the principle of joint control prevented the employers from managing their businesses in an effective way. It was also impossible for employers to exercise discipline over their workforce; from 1981, every single registered dockworker who was summarily dismissed by his employer in the port of Liverpool had been re-employed following NDLB appeal decisions²⁴³⁷. The NDLB's responsibility for discipline resulted in conflicts of interest for the trade unions, whose dual role caused profound frictions with the dockworkers²⁴³⁸.

²⁴³⁴ Quoted in Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 75-76.

²⁴³⁵ See Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 18.

²⁴³⁶ Hanson, C., "Time to End the National Dock Labour Scheme", *Economic Affairs* June/July 1988, (34), 35.

²⁴³⁷ Hanson, C., "Time to End the National Dock Labour Scheme", *Economic Affairs* June/July 1988, (34), 34-35. Comp. the 1990 speech by Nicholas Finney OBE, <http://www.labournet.net/docks2/9706/NDLS.HTM>:

The National Dock Labour Board consisting of 50% union and 50% employer reps, was supplemented by a further twenty boards across the country. This system gave the unions an absolute veto over dismissal and total control over recruitment and discipline. In 1982 (I just quote this as an example) a Southampton dockworker was dismissed for a serious criminal offence involving theft over quite a long period of time. He served the prison sentence, was returned to the labour pool and within six months on full back pay, was put back to employment in the same area from which he had come.

²⁴³⁸ Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 18.

One MP who advocated the abolition of the Scheme concluded that it stood in the way both of an effective utilisation of resources and of the adoption of labour-saving investment strategies, especially as it constituted a legislative framework for the maintenance of restrictive employment practices without parallel elsewhere in the industry:

[T]he Scheme encourages practices of unimaginable wastefulness; undermines effective management; destroys discipline; stultifies technological development and by a combination of high costs and low reliability, drives away business²⁴³⁹.

1895. The return of the Labour Government in 1974 led to the introduction of the 1976 Dock Work Regulation Bill. The Bill provided for the Minister to make an order which would:

- extend the NDLS to non-scheme ports;
- define port operations within a corridor of half a mile of harbour land (originally proposed as 5 miles but reduced in Parliament);
- categorise dock work, thus ending disputes about filling and emptying of containers;
- abolish the Temporarily Unattached Register by removing the power of local boards to employ dock labour.

The Bill passed, but the Order to bring it into force was defeated in the House of Commons and the Government did not attempt to reintroduce it²⁴⁴⁰.

1896. By the end of the 1970s important parts of the port industry faced financial problems²⁴⁴¹. Nevertheless, the general view within Government was that any attempt to abolish or reform the NDLS would automatically lead to a national port strike. Therefore, and notwithstanding a strong campaign organised by port employers, it was decided that the first priority was to tackle reform of industrial relations more generally. It was furthermore argued that the cost of repeal – there were ‘only’ 9,200 registered dockworkers in 1981 – was out of all proportion to the benefits²⁴⁴².

1897. During the 1980s legislation on industrial relations in the UK was progressively reformed, notably with the Employment Acts of 1980, 1982, 1984 and 1988, which outlawed secondary

²⁴³⁹ Conservative MP David Davis, as quoted in Coffey, D., “Old-time militancy and the economic realities: towards a reassessment of the dockers’ experience”, *Industrial Relations Journal* 2009, (292), 294.

²⁴⁴⁰ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 40.

²⁴⁴¹ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 52-53.

²⁴⁴² Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 53.

picketing (*i.e.* picketing locations that are not directly connected to the issue of protest), introduced a requirement for ballots before strike action, and exposed union funds to the risk of sequestration if they failed to comply with the law. These changes were to prove most important when the Government eventually decided to tackle the NDLS²⁴⁴³. A proposal by the employers in 1982/83 to redesign the Scheme so that it became operable in the modern day context had not been successful, because the trade unions could not agree to replace the legislation with a voluntary national agreement²⁴⁴⁴.

1898. Interestingly, in 1988 the British MEP Andrew Pearce submitted the following written question to the European Commission:

Does the Commission believe that the United Kingdom National Dock Labour Scheme, which obliges certain British ports to pay the cost of compensating redundant dockers for life, is a breach of the EEC's competition rules? Would the Commission agree that if the British Government was determined to maintain this outdated scheme which disfavors some British ports with regard to their competitors, that it should meet these costs centrally?

In its answer, the Commission first of all noted:

Conditions of employment vary considerably between the ports of the Community and within Member States. In all the maritime Member States except Denmark and the Federal Republic of Germany²⁴⁴⁵ dockworkers have in some measure a special status and different schemes have been devised seeking to provide a stable workforce for port employers and job security for port employees.

The Commission went on to explain that it had considered the NDLS when a procedure was instituted in 1986 under the Treaty's state aid rules. The aid at issue included assistance from the UK Government to meeting the cost of severance of registered dockworkers. The Commission took the view in these cases that the aids which had as their object a restructuring of the industry were not incompatible with the common market as they did not tend adversely to affect trading conditions to an extent contrary to the common interest. The Commission concluded that any similar future aid proposed by the UK Government would need to be examined²⁴⁴⁶.

²⁴⁴³ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 53; comp. McNamara, T.M.J and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 15.

²⁴⁴⁴ McNamara, T.M.J and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 14.

²⁴⁴⁵ See, however, our findings *supra*, para 293 *et seq.*

²⁴⁴⁶ European Parliament, Written question no. 2914/87 by Mr Andrew Pearce to the Commission, *OJ* 28 November 1988, C 303/56.

1899. On 6 April 1989, a statement was made by Norman Fowler, the then Secretary of State for Employment, announcing that the NDLS would be abolished and that a Bill would be published the following day, accompanied by a White Paper. The Government's strategy was to take the unions by surprise, and preparations were made in total secrecy²⁴⁴⁷.

The White Paper began by emphasising the importance of seaports for the UK's trade, and pointed out that ports would be facing both increased opportunities and increased threats as a result of the Single European Market. It went on to describe the many restrictions inherent in the NDLS and the history of chronic surpluses. Moreover, the paper included five case studies illustrating the nonsensical problems and costs to which the NDLS gave rise.

The White Paper concluded that the Government had decided that problems could only be solved by bringing all port employers and all dockworkers into exactly the same position as other employers and workers under employment law. The only way this could be achieved was by a complete repeal of all legislation connected with the NDLS. Finally, the White Paper announced compensation arrangements²⁴⁴⁸.

1900. The Dock Work Bill made its way through Parliament and eventually received Royal Assent on 3 July 1989.

Article 1 of the Dock Work Act 1989 stipulates:

Abolition of Dock Labour Scheme

(1) The Dock Workers Employment Scheme 1967 made under the Dock Workers (Regulation of Employment) Act 1946 shall, together with that Act, cease to have effect on the date of the passing of this Act.

(2) Any local dock labour board or other body constituted in accordance with the 1967 Scheme shall accordingly cease to exist on that date.

(3) Notwithstanding that Clause 3(1)(g) of the 1967 Scheme (functions of the National Dock Labour Board as to training and welfare) is, by virtue of subsection (1), no longer to apply to the Board, the Board shall continue during the transitional period to have power to make provision for the training and welfare of dock workers (within the meaning of the Scheme), including provision for port medical services.

²⁴⁴⁷ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 2 and 69.

²⁴⁴⁸ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 74-76. The compensation arrangements proved to be a cause of some embarrassment. The cost of the abolition to the Government was initially estimated at 25 million GBP. In the event the total cost was 131 million GBP (Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 97).

(4) In this Act “the transitional period” means the period beginning with the date of the passing of this Act and ending on the date on which the Board is dissolved in accordance with section 2.

The Dock Work Act 1989 furthermore contains provisions on the dissolution of the National Dock Labour Board (Section 2), the appointment by the Secretary of State of the person to act in place of the members of the Board (Section 3), the financial provisions relating to the winding up of Board’s affairs (Section 4), the compensation for former registered dockworkers who become redundant (Section 5) and employment protection for registered dockworkers (Section 6).

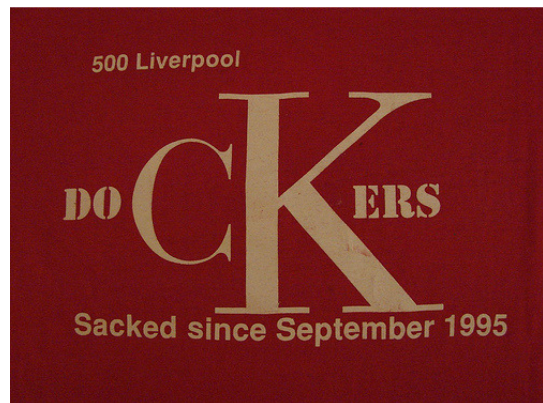
1901. The abolition of the NDLS meant that there was no longer any legal definition of ‘dock work’, nor any restriction on the employment of workers to perform such work²⁴⁴⁹.

1902. In the port of Liverpool, the dockworkers had been employed by the Mersey Dock & Harbour Company (MDHC). Following the abolition of the NDLS, concessions were made not to introduce casual labour. In 1995, a small stevedoring company called Torside went into liquidation, making around 80 dockworkers redundant. The local trade-union’s view was that, as in pre-abolition days, MDHC had to take on the role of employer of last resort and re-employ the redundant workers. MDHC refused to do so and when workers went on sympathy strike without having an official ballot it sacked its entire workforce. Dock gates were picketed for the following 15 months. The dispute was settled finally in January 1998. A limited number of dockworkers received a redundancy package while most of them came away with nothing. From 1999 onwards the port was able to run its business along normal commercial lines without having to bear the cost of other operating companies’ failures²⁴⁵⁰.

²⁴⁴⁹ See Turnbull, P., and Wass, V., “The great dock and dole swindle: Accounting for the costs and benefits of port transport deregulation and the dock labour compensation scheme”, *Public Administration* 1995, (513), 526.

²⁴⁵⁰ Stoney, P., “The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool”, *Economic Affairs* 1999, Vol. 19, No. 2, (18), 21. See also Carter, C., Clegg, S., Hogan, J. and Kornberger, M., “The polyphonic spree: the case of the Liverpool Dockers”, *Industrial Relations Journal* Vol. 34 (4), 2003, 290-304, https://www.st-andrews.ac.uk/management/media/carter_et_al-IRJ-polyphonic_spree.pdf; Castree, N., “Geographic Scale and Grass-Roots Internationalism: The Liverpool Dock Dispute, 1995-1998”, *Economic Geography* 2000, 272-292; “The Liverpool dockers dispute, a summing up”, <http://www.sinistra.net/lib/upl/comlef/cotu/cotugdicee.html>. On Britain’s restrictive laws on trade union action, see Hendy, J., “The Liverpool Dockers and International Law”, 29 January 1998, <http://www.labournet.net/docks2/9801/hendy.htm>.

Figure 115. The Liverpool footballer Robbie Fowler supported the famous strike by the Liverpool Dockers, an industrial dispute which lasted from 1995 to 1998. Fowler was fined 2,000 Swiss francs by UEFA, when, after scoring the winning goal in a televised European Cup Winners Cup quarter-final match, he removed his Liverpool shirt to reveal a t-shirt bearing the message '500 Liverpool Dockers sacked since 1995' (source: various websites²⁴⁵¹).



1903. The ending of the NDLS gave the port authorities the opportunity, if they so chose, to get out of cargo handling by leaving the work to independent companies²⁴⁵². Some shipping lines who had previously been forced to use stevedoring companies as contractors to load and unload their vessels were now able to use their own employees and chose to do so²⁴⁵³.

- Regulatory set-up

1904. Today, port employers do not need to be licensed anymore and there is no obligation on port employers to join an employers' association or a similar professional organisation.

1905. Port workers are employed under normal labour law conditions. There are no specific laws and regulations on the employment of port workers, nor is there an official pool system.

²⁴⁵¹ See Carter, C., Clegg, S., Hogan, J. and Kornberger, M., "The polyphonic spree: the case of the Liverpool Dockers", *Industrial Relations Journal* Vol. 34 (4), 2003, (290), 292.

²⁴⁵² Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 83-84. On the powers of harbour authorities to carry out cargo handling, see Douglas, R., Lane, P. and Peto, M., *Douglas & Geen on the Law of Harbours, Coasts and Pilotage*, London, LLP, 1997, 159.

²⁴⁵³ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 99.

Port workers do not have to be registered. There are no specific conditions regarding access to the profession. If a port worker is temporarily unemployed, he receives regular unemployment benefit.

1906. There is no ban on permanent employment of port workers, and employers are allowed to employ temporary port workers via job recruitment or employment agencies. The Recruitment and Employment Confederation confirmed to us that, generally, restrictions on temporary agency work in the UK are minimal. Indeed, agency work is more prevalent in the UK than in most other European countries²⁴⁵⁴. In 2009, the Department for Business Enterprise and Regulatory Reform could not even identify any restriction or prohibition which would require review under the EU Temporary Agency Work Directive²⁴⁵⁵.

In a considerable number of UK ports, work is outsourced to companies supplying, training and managing stevedoring workforce on a 24/7 basis. Some of these labour supply companies were set up by experienced port people, in some cases by ex-registered dockworkers. In Southampton, for example, temporary agency workers are used for car lashing and container work. In Tilbury, most workers are hired from an informal pool of workers. In smaller ports, temporary agency workers are mainly used to fill peaks or to handle seasonal traffic such as fruit and vegetables. Other ports relying on temporary agency workers include Birkenhead, Chatham, Liverpool, Thamesport²⁴⁵⁶. In most container terminals, the container crane and straddle carrier operators belong to the permanent workforce of the company.

²⁴⁵⁴ For a discussion of current UK law, see Davies, A., "The implementation of the Directive on temporary agency work in the UK: a missed opportunity", *European Labour Law Journal* 2010, Vol. 1, No. 3, 307-331.

²⁴⁵⁵ Department for Business Enterprise & Regulatory Reform, *Implementation of the agency workers directive : A consultation paper*, May 2009, <http://www.bis.gov.uk/files/file51197.pdf>, 45.

²⁴⁵⁶ One such provider is Drake International (and its subsidiary Drake Port Distribution Services (DPDS)): see <http://www.drakeintl.co.uk>. An article on www.portstrategy.com explains their position in the labour market:

In the UK, the new Agency Workers Regulations, based on the Directive, come into force this October. "These regulations will give agency workers the entitlement to the same basic employment and working conditions as if they had been recruited directly by the port, if and when they complete a qualifying period of 12 weeks in the same job," says Ian Roots, managing director of Drake International, the parent group of Drake Ports Distribution Services.

"Imagine the scenario where a port employs 20 casual workers, probably not on comparable conditions to those in full-time employment; perhaps they are paying £30,000 to their permanent workers, but the casual workers don't get that. The legislation is moving towards giving agency workers parity in more areas."

However, Mr Roots emphasises, it is important to make the distinction between 'agency' and 'outsourced'. DPDS is outside of these regulations because it employs the workers it provides on formal contracts.

"DPDS was set up in the UK in the early 90s to address the needs of some of our customers within the ports industry who wanted a viable alternative to directly employed, heavily unionised labour," he says.

DPDS does not operate as an 'agency' which would use traditional temporary staff or 'casuals', as they are better known in the ports industry, but employs all of its staff on contracts of employment with guaranteed weekly pay, holiday pay, sick pay, pensions, etc. We offer full employment contracts with associated benefits, plus we are responsible for their training, management, direction, control and supervision. We have a loyal, productive, well-trained and cost-effective workforce."

According to a study carried out in 2009/10, 7 of the 45 businesses supplying workers to UK ports were port labour suppliers; these businesses specialise in supplying labour to ports and are usually linked to a specific port where they have regular contracts. Of those that are general recruitment agencies (the remaining 38 businesses), the majority of workers they supply to the port are to perform jobs relating to the loading and/or unloading of general cargo for import/export; this includes stevedores for general dock work and warehouse workers, especially drivers (forklift, class 1, 2 etc.). Some workers are also recruited for construction projects on the port²⁴⁵⁷.

1907. Reportedly, exchanges of employees between employers may sometimes occur, which could conceivably involve temporary employer change under a formal agreement between the parties. However these are in the minority. Port workers may be supplied to another organisation to provide work, however this will be undertaken through some form of sub-contracting or service level agreement arrangement. The employee's status, named employer and terms will be specified in the contract arrangements.

Port workers can also be transferred temporarily to another port. Typically a permanent employee will remain employed by their employer organisation. If an employer owns more than one port, then employees do transfer between ports but retain the same employer. Contract non-permanent employees will typically be employed by the labour supply company rather than the port for which they are undertaking work²⁴⁵⁸.

DPDS provides workforces to major ports in the UK and also in Ireland and the Middle East, and has ambitions to expand in Europe: "Some European ports have the same issues relating to highly unionised workforces and often the management simply cannot run the port because of these issues," says Mr Roots.

The general principle of outsourcing is that it is ultimately more cost-effective, allowing ports to focus on their core activity, he says. "Ports' core activity isn't necessarily management of labour – and there is a huge amount of employment legislation, directives, etc., to consider. More and more ports are asking whether they really want to be involved in the intricacies of this, or do they really just want the labour. And outsourcing is much more flexible."

*DPDS has a fixed workforce, with employees guaranteed and paid for a 40-hour week but with flexibility built into their contracts. "So maybe they will work 30 hours in week one but we need them to do 50 in week two, within the constraints of health and safety and employment law (Landon, F., "Adding up the costs", *Port Strategy* 7 June 2011, <http://www.portstrategy.com/features101/manpower-and-training/labour/adding-up-the-costs>).*

The port of Liverpool and Peel Ports use Stafforce (see <http://www.stafforce.co.uk/employers/recruitment/ports/>).

In 2009, the Port of Dover outsourced stevedoring work to licensed ferry operators and to 3rd party companies.

²⁴⁵⁷ Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 46.

²⁴⁵⁸ Davis asserts that, under the NDLS, mobility of workers between ports was common:

The dock workers were directed not just within the port, but also to other cities. It was quite common, for example, for London dockers to be directed to work in Liverpool or elsewhere to fill an emergency shortage.

(Davis, C.J., "New York city and London, 1945-1960", in Davies, S. et. al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I, Aldershot, Ashgate, 2000, (213), 222; see also Davies, S., "The history of Hull dockers, c. 1870-1960", in Davies, S. et. al. (Eds.), *Dock Workers. International Explorations in Comparative Labour History, 1790-1970*, I,

1908. Breaches of general employment law can be pursued by the employee, supported to varying degrees by a trade union or similar organisation via either a civil court or employment tribunal.

- *Facts and figures*

1909. We were unable to collect reliable information on, or even an estimate of, the number of employers of port workers in the UK. A total number of 150 port operators engaged in cargo handling at ports would perhaps be a fair guess; supposing that it is methodologically correct to add some 45 temporary workforce providers, the overall total could be estimated at some 195²⁴⁵⁹.

1910. Accurate data on the number of registered dockworkers in the UK are only available for the period prior to the repeal of the National Dock Labour Scheme in 1989.

In the current absence of a definition of port labour for legal or merely statistical purposes and given the use of temporary and part-time labour in ports, it is not possible to provide precise updated nation-wide figures on the number of port workers.

One study mentions that in 2004, 27,300 people were employed in cargo handling and ports²⁴⁶⁰. A 2006 EU study reported that in 2005, 22,180 people were employed in cargo handling (including warehousing) in UK seaports²⁴⁶¹.

A more recent survey on behalf of the Department of Transport²⁴⁶² estimated the directly port-related employment in winter 2009/10 at 37,000 fte²⁴⁶³. Directly port related employment totalled

Aldershot, Ashgate, 2000, (180), 186). Other experts who were directly involved dispute this information.

²⁴⁵⁹ Our guess is based on data on the total number of port businesses and the percentage of businesses engaged in warehousing, storage and cargo handling given in Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 73-74.

²⁴⁶⁰ The Mackinnon Partnership, *The Maritime Sector Labour Market Assessment. A review of the fishing, ports and shipping industries for the Maritime Skills Alliance*, 2005, http://www.maritimeskills.org/docs/LMA_Final_Draft_v1.pdf, 18. This study also suggests that 9 per cent of this workforce is self-employed, and it refers to another report where the employment of stevedores was estimated at 9,000 (*ibid.*, 19).

²⁴⁶¹ European Commission, *Employment trends in all sectors related to the sea or using sea resources, Country Report – United Kingdom*, European Commission DG Fisheries and Maritime Affairs, 2006, 13.

58,100 fte, 45 per cent of which (both on and off-port) involved cargo operations²⁴⁶⁴, 11 per cent marine operations (vessel handling, mooring *etc.* by shore based staff), 4 per cent passenger operations²⁴⁶⁵ and 16 per cent management, administration and other specialist services (such as engineering & maintenance, Customs, security *etc.*). The remaining 24 per cent involved 'non-operational' activities such as forwarding agents, shipping agents, importers/exporters *etc.* The study highlights the fact that a significant number of those working in cargo operations work for organisations that are based outside the port estate; this was generally where freight forwarders based outside the port estate employed people to handle cargo on the port estate.

At the time of the survey (winter 2009/10), non-permanent employees accounted for about 7 per cent of all direct on-port employment by businesses. At the quietest time of year this proportion fell to about 4 per cent, while at the busiest time of year it was around 14 per cent. A proportion of these workers were recruited via employment agencies – at the time of the survey agency workers accounted for about 4 per cent of direct on-port employment, ranging between 3 per cent at the quietest time of year and 9 per cent at the busiest.

Overall the results of the survey suggest a decline in port related employment since a previous survey in 2004/5.

A further breakdown of the estimated direct port employment by function results in the following tables of port labour jobs directly related to cargo and passenger operations:

²⁴⁶² Department for Transport, "Port Employment and Accident Rates Survey: 2009/10", *Statistical Release*, October 2010, see <http://www.dft.gov.uk/statistics/series/ports/>. The full report is available on <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>.

²⁴⁶³ Full-time equivalent.

²⁴⁶⁴ This comprises "activities involving the loading and unloading of cargo, and any associated administration. Cargo operations includes stevedores, forklift operators, cargo handlers and clerks".

²⁴⁶⁵ This comprises "activities involving the transport of passengers by sea. Job roles included are information officers, baggage handlers and security staff".

Table 111. Breakdown of 'on port' port labour employment in UK ports, 2009/10 (source: Databuild / Department of transport²⁴⁶⁶)

Function	Permanent employees	Non-permanent employees employed by an agency ²⁴⁶⁷	All other non-permanent employees	Total
Cargo Operations				
Stevedores/dockers	4,140	25	150	4,315
Forklift operators	1,685	10	30	1,725
Cargo Handlers (Other than forklift operators)	1,265	90	40	1,395
Warehouse workers	1,200	125	20	1,345
Clerks	2,675	0	40	2,715
Other cargo operations	2,795	490	190	3,475
Cargo operations - subtotal	13,760	740	470	14,970
Passenger Operations				
Information Officers	260	0	15	275
Traffic Marshals	115	0	0	115
Baggage handlers	100	25	0	125
Security staff	595	125	35	755
Other passenger operations	1,000	10	35	1,045
Passenger operations subtotal	2,070	160	85	2,315

²⁴⁶⁶ Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 68.

²⁴⁶⁷ Ports were asked to supply non-permanent agency and non-permanent non-agency employees separately in the electronic questionnaire; as it was not practical to collect the full breakdown in this table via the telephone for businesses, the number of non-permanent agency employees for business respondents is estimated.

Table 112. Breakdown of 'off port' port labour employment in UK ports, 2009/10 (source: Databuild / Department of transport²⁴⁶⁸)

Function	Permanent employees	Non-permanent employees employed by an agency ²⁴⁶⁹	All other non-permanent employees	Total
Cargo Operations				
Stevedores/dockers	665	0	5	670
Forklift operators	1,135	0	0	1,135
Cargo Handlers (Other than forklift operators)	700	0	65	765
Warehouse workers	710	0	0	710
Clerks	6,230	0	85	6,315
Other cargo operations	1,340	0	15	1,355
Cargo operations - subtotal	10,780	0	170	10,950
Passenger Operations				
Information Officers	20	0	0	20
Traffic Marshals	15	0	0	15
Baggage handlers	0	0	0	0
Security staff	15	0	0	15
Other passenger operations	140	0	50	190
Passenger operations subtotal	190	0	50	240

²⁴⁶⁸ Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 70.

²⁴⁶⁹ Ports were asked to supply non-permanent agency and non-permanent non-agency employees separately in the electronic questionnaire; as it was not practical to collect the full breakdown in this table via the telephone for businesses, the number of non-permanent agency employees for business respondents is estimated.

Table 113. Breakdown of all port labour employment on and off port in UK ports, 2009/10
(source: Databuild / Department of transport²⁴⁷⁰)

Function	Permanent employees	Non-permanent employees employed by an agency	All other non-permanent employees	Total
Marine Operations				
Dredging	215	0	0	215
Harbour masters/assistants	655	5	35	695
Pilots	695	20	20	735
VTS staff	355	0	0	355
Lock Operations	230	0	5	235
Surveying	305	0	10	315
Tug Operations	565	0	10	575
Vessel mooring	875	0	110	985
Other marine operations	2,365	10	140	2,515
Marine Operations – subtotal	6,260	35	330	6,625
Cargo Operations				
Stevedores/dockers	4,805	25	155	4,985
Forklift operators	2,820	10	30	2,860
Cargo Handlers (Other than forklift operators)	1,965	90	105	2,160
Warehouse workers	1,910	125	20	2,055
Clerks	8,905	0	125	9,030
Other cargo operations	4,135	490	205	4,830
Cargo operations - subtotal	24,540	740	640	25,920
Passenger Operations				
Information Officers	280	0	15	295
Traffic Marshals	130	0	0	130
Baggage handlers	100	25	0	125
Security staff	610	125	35	770
Other passenger operations	1,140	10	85	1,235
Passenger operations subtotal	2,260	160	135	2,555

These figures and interviews with stakeholders result in a rough estimate of the current number of UK port workers performing port labour within the meaning of the present study at 18,000. Several experts from the public and private sector considered this a fair guess, perhaps slightly on the low side.

On that basis, and taking into account a particularly wide error margin due to the lack of comparability of the source material, the historical evolution of port labour employment in the UK since World War II can be sketched as follows:

²⁴⁷⁰ Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 72.

Table 114. Number of registered dock workers and port workers in the UK, 1950-2012 (source: Dempster based on NDLB Annual Reports²⁴⁷¹ and our estimate)

Registered dockworkers (scheme ports only)					Port workers (estimate, for all ports)
1950	1960	1970	1980	1988	2012
75,264	72,550	46,912	24,492	9,649	18,000

1911. No reliable data are available on trade union density. A representative of Unite the Union informed us that his union organises 90 per cent of all unionised dockers in the UK. Other important unions include the National Union of Rail, Maritime and Transport Workers (RMT), UNISON and GMB²⁴⁷², which unites seafarers and car checkers in the port of Dover. In the container sector, between 90 and 95 per cent of all workers are members of a union. In ports operated by Associated British Ports and bulk ports, union density is around 50 or 60 per cent. These scattered data suggest that union density remains higher in ports than in the UK economy taken as a whole, where it reaches a percentage of between 20 and 29 per cent²⁴⁷³.

9.22.4. Qualifications and training

1912. In 1999, Rayner wrote that there is a "mythology" in the docks industry that the National Dock Labour Scheme has been most missed because of the quality of its training, and that one of the fears of the employers was that standards of training would reduce post-repeal²⁴⁷⁴. Rayner stated with great certainty that this fear has not been realised:

Customer demands for a quality service, including damage control and the increasing sophistication, specialisation and cost of cargo-handling plant and capital, have been

²⁴⁷¹ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 212-213. Compare, however, the historical figures provided by the British Ports Federation as published in House of Commons, Transport Committee, *Ports*, Ninth Report of Session, 2002-2003, I, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmtran/783/783.pdf>, 12. For 1988, for example, the latter report mentions 17,425 "Dock Workers and other Cargo Handlers" and, in addition, 2,611 "Foremen/Supervisors". The difference can be explained partly by the fact that the latter figures also cover non-registered dock workers in non-scheme ports.

²⁴⁷² GMB is derived from 'General, Municipal, Boilermakers and Allied Trade Union'.

²⁴⁷³ See Carley, M. "Trade union membership 2003-2008", *Eironline* 22 September 2009, <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm>; Fulton, L., "Worker representation in Europe", <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>.

²⁴⁷⁴ See, for example, the debate on the Dock Work Bill in the House of Lords on 3 July 1989 (especially the statement by Lord Rochester). It is worth mentioning that the Port of London Authority in 1970 established an Accident Prevention Centre at the Royal Albert Dock, where two full-time instructors were employed.

such that for the vast majority of the industry, training, now provided by various specialised agencies, has improved beyond all recognition. Some ports, notably Liverpool, which has an international reputation in this field, have expanded their operations into the provision of training for other ports. Dockers are increasingly certified for their skills. Those employed by Forth Ports Ltd for example now largely possess VNQs²⁴⁷⁵.

Other sources confirm that ten years after repeal of the NDLS, many ports nationwide were offering extensive training packages, which included the opportunity to study for National Vocational Qualifications (to NVQ level II and NVQ level III) and degrees; methods of staff training however varied among operators²⁴⁷⁶.

1913. Today, UK port employers must comply with general health and safety legislation which requires the provision of suitable and sufficient instruction, information and training for employees (Health and Safety at Work Act 1974). It is an employer's responsibility to carry out a risk assessment of the work and the work environment and to identify the information, instruction and training necessary to reduce the risk of harm so far as reasonably practicable. As the approach is risk and evidence based, there are no prescribed requirements. In general, the solutions are specific to the context and to the work²⁴⁷⁷. There are however some recent initiatives to develop standards for port training²⁴⁷⁸.

1914. In response to our questionnaire, the following types of formal training were confirmed to be available for port workers in the UK (but probably not in every individual port):

- continued or advanced training after regular educational programme;
- induction courses for new entrants (broadly compulsory);
- courses for the established port worker (employer's decision and responsibility);
- training in safety and first aid (compulsory);
- specialist courses for certain categories of port workers such as: crane drivers (employer's decision and responsibility); container equipment operators (employer's decision and responsibility); ro-ro truck drivers (employer's decision and responsibility); forklift operators (compulsory); lashing and securing personnel (employer's decision and responsibility); tallymen (employer's decision and responsibility); signalmen (employer's decision and responsibility); reefer technicians (employer's decision and responsibility);

²⁴⁷⁵ Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 8.

²⁴⁷⁶ See McNamara, T.M.J. and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 15-16, where further details are provided.

²⁴⁷⁷ See also McNamara, T.M.J. and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 16.

²⁴⁷⁸ See *infra*, para 1917.

- training aimed at the availability of multi-skilled or all-round port workers (employer's decision and responsibility);
- retraining of injured and redundant port workers (employer's discretion).

1915. Following the abolition of the National Dock Labour Scheme, company-based training is now the norm in the UK²⁴⁷⁹.

The port of Felixstowe, for example, has its own dedicated training centre with a team of forty trainers and simulators for both rubber-tired gantry cranes and quay cranes²⁴⁸⁰.

DP World Southampton has a dedicated training centre and classrooms, where candidates can practice and study skills such as forklift driving, manual handling and working at height.

Port Training Services (PTS)²⁴⁸¹, an organisation set up by the Port of Blyth in 2008, organises training for the port, marine, warehousing, logistics and heavy industrial sectors. PTS reports that the increase of offshore wind turbines and relocation of organisations to the North East of England are set to increase demand for highly skilled and competent workers, further impacting on challenges presented by an aging workforce. It was recognised that outside trainers could not deliver training to meet future demand for skilled port workers, as they did not have the industry knowledge²⁴⁸².

The Scottish Ports Division of Forth Ports, which comprises the ports of Grangemouth, Leith, Rosyth, Dundee, Methil and Burntisland, developed a Management / Supervisory Development Programme based on in-house and external training which consists of Induction, specific Management Development Programmes and external training where employees achieve nationally recognised qualifications such as Foundation Degree: Supply Chain (Logistics and Operations Management) and the Diploma in Port Management. Supervisors go through the Management/Supervisory Development Vocational Qualification (VQ) to Management Level 3/4. In-house programmes and specialist one off courses also supplement this programme and include Appointed Persons, Safe Cranes and Lift Supervisors training. All managers and supervisors are trained in the IOSH 4-5 day Managing Safely course. Port operators are trained to Stevedoring VQ Level 2 and to date Scottish Ports has trained over 300 employees. In addition, all employees are given a full safety induction on starting with the Company, where certification is checked and employees become familiarised with plant and equipment before being allowed to work in an operational environment. All employees who are certificated are subject to a Continuous Assessment programme where each employee is assessed annually for competence in each particular category of plant. Safety training is also carried out on a regular

²⁴⁷⁹ Further information on UK port training providers is available on http://www.portskillsandsafety.co.uk/skills/training_providers.

²⁴⁸⁰ See Turnbull, P., *Training and Qualification Systems in the EU Port Sector: Setting the State of Play and Delineating an ETF Vision*, July 2009, <http://www.itfglobal.org/files/extranet/-75/17739/Final%20report%20EN.pdf>, 19.

²⁴⁸¹ See <http://www.porttrainingservices.co.uk/>.

²⁴⁸² See <http://www.esf-works.com/projects/short-reviews/projects/401453>.

basis for updates on new legislation and for refresher safety training as required. The company launched a Safety Partnership initiative with its employees and the trade unions to promote greater safety within the ports industry. This involved the participation of 360 employees, London Metropolitan University, Unite and the Company's Senior Management Team²⁴⁸³.

Forth Ports also has a Training and Development Team at the port of Tilbury²⁴⁸⁴.

1916. In 2002, the ports industry established Port Skills and Safety (PSS). This organisation has a wide remit to work with its members and other stakeholders, to encourage and promote high standards of health and safety and a highly skilled workforce. PSS is core funded through subscriptions, and is open to all port related organisations including harbour authorities, conservancies, port and terminal operators, stevedoring companies and labour supply companies²⁴⁸⁵.

In 2012, PSS represented 90 port-related organisations throughout the UK²⁴⁸⁶. It is estimated that this represents approximately 18,000 people or two thirds of employees at port operations where safety is a particular concern²⁴⁸⁷. PSS works in co-operation with the British Ports Association (BPA) and the United Kingdom Major Ports Group (UKMPG), who are the only shareholders. PSS has a Board of Management comprising senior representatives of the BPA and UKMPG as well as other employer interests²⁴⁸⁸.

PSS administers a series of standing work and advisory groups which includes the long-established Port Skills and Safety Group (PSSG; previously the Accident Prevention Officers' Group). The PSSG provides the industry with a forum for health and safety practitioners, and others with an interest in health and safety, to learn about and discuss current issues, and to share information and best practice.

Special work groups are established on an *ad hoc* basis to consider specific issues. Such issues can include the development of industry guidance, the interpretation of generic legislation, or the development of National Occupational Standards and national qualifications frameworks.

PSS also provides a full range of services to its members. These include:

- the dissemination of information via regular postings on the PSS website. These postings provide important information on, for example, accidents and incidents, legal

²⁴⁸³ See <http://www.forthports.co.uk/ports/ports/scotland/people/>.

²⁴⁸⁴ See http://www.forthports.co.uk/ports/ports/tilbury/working_tilbury/.

²⁴⁸⁵ See www.portskillsandsafety.co.uk.

²⁴⁸⁶ House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 12.

²⁴⁸⁷ House of Commons Transport Committee, *The Ports Industry in England and Wales*, o.c., Vol. 1, 3.

²⁴⁸⁸ House of Commons Transport Committee, *The Ports Industry in England and Wales*, o.c., Vol. 2, 12.

- developments (including consultations), accident prevention, skills and standards issues, industry publications, and events and training;
- technical advice on any issues relating to health, safety, skills and standards in the ports industry;
 - the production and publication of industry specific guidance material;
 - the facilitation of national and in-house training events on ports specific issues.

With the consent of the HSE, members are able to appoint PSS as one of their 'competent persons', in accordance with the Management of Health and Safety at Work Regulations, reflecting the range of health and safety services and advice provided.

1917. PSS acts as the standards setting body for the ports sector and works with employers, and other key stakeholders, to develop National Occupational Standards and Qualifications frameworks that will meet the needs of employers and learners into the future.

Almost all sectors within industry have developed National Occupational Standards (NOS). NOS identify key job roles within a particular sector, break each role into its component activities and define the performance, behaviour and knowledge that an employee needs to undertake the activity. The ports sector currently has five completed sets of NOS. Two are concerned with port operations and three with harbour management. The NOS reflect best practice within industry and, as such, provide a useful benchmark against which individual employee performance can be measured. They can therefore be adapted for use as management tools covering a range of employer functions including recruitment, employee development and managing performance.

PSS is also developing a framework of qualifications that will recognise the professionalism and aid the development of those already working within the ports sector. The framework will also provide a career pathway and entry qualifications for those considering working in the ports sector. Within this framework are planned National and Scottish Vocational Qualifications (N/SVQs), Apprenticeships (Foundation Modern Apprenticeships (FMA) in Wales), Advanced Apprenticeships (Modern Apprenticeships in Wales and Scotland) and a Foundation Degree. National and Scottish Vocational Qualifications are qualifications designed to recognise the skills and knowledge of those already working within the ports sector, through assessment of work performance. Although they are not strictly development programmes, many assessment centres have the capability to help individuals plan and, possibly, meet, their development needs so that they can complete the qualification²⁴⁸⁹.

The need for a tailored vocational route led to a collaboration between PTS, the examination board EAL²⁴⁹⁰ and Port Skills and Safety aimed at developing level II and level III National

²⁴⁸⁹ For further background, see House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 14.

²⁴⁹⁰ EAL is an employer-recognised awarding organisation for the engineering, manufacturing, building services and related sectors, see <http://www.eal.org.uk/>.

Vocational Qualifications (NVQs) in port operations²⁴⁹¹. Funded by Skills Funding Agency²⁴⁹² and the European Social Fund (ESF), PTS delivers these NVQs to employees in the North East of England²⁴⁹³, but the EAL qualifications are open to all regions and have been delivered around the UK. In June 2012, level II qualification has been revised and updated.

1918. In 2000, the ports industry (British Ports Association, the United Kingdom Major Ports Group and Port Skills and Safety) developed a Code of Practice on the engagement of non-permanent employees on cargo handling operations in the port industry²⁴⁹⁴. The purpose of this voluntary Code is to set a minimum industry standard by which non-permanent employees are not put to work on cargo handling operations until the cargo handling company is satisfied that they have undergone appropriate safety induction training. The Code was revised in 2005.

1919. A study for 2009/10 pointed out that 13 of the 45 temporary work agencies active in UK ports that were interviewed (29 per cent) offer some form of training ranging from basic health and safety to a full port induction which is usually delivered in conjunction with either the port authority or the business they are supplying on the port.

28 out of the 45 agencies interviewed (62%) stated that they do not provide any training for the workers they supply to the ports; this is for a number of reasons:

- *Ports typically provided induction which would cover most or all of the elements of interest i.e. 'health and safety', 'skill-related training' and 'port-related training'.*
- *Agencies rarely carry out training themselves, though they could arrange training if requested by the client. Agencies tended to see themselves as merely a resource to find the staff with existing capabilities to be able to successfully and safely perform their job roles; they considered it to be the client's responsibility to provide any job/location specific training beyond that.*
- *There are generally little to no educational requirements to work on a port. All that workers typically require is relevant experience, which tended to be considered as over a year doing a job similar to the one they had applied for i.e. cargo handling, general labour etc. Checks are also carried out where necessary to ensure workers have up to date licenses [sic] for those using machinery, especially drivers²⁴⁹⁵.*

²⁴⁹¹ See http://www.portskillsandsafety.co.uk/sites/default/files/documents/NVQ_Pathways.pdf.

²⁴⁹² See <http://skillsfundingagency.bis.gov.uk/>

²⁴⁹³ See <http://www.esf-works.com/projects/short-reviews/projects/401453>.

²⁴⁹⁴ http://www.portskillsandsafety.co.uk/sites/default/files/documents/Inf0022006_-_PSSL_NPE_Booklet.pdf.

²⁴⁹⁵ Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 46-47.

9.22.5. Health and safety

- Regulatory set-up

1920. Health and safety of UK port workers is covered by general health and safety legislation, in particular the Health and Safety at Work etc Act 1974.

The legislation applies to all dock operations, on shore and on board ship, when shore based workers are involved. It does not apply to dock operations carried out solely by the ship's crew under the direction of the master, which is covered by merchant shipping legislation enforced by the Maritime and Coastguard Agency (MCA)²⁴⁹⁶.

The Management of Health and Safety at Work Regulations 1999 set out a number of requirements for employers to ensure they are adequately managing health and safety. These include:

- a risk assessment of their activities. This should identify the measures they need to have in place to comply with their duties under health and safety law and reduce risks so far as is reasonably practicable;
- making sure there is effective planning, organisation, control, monitoring and review of the measures they put in place;
- appointing a competent person to provide health and safety assistance. A competent person is someone with the necessary skills, knowledge and experience to manage health and safety;
- providing employees with information they can understand – including people whose first language is not English; and
- co-operation and co-ordination with other employers sharing a workplace.

The Health and Safety Executive (HSE) is responsible for enforcing the Health and Safety at Work, etc Act 1974, and its supporting regulations, in ports in Great Britain.

By law, employers must consult with all their employees on health and safety matters.

1921. The main regulation, specific to ports, is the Docks Regulations 1988 which are based on ILO Convention No. 152. These Regulations impose health, safety and welfare requirements with respect to dock operations. The Regulations contain provisions on, *inter alia*, lighting,

²⁴⁹⁶ House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 223.

access, transport by water, rescue, life-saving and fire-fighting equipment, hatches, ramps and car-decks and drivers of vehicles and operators of lifting plant²⁴⁹⁷. It also sets out the general requirement that dock operations be planned and executed in such a manner as to ensure so far as is reasonably practicable that no person will be exposed to danger (Section 5).

Other relevant regulatory instruments include:

- the Dangerous Substances in Harbour Areas Regulations 1987;
- the Loading and Unloading of Fishing Vessels Regulations 1988.

HSE, the Maritime and Coastguard Agency and the Marine Investigation Accident Branch have signed a Memorandum of Understanding for health and safety enforcement activities *etc.* at the water margin and offshore.

1922. On its website, HSE offers a wealth of guidance instruments and other information on health and safety in ports, including which topics are the main causes of injury and ill health in ports, where to get useful guidance on how to manage these risks, the role of HSE in the port industry and how to manage health and safety in ports to ensure compliance with legal requirements²⁴⁹⁸.

A guidance instrument of major importance is the Approved Code of Practice *Safety in Docks*²⁴⁹⁹ which covers safety in dock operations and is aimed at those who have a duty to comply with provisions of the Docks Regulations 1988. This includes people who control dock premises, suppliers of plant and equipment, dock employers, managers, safety officers and safety representatives. The Code has been prepared in joint discussion between the Confederation of British Industry, the Trades Union Congress, other Government Departments and the Health and Safety Executive (HSE). The Code integrates Regulations (in particular The Docks Regulations 1988), Approved Code of Practice (ACOP) and Guidance. Although failure to observe any provision of the Code is not in itself an offence, that failure may be taken by a Court in criminal proceedings as proof that a person has contravened the Regulation or Section of the HSW Act to which the provision relates. In such a case, however, it will be open to that person to satisfy the Court that he has complied with the Regulation or Section of the Act in some other way.

In 2011, HSE published *A quick guide to health and safety in ports* which provides among other things an overview of the main legal requirements²⁵⁰⁰.

²⁴⁹⁷ See also Douglas, R., Lane, P. and Peto, M., *Douglas & Geen on the Law of Harbours, Coasts and Pilotage*, London, LLP, 1997, 161-162.

²⁴⁹⁸ See <http://www.hse.gov.uk/ports/index.htm>.

²⁴⁹⁹ <http://www.hse.gov.uk/pubns/priced/cop25.pdf>.

²⁵⁰⁰ <http://www.hse.gov.uk/pubns/indg446.pdf>.

1923. In 2000 the Port Marine Safety Code was introduced. This Code applies to all harbour authorities in the UK that have powers to direct shipping and to regulate navigation.

It applies the well-established principles of risk assessment and safety management systems to port marine operations. It does not contain any specific provisions on cargo handling however²⁵⁰¹.

1924. Industry policy for health, safety and skills is driven through the partnership work of the Ports Industry National Committee for Health, Safety, Skills and Standards. The partner organisations represented on the Committee are:

- the training centre AMICUS;
- Department for Transport (Ports Division);
- Health and Safety Executive;
- Maritime and Coastguard Agency;
- the National Union of Marine, Aviation and Shipping Transport Officers (NUMAST);
- Port Skills and Safety;
- Transport and General Workers Union.

1925. Individual port companies have developed internal health and safety schemes. For example, the Corporate Health and Safety Policy Statement of Peel Ports Group²⁵⁰² mentions the following Group Commitments:

Peel Ports will ensure that:

- *The Chief Executive Officer has specific responsibility for health and safety; he will delegate authority for the implementation of Group policies to his Managing Directors, Senior Managers, Health and Safety Managers and Supervisory Managers.*
- *Risk-assessed safe systems of work are in place for all potentially hazardous activities, and are properly supervised at all times.*
- *Competent people are appointed to assist in meeting relevant statutory duties including, where appropriate, specialists from outside the organisation.*
- *Arrangements are in place to ensure that employee representatives are consulted and have the opportunity to raise concerns on matters relating to health, safety and welfare.*

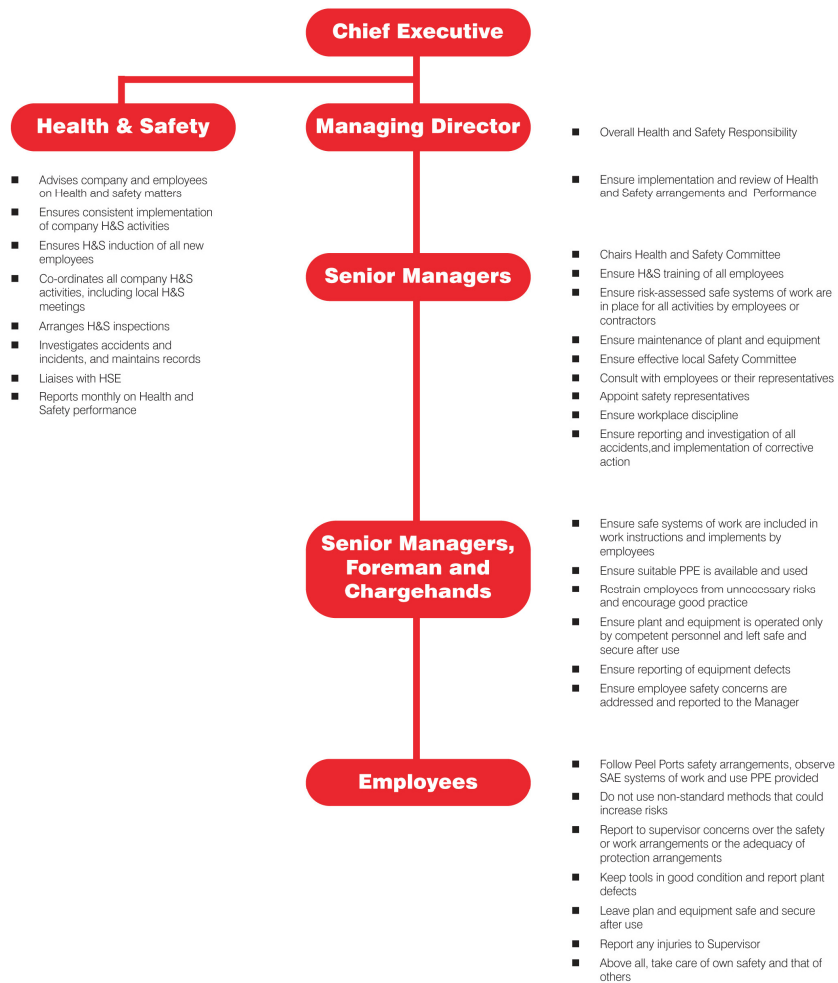
²⁵⁰¹ The Code is primarily intended for the 'duty holder' – for most harbour authorities this means members of the harbour board, both individually and collectively – who is directly accountable for marine safety in harbour waters. The Code establishes the principle of a national standard for every aspect of port marine safety and aims to enhance safety for those who use or work in ports, their ships, passengers and the environment. The Code refers to some of the existing legal duties and powers that affect harbour authorities in relation to marine safety, but does not create any new legal duties for harbour authorities (Department for Transport, *Port Marine Safety Code*, London, Department for Transport, 2009).

²⁵⁰² <http://www.merseydocks.co.uk/assets/pdf/healthandsafety.pdf>.

- Adequate facilities are maintained for employee health, safety and welfare.
- Each employee is given such information, instruction and training as is necessary to enable the safe performance of work activities.
- All employees are made aware of the arrangements for their health, safety and welfare.
- These arrangements are regularly monitored and reviewed to ensure that they are effective.

The diagram below sets out the principal responsibilities for health and safety within Peel Ports.

Figure 116. Principal responsibilities for health and safety within Peel Ports (source: Corporate Health and Safety Policy Statement of Peel Ports Group²⁵⁰³)



²⁵⁰³ <http://www.merseydocks.co.uk/assets/pdf/healthandsafety.pdf>.

1926. Breaches of law relating to employee health and safety are prosecuted by the Health and Safety Executive, a UK government agency. The police may also be involved in the process.

- *Facts and figures*

1927. Under its Safer Ports Initiative, which was launched in 2002, PSS claims that the industry succeeded in substantially reducing the incidence rate of reportable fatal, major and over-three-day industry accidents, whereby it achieved and even exceeded its initial targets²⁵⁰⁴. Taking the last full year of available data (2011), the overall incidence rate shows a fall of 54 per cent when compared with 2000.

In 2008, the Health and Safety Executive (HSE) published *Accidents in the docks industry. An analysis of statistics from 2005/06 to 2007/2008*²⁵⁰⁵. In this report, HSE explains that the docks industry has always been considered one of the most dangerous in the UK, and statistics showing the number of fatalities go back to 1896 when there were 71 deaths. In the 1950s and 1960s the number of fatalities in the industry was consistently very high at between 40 and 60 every year when the industry was regulated by the old Factories Acts. The reporting of injuries changed substantially in 1985 following the implementation of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 1995. There have been some changes to RIDDOR and SIC codes since then which can make year on year comparisons difficult. In 1996/97 there were a total of 781 reported injuries (including 6 fatalities) assigned to ports. According to HSE, the numbers of reportable injuries in recent years were still showing at between 800 and 900 every year. The figures suggested that priority areas of attention for the industry should be 'handling' and 'slips and trips'.

The trade union Unite the Union concluded from these statistics that the safety record of the industry had considerably worsened²⁵⁰⁶.

1928. In 2010, the Department for Transport published the following figures on port accidents:

²⁵⁰⁴ See House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 13.

²⁵⁰⁵ <http://www.hse.gov.uk/ports/accidents.pdf>.

²⁵⁰⁶ See *infra*, paras 1943 and 1964.

Table 115. Accident rate estimates in UK ports, 2009/10 (source: Department of Transport, 2010²⁵⁰⁷)

	Estimated number of accidents ²⁵⁰⁸	Number of employees (fte)	Annual rate as a percentage	Annual rate per 100,000 employees
Directly port related, on port	421	37,000	1.1	1,100
Other on port	72	12,200	0.6	600
Employees of directly related businesses based off port, but spending time on port ²⁵⁰⁹	57	7,000	0.8	800

The survey suggested that among direct on port businesses, the accident rate among all employees who were not 100 per cent office based was around 50 per cent higher than the overall average. The work further suggested that the accident rate for direct on port employees while “not in the office” was around twice the overall average.

1929. Recently, HSE published statistical data on occupational accidents in the ports industry over a five-year period from 2006/07 to 2010/11p²⁵¹⁰. The data represent accidents and dangerous occurrences reported to HSE under RIDDOR.

It would appear, however, that these data, which cover various types of water transport plus cargo handling regardless of transport mode (e.g. ports, airports, road haulage) are insufficiently accurate to support firm policy-oriented conclusions on the safety level in port labour²⁵¹¹. In addition, HSE mentions a number of general interpretational caveats²⁵¹². For these reasons, the data below should be used with caution:

²⁵⁰⁷ Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>.

²⁵⁰⁸ Defined as the number of injuries to persons reportable to the Health and Safety Executive under RIDDOR reporting rules. Collected through the survey and grossed up for non-response and so subject to sampling variation.

²⁵⁰⁹ Accidents and employee ftes for this group both relate to that part of their time spent on port, to give a comparable estimate of their on-port accident rate.

²⁵¹⁰ *Statistics report for the Port industry 2010/11p (provisional)*, <http://www.hse.gov.uk/ports/port-industry-statistics-report%202010-11.pdf>.

²⁵¹¹ The HSE explains its classification system as follows:
In 2009 HSE transferred to a new industrial classification system (SIC 2007 from SIC 2003). The following tables provide 2010/11p figures and a back series of data under SIC 2007. Please note that the back series (before 2010/11p) has been mapped back and the figures provided for 2005/06 – 2009/10 are considered to be an estimate.

Table 116. Number of reported major accidents in water transport in the UK, 2010-2011 (provisional) (source: Health and Safety Executive²⁵¹³)

Severity	2010/11p
Fatal - employee	0
Major - employee	69
Over-3-day - employee	225
Fatal to MOPs	1
Non-fatal to MOPs	12

Under SIC 2007 we only have 2 years employment data at 4 digit level, and therefore we are unable to provide 3 year average rates. The 4 digit rates will be available from next year. The analysis is divided by Standard Industrial Classifications as defined in 2007 (SIC), and focuses on six main industry categories (to SIC 4 digit level) either independently or as combined totals.

- 5010 Sea and coastal passenger water transport
- 5020 Sea and coastal freight water transport
- 5030 Inland passenger water transport
- 5040 Inland freight water transport
- 5222 Service activities incidental to water transport
- 5224 cargo handling

For the purposes of this report, data provided for Water Transport will include SIC 2007 codes 5010, 5020, 5030, 5040 & 5222 as identified above.

Cargo handling (SIC 5224) refers to all transport and is not therefore able to be incorporated into any particular transport type (e.g. ports, airports, road haulage). Therefore although we have referenced the RIDDOR data for SIC 5224 in relation to ports, it is not possible to confidently ascertain which type of transport is more significantly affected by this data than any others. It is important to bear this in mind when interpreting the figures.

²⁵¹² These caveats are:

RIDDOR

Starting in 2010/2011 HSE data will be collected and, later, published using SIC 2007 rather than SIC 1992 and SIC 2003. Earlier data collected using SIC 1992/2003 may be used in publications after recoding it into SIC 2007 to show trends. There may be errors introduced as a result of such recoding and we will clearly annotate any series which we believe to have been affected by a discontinuity

General caveats on RIDDOR data

RIDDOR data needs to be interpreted with care because it is known that non-fatal injuries are substantially under-reported. Currently, it is estimated that just over half of all such injuries to employees are actually reported, with the self-employed reporting a much smaller proportion. (Further information on the caveats that should be applied to analysis of RIDDOR data)

1. Counts of non-fatal injuries reported under RIDDOR will almost always underestimate by a considerable amount the total that would have been recorded if there had been 100% reporting.

2. Any comparisons between different subsets within RIDDOR data (e.g. comparisons between one industrial sector and another) need to take account of the possibility of there being markedly different reporting levels in the subsets being compared.

Small Numbers

This output includes counts that are relatively small numbers. (Further information that explains the need for caution when making comparisons that involve small numbers)

A further factor that needs consideration when numbers are small is that the coding of data is by its nature an error-prone process. Miscoding is more likely to occur as the coding becomes more detailed. Thus, for example, when the industrial sector (SIC) or nature of employment (SOC) is coded to a four digit level coding errors may have an important bearing.

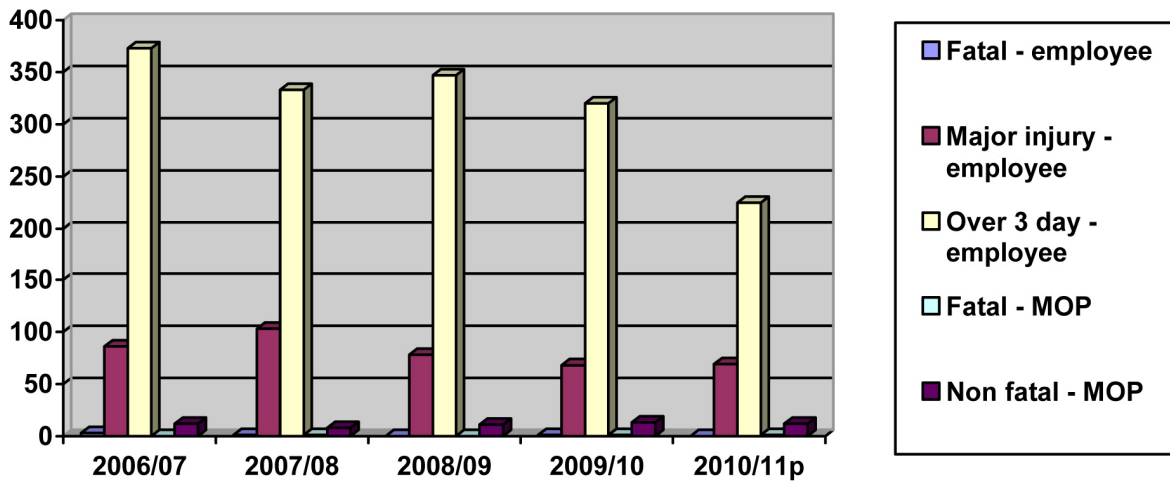
(the underlinings in the original were omitted).

²⁵¹³ p means Provisional. MOPs means Members of the public.

Table 117. Number of reported major accidents in cargo handling in the UK, 2010-2011 (provisional) (source: Health and Safety Executive²⁵¹⁴)

Severity	2010/11p
Fatal - employee	0
Major - employee	49
Over-3-day - employee	341
Fatal to MOPs	0
Non-fatal to MOPs	2

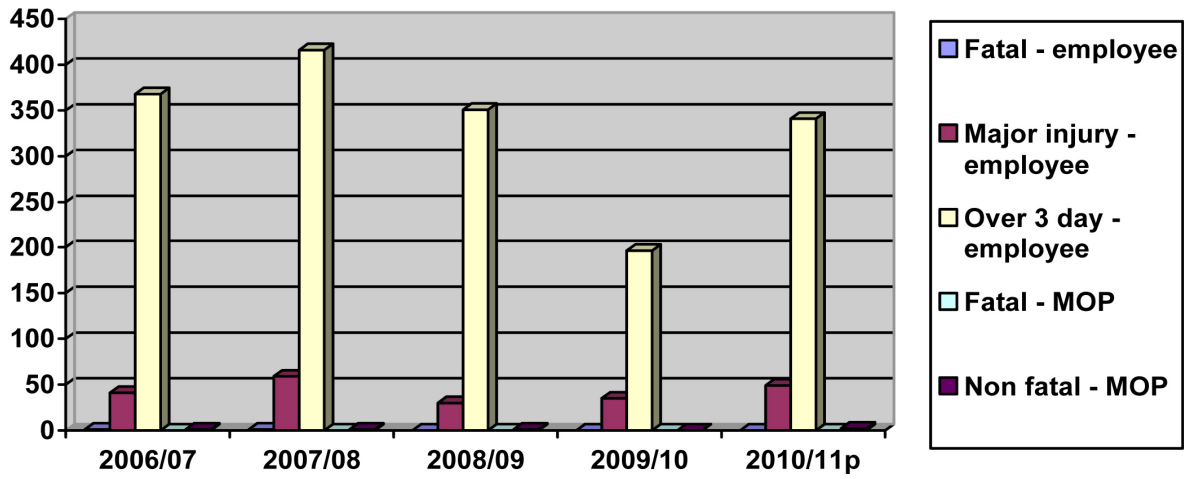
Figure 117. Accident trends 2006/07 to 2010/11p for water transport in the UK (not including cargo handling) (source: Health and Safety Executive²⁵¹⁵)



²⁵¹⁴ p means Provisional. MOPs means Members of the public.

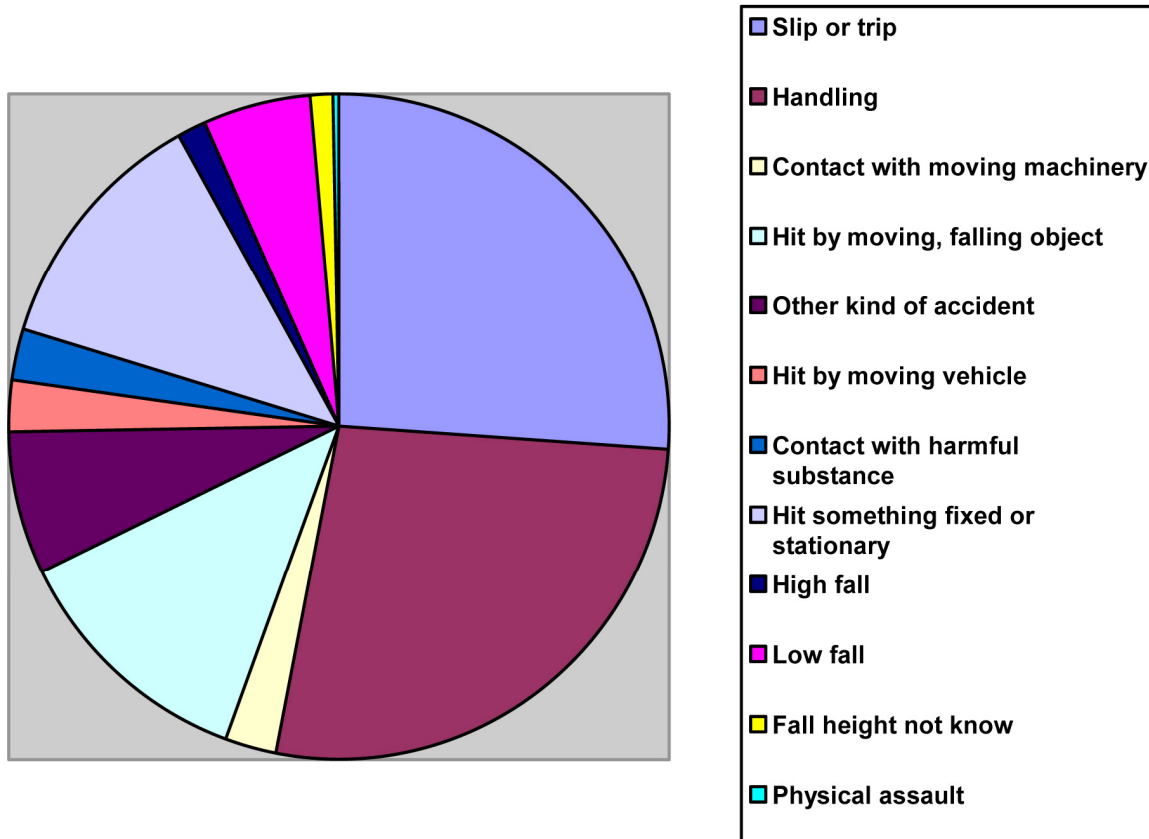
²⁵¹⁵ p means Provisional. MOPs means Members of the public.

Figure 118. Accident trends 2006/07 to 2010/11p for cargo handling in the UK (source: Health and Safety Executive²⁵¹⁶)



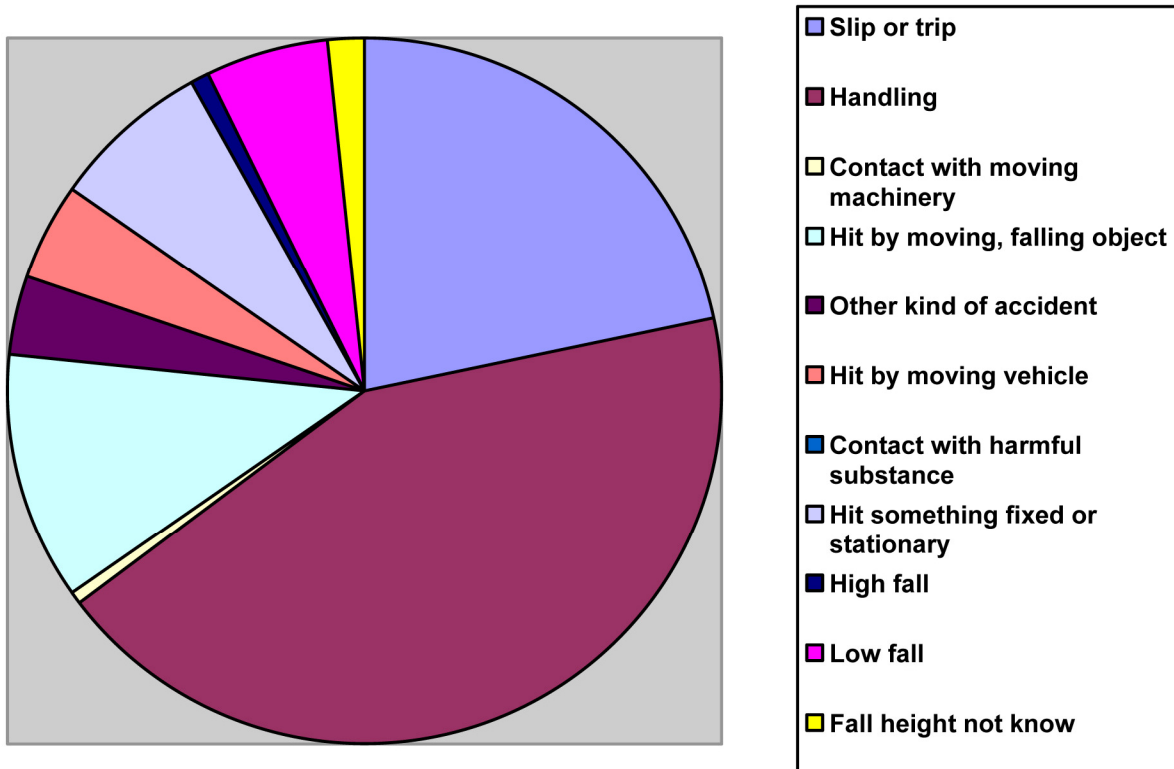
²⁵¹⁶ p means Provisional. MOPs means Members of the public.

Figure 119. Details of all injuries (major & over 3 day) to employees in water transport in the UK for 2010/11p by accident kind code (source: Health and Safety Executive²⁵¹⁷)



²⁵¹⁷ p means Provisional.

Figure 120. Details of all injuries (major & over 3 day) to employees in cargo handling in the UK for 2010/11p by accident kind code (source: Health and Safety Executive²⁵¹⁸)



²⁵¹⁸ p means Provisional.

Table 118. Dangerous occurrences for water transport in the UK (not cargo handling) (source: Health and Safety Executive²⁵¹⁹)

Dangerous occurrence by type	2008/09	2009/10	2010/11
Failure, collapse or overturning of lifting machinery <i>etc.</i>	22	22	13
Failure of any closed vessel including boiler	0	0	1
Failure of freight container in any of its load bearing parts	1	0	1
Plant or equipment comes into contact with overhead power lines	1	0	0
Electrical short circuit which results in stoppage of plant for over 24 hours	1	1	1
The malfunction of radiation generators	1	0	0
Failure of any lifting or life-support equipment during a diving operation	1	1	1
Complete or partial collapse of a scaffold over 5m	0	1	0
An explosion or fire occurring in plant or premises which results in stoppage of plant for more than 24 hours	0	3	0
Accidental release or escape of any substance sufficient to cause death or major injury or damage health	1	4	3
Any fire or explosion at an offshore installation	1	0	0
TOTAL	29	32	20

Table 119. Dangerous occurrences for water transport in the UK (not cargo handling) (source: Health and Safety Executive²⁵²⁰)

Dangerous occurrence by type	2008/09	2009/10	2010/11
Failure, collapse or overturning of lifting machinery <i>etc.</i>	9	3	7
Failure of freight container in any of its load bearing parts	1	0	0
Electrical short circuit which results in stoppage of plant for over 24 hours	1	1	0
Failure of any lifting or life-support equipment during a diving operation	0	1	0
The sudden, uncontrolled release of flammable substances	1	0	0
Accidental release or escape of any substance sufficient to cause death or major injury or damage health	0	1	1
TOTAL	12	6	8

²⁵¹⁹ p means Provisional.

²⁵²⁰ p means Provisional.

Finally, HSE also maintains statistics on enforcement activity in the water transport and cargo handling sectors²⁵²¹.

1930. On 31 July 2012, the Health and Safety Executive posted a media release on its website in which it informed the public that a berth operator at an Essex Port has been fined £20,000 for safety failings after an employee had both legs amputated after they were crushed by a cargo container²⁵²².

9.22.6. Policy and legal issues

- Labour market issues

1931. Since the abolition of the National Dock Labour Scheme and the privatisation of a number of large ports in the UK in the 1980s and 1990s, the UK Government has continued support for a market-led approach to the industry with minimal interference from the centre.

Today, no one seems to advocate the reinstatement of the NDLS or any other form of re-regulation of the port labour market. In other words, (de)regulation of the market for port labour is hardly an issue in the UK. Recently, however, a trade union proposed the introduction of a new type of port passports²⁵²³.

1932. Our questionnaire did not reveal any major problems resulting from restrictions on employment or restrictive working practices.

1933. Port Skills and Safety reported that UK employment law is properly enforced. While the organisation identified no restrictions on employment or restrictive working practices, it admitted that job insecurity and temporary unemployment exist in the UK as in all EU countries and beyond. Whilst distressing, these two issues can arguably not be considered sub-standard or otherwise unacceptable labour conditions, as the UK has robust systems and legislation

²⁵²¹ See, again, the *Statistics report for the Port industry 2010/11p (provisional)*, <http://www.hse.gov.uk/ports/port-industry-statistics-report%202010-11.pdf>.

²⁵²² Health and Safety Authority, "Port berth operator fined after worker's legs amputated", Release No. HSE-E-93, 31 July 2012, <http://www.hse.gov.uk/press/2012/rnn-e-93.htm>.

²⁵²³ On the latter, see *infra*, para 1943.

addressing the remaining items (from social security to lack of training) though there is clearly a need to continuously seek to improve skills and safety.

1934. In an interview, an experienced shipping company manager at Liverpool confirmed that all manning scales were abolished and that the employer can freely choose his men. Most UK ports operate on a 24/7 basis, except the smaller ones. In container terminals, usually a three-shift system is applied. Self-handling is not an issue²⁵²⁴. In most UK ports, lashing is performed by the ship's crew, but there are exceptions²⁵²⁵.

1935. Yet, employers are still trying to increase flexibility, for example through the introduction of 'follow-the-ship contracts' which stipulate that dockers work when ships are ready to be unloaded, rather than to a set shift pattern. This innovation, which would reduce overtime, gave rise to an industrial conflict in the port of Tilbury in 2012, which was reported to be the first dockworker strike in the London-area since 1989²⁵²⁶, and a similar scheme was proposed at Teesport. Some workers complain about flexibility affecting family life; some signals even suggest the local survival of closed shop and nepotism situations²⁵²⁷.

²⁵²⁴ U.S. law (22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals) mentions no restrictions on longshore work by crewmembers aboard U.S. vessels in UK ports.

²⁵²⁵ An ESPO report for 2004-2005 mentions:

"Self handling" is largely confined to the ro-ro sector, but it can include the lashing of vehicles, although the practice varies from port to port.

Some ports do not permit "self-handling" of cargo, on the grounds that this would amount to "cherry picking" and would not be in the overall interest of the port. The need for expensive equipment and high investment generally militates against "self handling" of cargo, especially for containers. The situation is different for ferry services where "self handling" tends to predominate.

(European Sea Ports Organisation, *Factual Report on the European Port Sector*, Brussels, 2004-2005, 168-169).

²⁵²⁶ See, for example, <http://www.itfglobal.org/news-online/index.cfm/newsdetail/7426>; http://www.idcdockworkers.org/index.php?option=com_content&task=view&id=186&Itemid=9&lang=english and <http://felixstowedocker.blogspot.be/>. In 2006, a manager from Maersk complained about shifts systems in UK ports before the Transport Committee of the House of Commons:

If I may offer one specific example, it is that in most Continental ports there are four six-hour shifts during the day, whereas in the UK typically it is worked as two 12-hour shifts. That lowers the flexibility for the shipping lines to arrive. I am talking mainly of container shipping lines here. That is one example of where port industry could make a change to the way things are done today and, we believe, achieve high productivity.

[...]

It makes a difference in that, traditionally, or in practice, you will get better productivity if you arrive your vessel at the same time as there is a change of shift, which provides the UK with only two possible arrival slots during the 24-hour period, whereas you will have four on the Continent. Traditionally, for a number of reasons, you will lose a bit of time around the end of those shifts, a number of hours where perhaps it is not felt beneficial to start a vessel which arrives at five o'clock, before the shift starts at seven o'clock.

(House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 31).

²⁵²⁷ See Hetherington, G., "Dock workers consider strike action over contract changes", *The Northern Echo* 16 June 2012, http://www.thenorthernecho.co.uk/news/9765687.Dock_workers_consider_strike_action_over_contract_changes/?ref=rss, and the comments by readers. On the evolution of the closed shop in the

1936. Responding to the questionnaire, ship owner DFDS mentioned job insecurity and temporary unemployment of workers in the port of Dover as an unfortunate result of the fierce competition which exists in the Channel and the very high fuel prices which forced several operators to close business. As regards Immingham, the same company mentions issues in relation to limited working days and hours and unauthorised absences, but these are not seen as a major competitive problem.

1937. In an interview, an international ro-ro carrier commented that in Tilbury, where an informal pool system applies, there is a structural shortage of skilled workers which causes delays and congestion. The port is said to offer poor quality of service. Priority is given to safety of workers above safe stowage of cargoes to be unloaded at the port of destination. Health and safety reasons are invoked to justify considerably larger gangs than in, say, Antwerp or Hamburg. Lashing and securing by the ship's crew is not allowed. The port of Southampton is organised as a commercial company, with considerable flexibility. In this port, workforce shortages do not occur and the crew is allowed to perform lashing work.

1938. A ferry company confirmed to us that operations are much more flexible in Ramsgate than in Ostend in Belgium, where labour is very strictly regulated.

- *Health and safety issues*

1939. Since the publication of the Government's ports policy paper *Modern Ports: A UK policy* in 2000, the lack of statistical data and the occupational health and safety level in the ports has repeatedly attracted the attention of national policymakers.

To begin with, *Modern Ports* highlighted the unacceptable accident rate in docks – the causes of which are very diverse²⁵²⁸ – and the need to develop qualifications for port workers and to

United Kingdom, see Carby-Hall, J., "Essor et déclin du "closed shop" en Grande-Bretagne", *Revue internationale de droit comparée*, 1991, Vol. 43, No. 4, 775-827, http://www.persee.fr/web/revues/home/prescript/article/ridc_0035-3337_1991_num_43_4_4398.

²⁵²⁸ According to the report, contributory factors in fatal accidents included:

- inadequate induction training and supervision;
- inadequate risk assessments and weak monitoring arrangements;
- failure to apply safe systems and lack of management control;
- complacency by experienced workers and fatigue;
- commercial pressures;

promote training, especially of temporary agency workers²⁵²⁹. The Government also announced that it was working towards ratification of ILO Convention No. 152²⁵³⁰ – a project that has since been abandoned.

In its 2003 report on ports policy, the Transport Committee of the House of Commons noted that the dependence of the UK major ports on temporary or casual workers, particularly at peak times, is unquestionable, and that the Committee needs to know the extent to which dock work is carried out by skilled employees, and the extent to which casualisation has led to a reduction in the skills base²⁵³¹. On statistics and safety, the Committee adopted the following conclusions and recommendations:

Statistics

4. The Standard Industrial Classification (SIC) systems must be modified as a matter of urgency, in order to facilitate the collection of precise data on the port industry. [...]

5. The existing statistical information on ports falls seriously short of what is required by a modern industry. Although the Department for Transport acknowledges this, there appears to be no sense of urgency in addressing this need for accurate statistics. It is a disgrace that there is so little statistical information on an industry so vital to the United Kingdom's economic and commercial prosperity. We are astonished that so little progress has been made in developing the statistical base necessary to inform policy. The Department for Transport must produce regular statistics on port activity in collaboration with industry. This should cover in detail employment, health and safety, infrastructure and general economic data. Statistics on the accidents, injuries and illness to dockworkers are particularly important and must be made available on a national basis. [...]

Making Ports Safe

6. We expect the Government to set identifiable national targets on health and safety in ports, together with a timetable for their implementation. [...]

7. The current review of Dock Regulations 1988 has taken an inordinate time. The revised codes must give clear and practical guidance including an explicit definition of the term 'adequate training'. [...]

²⁵²⁹ - a need for more inspections (Modern ports: A UK policy, <http://webarchive.nationalarchives.gov.uk/20110503182441/http://www.dft.gov.uk/pgr/shippingports/ports/modern/modernportsaukpolicy>, para 4.1.18).

²⁵³⁰ See Modern ports: A UK policy, <http://webarchive.nationalarchives.gov.uk/20110503182441/http://www.dft.gov.uk/pgr/shippingports/ports/modern/modernportsaukpolicy>, item 4.

²⁵³¹ Modern ports: A UK policy, <http://webarchive.nationalarchives.gov.uk/20110503182441/http://www.dft.gov.uk/pgr/shippingports/ports/modern/modernportsaukpolicy>, para 4.1.27.

²⁵³¹ House of Commons, Transport Committee, *Ports*, Ninth Report of Session, 2002-2003, I, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmtran/783/783.pdf>, 12, para 34.

8. *There is an acute shortage of dedicated port inspectors to fulfil the obligations of the Health and Safety Executive (HSE). We expect the HSE to set a timetable for the recruitment of a sufficient number of inspectors together with the provision of an effective training programme. [...]*

9. *We expect the HSE to take immediate action against employers who fail to fulfil their training obligations. [...]*

10. *The HSE, the Department for Transport and Port Skills and Safety Limited (PSSL) must monitor levels of safety and training for port employees to ensure adequacy. Particular regard should be given to safe working practices in this most hazardous of United Kingdom industries. The Port Passport is a voluntary scheme to demonstrate the attainment of basic dockworker skills. We recommend that this scheme be energetically pursued and used as the basis for a standard and rigorous training programme. A high level of professional training in all port related activities is essential to maintain safety in the “most dangerous land-based industry in the United Kingdom.” [...]*

11. *ILO Convention 152 is concerned with the health and safety of dockworkers. We were disturbed by the changing and ambivalent attitude to this important convention and strongly recommend that it be ratified by the Government as soon as possible. [...]*

12. *During the evolution of the draft Directive on Market Access to Port Services it has been made clear that “professional qualifications and environmental matters might be among the criteria to authorise self-handling.” We strongly support this. We believe that these issues must be among the criteria to authorise self handling. [...]*²⁵³²

In 2006, the Government launched a ports policy review. The discussion document contained *inter alia* the following information on safety in port work:

the accident rate for direct businesses on port is estimated to be 1.2 accidents per 100 employees on average, annually (a range of 1.0 – 1.5 per cent). The accident rate is lower than estimated by Ports Skills and Safety for their members (2.8% in 2004), since PSSL are thought to have a narrower coverage of port employment activities and concentrate on companies more directly involved with port operations (cargo handlers for example), where employees are more at risk.

[...]

When the Transport Select Committee reported on ports issues in 2003, it described the sector as ‘the most dangerous land-based industry in the UK’. This was informed by the unacceptably high accident rate for docks employment. This data was in part based on an incomplete understanding of the extent of dock employment, which the Committee

²⁵³² House of Commons, Transport Committee, *Ports*, Ninth Report of Session, 2002-2003, I, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmtran/783/783.pdf>, 52-53, para 187.

itself highlighted. In the report mentioned in the discussion document at 4.14, DfT has now published new data estimating that the accident rate is in fact under half that reported hitherto.

[...] Even aside from that technical adjustment, good progress is being made by the industry in tackling the safety problem, helped now by a more focused approach from the Health & Safety Executive. The HSE, who have enforcement responsibility for the safety of dock workers, passengers and other visitors, and materials passing through ports up to the quayside or jetty, are now implementing a 'revitalising Health and Safety Strategy'. As this affects the HSE's ports role, this entails agreeing priorities with the industry and trade unions, and increased effort on targeting those ports with poor safety records.

[...] But the prime responsibility for delivering high safety standards rests with the industry itself. Port Skills and Safety Ltd (PSSL) is the ports industry's organisation tasked with promoting health, safety, skills and standards. Formed in 2002, PSSL represents the interests of port employers, but it works closely with trade unions and Government bodies such as DfT, the HSE and the Maritime and Coastguard Agency (which is an executive agency of the Department for Transport), who have the remit for marine-side safety. All these partners have a shared commitment to attain and maintain high standards of health and safety and a highly skilled and productive workforce in the ports sector. This is particularly important for the much smaller dock workforce we now have; the current 54,000 figure is only a fifth of the level of 40 years ago. But port operations are now much more intensive, and higher skill levels are needed to work with the range of technologies, including containers, ro-ro ferries, car transporters, and bulk handling equipment.

[...] The main progress on docks safety has been through PSSL's Safer Ports Initiative. Working from a baseline of reported 2001 accident data, it has exceeded its Phase 1 targets of reducing the incidence of 'fatal and major injury accidents' by 10% by the end of 2005, with an actual outturn of just under 22% by 2004; there has been comparable success on the parallel target on other significant accidents. All the stakeholders are now focusing on how best to maintain this record in Phase 2, launched in May 2006²⁵³³.

In response to the Government's proposals, the Transport Committee of the House of Commons received memoranda from stakeholders and also heard witnesses.

In its memorandum, Port Skills and Safety provided detailed figures on the improved accident rate in ports²⁵³⁴.

²⁵³³ Department for Transport, *Ports Policy – your views invited. DfT's discussion document for the Ports Policy Review*, May 2006, <http://webarchive.nationalarchives.gov.uk/tna/20091008191952/http://www.dft.gov.uk/consultations/archive/2006/ppr/portspolicyreview.pdf>, 73-75.

²⁵³⁴ House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 12-15.

The Transport and General Workers Union, however, disputed these figures and insisted on the need for the UK to adhere to ILO instruments on dock labour²⁵³⁵.

HSE explained that it is difficult to produce accident statistics for the dock industry that are totally accurate, because Standard Industrial Classifications (SIC) do not identify dock work as a separate category²⁵³⁶.

At the oral hearing, industry representatives insisted that the safety track record in the ports is one showing improvement, whilst unions stated, on the contrary, that accidents had gone up²⁵³⁷.

The Committee noted, *inter alia*:

The ports industry appears to be one of the most dangerous in which to be employed. We remain concerned about the veracity of the statistics on employment and accident rates; we are also not convinced that the safety regime monitored by Port Skills and Safety Ltd (PSSL) is effective²⁵³⁸.

On statistics, the Committee stated:

94. We remain doubtful that the Government has a grip on the production of employment and accident statistics. We received a significant amount of evidence

²⁵³⁵ House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf.92-93>:

We could be accused of being churlish, but we would like to take this opportunity to remind the Transport Committee that when the Nation Dock Labour Scheme was abolished there were many statements from the employers' organisation that casualisation would not be reintroduced into the ports. We believed then, and still do now, that the real reason for the abolition of the scheme was just to do that, despite the high profile statements by leaders of the employers' association. This is why we are calling on the Government to ratify the International Labour Organisation (ILO) Convention 137, Recommendation 145 and ILO Convention 152 as we believe that this would result in increased job security and raise the safety standards of this industry. We hope that in the Committee's recommendations it will also ask the Government to ratify these conventions.
[...]

We are concerned that the Government intends to continue, for the foreseeable future, broadly its present policies in regard to safety within the ports. We disagree fundamentally with the statement: "We believe there are no fundamental issues at stake around the general approach to safety and security in ports." With specific regards to accidents in the industry, we are of the opinion that the figure is higher than reported. Also the health and safety of people employed within the port industry is still a matter of concern to us, as well as the reporting of accidents and how this data is collected. This is because certain categories of workers are not included in the figures for the docks industry, for example agency workers, hauliers and members of the public.

²⁵³⁶ House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 224.

²⁵³⁷ See House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, II, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61ii.pdf>, 82.

²⁵³⁸ House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, I, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61i.pdf>, 36, para 90.

questioning the statistical base of the Government's 2005 figures in Port Employment and Accident Rates. The Health and Safety Executive (HSE) acknowledged that Standard Industrial Classification (SIC) still do not identify dock work as a separate category. This was raised with the Government by our predecessor Committee in 2003 when the Government agreed that modification of SIC was needed and that the "revision is well underway". We do wonder why, then, the problem still exists.

95. The TGWU is concerned that the employment figures for port workers are being underestimated. Ports employ approx 90,000 individuals, but approx 36,000 of these are agency workers and day labourers and are constantly changing. Given the importance of the industry, the Committee agrees with the TGWU that it is difficult to understand why the Department is basing its assumptions on such employment data²⁵³⁹.

This time, the Transport Committee arrived at the following conclusions and recommendations on safety:

96. Port Skills and Safety Ltd appears to be a professional organisation that is working hard to improve safety in the ports industry. Similarly, the Port Marine Safety Code (PMSC) appears to be working well. But we are concerned that both PSSL and the PMSC are voluntary. We recommend that the Government establish a statutory safety inspectorate for the ports, and make the PMSC compulsory as soon as is practicable. Both of these measures will reassure port workers that they are valued by the Government and by their employers and that their safety is paramount.

97. It is impossible to evaluate any improvements in safety for port workers without reliable figures, and our evidence suggests that the employment and accident figures used by the Government are inaccurate. Our predecessor Committee was assured in 2004 that 'things were getting better' but our evidence suggests that confusion still reigns. Confidence needs to be restored; to this end port workers should have a separate Standard Industrial Classification (SIC) and an independent audit of ports safety should be carried out. Quite simply, port workers deserve better²⁵⁴⁰.

The Department for Transport responded that it is not persuaded of the need for a separate ports safety inspectorate, nor for making the Port Marine Safety Code (PMSC) compulsory. It believed the voluntary approach to be the right way, given the need to ensure the onus to manage harbours safely rests with the harbour authorities. Also, it stated that the Standard Industrial Classification 2007 published earlier that year now includes separate classifications for port workers, and will be adopted by HSE in its accident recording in due course²⁵⁴¹.

²⁵³⁹ House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, I, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61i.pdf>, 37, paras 94-95.

²⁵⁴⁰ House of Commons, Transport Committee, *The Ports Industry in England and Wales*, Second Report of Session 2006-07, I, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61i.pdf>, 37, para 96-97.

²⁵⁴¹ House of Commons, Transport Committee, *The Ports Industry in England and Wales: Government Response to the Committee's Second Report of Session 2006-07*,

1940. A survey for 2009/10 indicated that temporary work agencies active in UK ports usually begin their accident procedures once they have been informed by either the client or the employee of the situation. These procedures then generally work in conjunction with those of the port. Respondents often explained that the accident would be logged in the accident report book by both parties and both would often carry out full investigations of the incident, sometimes in collaboration. However, the results appear to indicate that there is a lack of clarity among ports and port based businesses about whether they should report accidents relating to agency workers to HSE directly or just to the agency for them to report. It is difficult to draw specific conclusions from the results as:

- In practice, the person responsible for reporting will vary. Where there are agency workers HSE would expect agreement between the parties on who is responsible for RIDDOR reporting. The legal definition of 'employer' under health and safety legislation is the person who has most control over the work and activities – this is often the company for which the agency employee has been working rather than the agency, but this is not always the case.
- Some ports using agency workers will be using specialist labour supply companies where the working arrangements are likely to be different to those using generalist agencies.
- It is possible that the person responsible for reporting accidents to HSE and the respondent to the surveys would be different.

However, taking into account the uncertainty on the part of some individuals responding to the survey, there was no clear evidence that accidents occurring to agency workers would go unreported or that they would be reported twice (once by the agency and once by the port business) ²⁵⁴².

1941. Also, all agencies interviewed had timesheet systems in place to capture the amount of time that workers spent working for their clients. Those supplying drivers to port based or port related businesses tended to have formal procedures in place for explicitly monitoring and dealing with excessive working hours.

For other roles, respondents felt that excessive working hours would be picked up (either because they would notice from looking at the timesheet information or because the timesheet system would specifically alert them to the high number of hours worked); however, as they had not typically encountered a situation where one of their workers had been deemed to be working excessive hours, they could only speculate about what action they would take where

<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/954/954.pdf>, 10-11, paras 22-23.
²⁵⁴² Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 47-49.

they identified such issues. Responses suggested that agencies were aware of the potential risks that workers on their books might work excessive hours; however, some respondents commented that it was difficult to apply a cap on working hours due to the fluctuations in demand for labour²⁵⁴³.

1942. Responding to our questionnaire, the port employers' organisation Port Skills and Safety stated that, broadly, applicable rules on health and safety are satisfactory and properly enforced but that there is a need to update legislation. It also confirmed that identifying accident rates associated with ports is made complex by a wide range of factors which includes: identifying who should or should not count as a port worker, where the accident happened and whether accidents are multiple-reported²⁵⁴⁴.

1943. In 2010, when the Transport Committee of the House of Commons discussed a proposed National Policy Statement on Ports, Unite the Union demanded that anybody working in the area of a port should have a minimum level of safety training before they can enter the port, an identification badge with their picture on it, and their core competences given on the badge. The union also believes poor safety and low wages may lead to difficulty in finding workers for ports since they can work in other industries which pay similar amounts but have a better safety record²⁵⁴⁵.

²⁵⁴³ Databuild, *Transport Statistics Bulletin. Port Employment and Accident Rates 2009/10*, London, Department for Transport, 2010, <http://assets.dft.gov.uk/statistics/series/ports/report.pdf>, 47.

²⁵⁴⁴ See also <http://www.hazards.org/deadlybusiness/docks.htm>.

²⁵⁴⁵ House of Commons, Transport Committee, *The proposal for a National Policy Statement on Ports*, <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmtran/217/217.pdf>, unpagged, Memorandum from Unite the Union. The union based its proposals on the following arguments:

3. PORTS PASSPORTS

3.1 In the docks industry, five causes of accidents account for 90% of all accidents experienced in 2007–08.40 So the nature of the accidents is clear for all to see. So it is disappointing that accident statistics in the last three years for Docks and Cargo Handling have got worse.

<i>DOCKS RIDDOR STATISTICS</i>			
Accident type	2005-06	2006-07	2007-08p
<i>Fatal</i>	0	4	3
<i>Major</i>	155	142	174
<i>Over 3 day</i>	709	742	751
<i>Total</i>	864	888	928

<i>CARGO HANDLING (SIC 6311 ONLY)</i>			
Accident type	2005-06	2006-07	2007-08p
<i>Fatal</i>	0	1	1
<i>Major</i>	51	43	62
<i>Over 3 day</i>	338	369	414
<i>Total</i>	389	413	477

1944. In 2011, a union representative working at a DPW terminal in Southampton said:

Several serious physical conditions were identified as a result of unsafe equipment in the terminal. These included whole body vibration and neck and back complaints. We carried out a survey to get employees to tell us how these affected them. The survey highlighted issues and any work-related accidents they had had. We then contacted the Health and Safety Executive, which monitors workplace safety in Britain. They said the equipment was unsafe so the employers had to make adjustments to fix it. Anyone who has been injured as a result will be taking a claim to court through the union²⁵⁴⁶.

3.2 Therefore, for health, safety, welfare, and security reasons, Unite is calling for the introduction of a mandatory ports passports scheme. This scheme would be similar to the successful Construction Skills Certification Scheme operating in the construction industry.

3.3 The scheme would require anybody working in the area of a port to receive a minimum level of safety training before they can enter the port, and would have an identification badge with their picture on it, and their core competences given on the badge. Without such a scheme Unite believes that it will not be possible for health, safety and security reasons to make the ports safe.

4. TRAINING AND SAFETY

4.1 Industry has moved to using casual workers, recruited through agencies. But casual workers are largely unskilled and untrained in dock work. Paragraph 4.1.24 of "Modern ports: A UK policy" suggested "The Government is introducing new regulations to ensure that people supplied by employment agencies are trained and competent for the jobs they do" but we are not clear that anything happened on this.

4.2 Casual workers also present a serious problem in terms of safety. The industry has a very poor record for safety. The National Dock Labour Scheme provided a trained workforce which was aware of the dangers of the industry and hence resulted in a much better safety record. Privately owned and smaller ports are a bigger problem than municipal and trust ports.

4.3 There is a need for an industry wide recognised and regulated mandatory qualification programme to improve safety and training. Currently any training is offered voluntarily by employers, and trained staff may then be "poached" by rival employers—thus there is no incentive to train, particularly when agency staff, are easily available and cheap.

4.4 Currently none of the agencies or bodies (HSE, Ports Safety organisation) or regulations (ILO, Ports Passport scheme) has any teeth as they are voluntary and have therefore not been able to create extensive improvements in safety.

4.5 Responsibility for safety and training rests with port authorities, and as a result only tend to be acted upon when there are potential financial implications of a lack of training or poor safety (eg the damage to expensive equipment, insurance claims or injury claims).

4.6 Ultimately poor safety and low wages may lead to difficulty in finding workers for ports since they can work in other industries which pay similar amounts but have a better safety record.

²⁵⁴⁶ X., "Global Network Terminals Campaign Update", *GNT Bulletin* No. 3, May 2011, <http://www.itfglobal.org/dockers/gnt-bulletin.cfm>, 2.

1945. New statistics published by HSE in 2012 suggest a decrease in the number of water transport accidents between 2006 and 2011, and a similar trend, yet less outspoken, in cargo handling activities. The statistical material remains difficult to interpret however²⁵⁴⁷.

1946. Finally, we should point out that the UK remains bound by the outdated ILO Convention No. 32.

9.22.7. Appraisals and outlook

1947. The now repealed National Dock Labour Scheme unmistakably had a great symbolic significance²⁵⁴⁸ but also far-reaching practical implications.

Most observers acknowledge that the effects of abolition of the National Dock Labour Scheme in 1989 were markedly positive for the UK port industry as a whole²⁵⁴⁹.

In addition, the repeal paved the way for the privatisation of large parts of the UK ports industry²⁵⁵⁰, a subject which is however beyond the scope of the present study.

1948. The impact of the repeal of the NDLS on employment in the UK ports industry was substantial. A far greater number of severances took place than the Government had forecast. Whereas just prior to the abolition, there were more than 9,200 dockworkers²⁵⁵¹, by October 1990 this number had reportedly dropped to less than 4,000 dockworkers and in many ports there were no ex-registered dockworkers at all²⁵⁵².

²⁵⁴⁷ See *supra*, para 1929.

²⁵⁴⁸ See Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 24.

²⁵⁴⁹ Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 22.

²⁵⁵⁰ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 109.

²⁵⁵¹ See also House of Commons Transport Committee, *Transport – Ninth Report*, 2003, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmtran/783/78302.htm>; compare the figures *supra*, para 1910.

²⁵⁵² <http://www.labournet.net/docks2/9706/NDLS.HTM>. For details on employment in Liverpool, see Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 20.

1949. Productivity improved greatly and many of the UK's traditional ports such as London, Liverpool, Hull and Southampton, which had languished during the days of the NDLS, experienced a dramatic rejuvenation²⁵⁵³.

1950. In 1990, Nicholas Finney, the former director of Britain's National Association of Port Employers, inventoried the results of the abolition of the NDLS as follows:

- the national labour agreements as well as all port agreements (seventy in total) were removed;
- all industry conciliation and arbitration procedures were removed;
- all national and local employers associations were disbanded;
- new industrial contracts based entirely on the relationship with each employer's own workforce were introduced;
- all artificial demarcation lines were abandoned;
- new retaining programmes without government money were introduced;
- new work patterns and flexible shift patterns were developed;
- labour pooling was eliminated;
- part time working and contracting out was introduced;
- in five ports dockworkers established major stevedoring companies with their own redundancy money²⁵⁵⁴;
- productivity improvements were achieved;
- docks and container berths which had been closed for sixteen years were opened;
- ship turn-around times were improved;
- new and innovative inward investment to the ports in the form of warehousing, cold storage, packaging, food preparation, and processing plants were established²⁵⁵⁵.

1951. Impact studies from the early nineties suggested that the abolition of the NDLS already had considerably improved productivity and led to lower costs in the former Scheme ports. These improvements were attributed to reduced manning scales, elimination of restrictive practices and more flexible working arrangements, particularly more flexible shift systems²⁵⁵⁶.

1952. In 1991, the international authority on port labour Peter Turnbull of Cardiff Business School wrote that there was still very little concrete evidence of a transformation in the

²⁵⁵³ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 3.

²⁵⁵⁴ See also Turnbull, P., and Wass, V., "The great dock and dole swindle: Accounting for the costs and benefits of port transport deregulation and the dock labour compensation scheme", *Public Administration* 1995, (513), 530.

²⁵⁵⁵ <http://www.labournet.net/docks2/9706/NDLS.HTM>.

²⁵⁵⁶ See Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 101 *et seq.*

performance of Britain's ports, despite the abolition of the demarcation between dock work and other work and of manning levels, increased flexibility and the regulation of working practices at company level. He noted that in some ports the workers had to form cooperatives, that the introduction of temporary work amounted to a return to casual labour and that there had been serious wage cuts²⁵⁵⁷.

1953. According to a paper published by academics Wass and Turnbull in 1995, the benefits of lower prices for port users and consumers and improved international competitiveness failed to materialise, largely because the Government did not appreciate the non-competitive structure of the industry or the effects of the NDLS on the economic performance of the ports, while the costs were substantially underestimated. Consequently, the costs of deregulation have exceeded the benefits. The key problem was not the NDLS *per se* but the failure of successive governments to link employment regulation with any coherent port transport policy. Furthermore, deregulation has ushered in a new era of casual employment in the docks. Changes to working practices in the industry since 1989 have been directed predominantly towards multi-task (horizontal job loading or job enlargement) rather than multi-skilled working (vertical job extension or job enrichment). Last but not least, these authors assert that accident rates had risen sharply since 1989²⁵⁵⁸.

1954. In 1999, Turnbull and Barton asserted that accident rates in UK ports had more than doubled since 1989 and that many dockers now worked double shifts or extended hours which contravened EU directives on working time²⁵⁵⁹.

1955. In 1999, *i.e.* ten years after the abolition of the National Dock Labour Scheme, Mc Namara and Tarver noted that the subject had remained controversial²⁵⁶⁰. On the one hand, they reported:

*Since the end of the scheme, there has been a dramatic increase in the use of casual labour, a decline in the amount of training stevedores receive, an increase in the number of accidents and a decrease in the welfare provisions for dock workers*²⁵⁶¹.

²⁵⁵⁷ Turnbull, P., "The docks after deregulation", *Maritime Policy and Management* 1991, Vol. 18, No. 1, 15-27.

²⁵⁵⁸ Turnbull, P., and Wass, V., "The great dock and dole swindle: Accounting for the costs and benefits of port transport deregulation and the dock labour compensation scheme", *Public Administration* 1995, (513), 513-534, especially 513, 518-520, 526 and 530.

²⁵⁵⁹ Barton, H. and Turnbull, P., *Labour Regulation and Economic Performance in the European Port Transport Industry. Full Report of Research Activities and Results*, Cardiff, Cardiff Business School, May 1999, www.esrc.ac.uk, 29.

²⁵⁶⁰ McNamara, T.M.J and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 13.

The same authors however acknowledge that the abolition of the NDLS has resulted in a revitalised port industry²⁵⁶² and conclude:

The through-put figures of Britain's ports have outstripped European Community predictions. Port operators have been able to invest in new technology and mechanical handling equipment for increasingly unitised cargo. Dockers have become flexible multi-skilled port workers, able to handle different types of cargo, machinery and work. The combination of privatisation, increased capital investment, a reversal of the negotiating-power status quo between union/employee and employer, and a plentiful supply of labour has ensured the industry's success ten years after the NDLS was scrapped. Circumstances may once again force changes on the industry. A restriction of skilled labour supply, caused by demographic trends and changing needs of the industry, may prevent companies from competing on cost terms alone. Furthermore, there may be further legislation on safety of port workers and protection of the environment from port operations. A return to an NDLS will be seen as undesirable by the industry. To avoid it, companies will need to find long-term strategies to cope with change including increased investment and training²⁵⁶³.

1956. In 2000, Peter Stoney of the University of Liverpool mentioned the following main national benefits of abolition:

- the ex-scheme ports compete on equal terms with non-scheme ports;
- productivity throughout the port industry has improved, resulting in reduced trade handling costs;
- strike action throughout the port industry has been reduced dramatically, after a four-week national strike in protest at abolition;
- greater choice for port users has brought associated economic benefits, although reduced charges appear to have been associated more with containerised cargoes where overmanning was more prevalent before abolition²⁵⁶⁴.

According to the same researcher, the main losers from abolition have been the smaller non-scheme ports, whilst the main beneficiaries have been larger ex-scheme ports like Liverpool. Other significant losers have been trade unions, whose influence has waned considerably²⁵⁶⁵.

²⁵⁶¹ McNamara, T.M.J and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 15.

²⁵⁶² McNamara, T.M.J and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 14.

²⁵⁶³ McNamara, T.M.J and Tarver, S., "The strengths and weaknesses of dock labour reform – ten years on", "The strengths and weaknesses of dock labour reform - ten years on", *Economic Affairs* 1999, Vol. 19, No. 2, (12), 17.

²⁵⁶⁴ Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 19.

²⁵⁶⁵ Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 19.

Stoney concludes that abolition gave port employers the opportunity to remove excess labour, to reorganise working arrangements and to revise industrial relations practices. Most ports seized these opportunities, but studies have tended to conclude that there has been little switching in trade from continental to British ports as a result of port labour-market reforms, and that increases in trade through British ports as a whole attributable to abolition have been minimal²⁵⁶⁶.

1957. Also, in 2000, Joe Rayner, former Head of Personnel at Tees and Hartlepool Port Authority, mentioned the following short-term effects of abolition:

- the removal immediately of the more outrageous restrictive practices, such as ghosting, wetting and bobbing;
- the removal from the industry of large numbers of employees, many of whom had neither the necessary skills, in particular the ability to drive mobile plant, nor the potential or willingness to acquire them;
- conversely a substantial number of ex-registered dockworkers with both the skills and experience needed by the industry also left – providing a pool for worker co-operatives and contracting companies which have sprung up in the past ten years;
- for the first time in many years employers no longer had a surplus of labour at their disposal;
- new patterns of work and more flexible shift systems were introduced almost immediately²⁵⁶⁷.

Still according to Rayner,

The consequences of these immediate changes across the industry are to be found in improvements in productivity of between 25% and 400%; the development of newly formed stevedoring companies of various types; improvements in ship turnaround times; innovative inward investment to the ports; the re-opening of berths, jetties and docks which had been unable to thrive under the scheme and the ability of the ex-scheme ports now to compete on equal terms with their non-scheme competitors – particularly Felixstowe, Dover and Portsmouth.

[...]

It is a sobering thought that if repeal had come ten years earlier, both coastal trading, which went into terminal decline under the scheme, and the ability to compete for trade with continental ports might well have been retained²⁵⁶⁸.

²⁵⁶⁶ Stoney, P., "The abolition of the National Dock Labour Scheme and the revival of the Port of Liverpool", *Economic Affairs* 1999, Vol. 19, No. 2, (18), 19.

²⁵⁶⁷ Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 6-7.

²⁵⁶⁸ Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 7.

The same commentator states that docker pay remained well into the upper quartile for semi-skilled work²⁵⁶⁹. On the other hand,

'True casualisation', a term which refers to the use of untrained, inexperienced and low-paid labour on a very short-term basis certainly exists. The cost of capital equipment and customer expectations have however ensured that there is no place within the vast majority of ports and cargo-handling facilities for such an employment relationship²⁵⁷⁰.

[...]

Events within the industry in the past decade may well be open to criticism from some perspectives. They should not, however, be seen as a move backwards to the casualisation of the nineteenth century, but rather a move forward to the twenty-first century and its obsessions with flexibility, quality systems, diversity, rapid change and to some extent uncertainty²⁵⁷¹.

The author concluded on a positive note:

Repeal of the NDLS would appear to have played a significant part in the rejuvenation of the ailing port industry in Britain. Under the scheme, those employed appeared to have forgotten that ultimately for the employee to flourish, the employer must also flourish. The reinstatement of this fundamental notion may well have some way to go, but there is every reason to anticipate that the future of all those engaged in an employment relationship in the docks industry is hopeful²⁵⁷².

1958. During the 2002 debate within ILO on the present-day relevance of ILO Convention No. 137, the Government member of the United Kingdom – quite surprisingly – supported the main objectives of the Convention and the accompanying Recommendation. While the Convention had not been ratified by his country, many of the principles contained therein were implemented in practice, and a national code of practice on safety in docks was being reviewed in consultation with the International Labour Office²⁵⁷³.

1959. In a paper on port privatisation in the UK of 2007, Baird and Valentine comment that the abolition of the NDLS removed restrictive and archaic employment regulations and helped to

²⁵⁶⁹ Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 8.

²⁵⁷⁰ Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 9.

²⁵⁷¹ Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 10.

²⁵⁷² Rayner, J., "Raising the portcullis: repeal of the National Dock Labour Scheme and the employment relationship in the docks industry", *Economic Affairs* 1999, Vol. 19, No. 2, (5), 10.

²⁵⁷³ 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/reilm/ilc/ilc90/pdf/pr-28p1.pdf>, 28, para 141.

create an environment for the introduction of a range of new and flexible employment practices, which was urgently required due to fundamental technological changes affecting the industry²⁵⁷⁴.

1960. In his 2010 account of the 1989 reform, Dempster writes that concern that repeal of the NDLS would lead to a massive increase in the use of casual or temporary labour has not been borne out. As a matter of fact, the increasing sophistication of cargo handling equipment makes the use of casual labour quite inappropriate²⁵⁷⁵.

1961. The (in)accuracy of statistics on occupational safety in UK ports has been a matter of debate since 2000. Astonishingly, the lack of adequate accident statistics for port labour had already been criticized in an official Report of Inquiry published back in 1962²⁵⁷⁶, *i.e.* exactly 50 years ago, at a time when dock work along the National Dock Labour Scheme was still in full swing. The most recent statistics published by HSE in 2012 still do not appear to provide a firm basis to assess the safety level in UK ports.

1962. The Department for Work and Pensions' March 2011 strategy document *Good Health and Safety, Good for Everyone*, which presents the next steps in the Government's plans for reform of the health and safety system in Britain, classifies docks as one of the "[l]ower risk areas where proactive inspection will no longer take place"²⁵⁷⁷.

1963. At the time of writing, the Docks Regulations 1988 were being considered for revocation and may be removed from UK law in 2013. If they do go, then the associated Approved Code of Practice will also probably be removed.

²⁵⁷⁴ Baird, A.J. and Valentine, V.F., "Port privatisation in the United Kingdom", in Brooks, M.R. and Cullinane, K. (Eds.), *Devolution, Port Governance and Port Performance*, Amsterdam, Elsevier, 2007, <http://202.114.89.60/resource/pdf/2071.pdf>, (55), 63.

²⁵⁷⁵ Dempster, J., *The Rise and Fall of the Dock Labour Scheme*, London, Biteback Publishing, 2010, 113. The author refers to the 2005 report on behalf of the Department for Transport (see *supra*, para 1910).

²⁵⁷⁶ As a result, the Committee of Inquiry was unable to judge whether the safety record of the docks is or is not reasonably satisfactory. It recommended that the Ministry of Labour should consider whether measures can be taken to enable accidents to dock workers to be identified separately in accident figures for the docks (*Report of the Committee of Inquiry into the Major Ports of Great Britain*, London, HMSO, 1962, 151, paras 427-428).

²⁵⁷⁷ See <http://www.dwp.gov.uk/docs/good-health-and-safety.pdf>.

1964. The current approach of the UK Government towards safety in port labour was severely criticised in the January / March 2012 issue of *Hazards magazine*²⁵⁷⁸. The authors launch a scathing attack on HSE's inability to maintain precise accident statistics:

HSE says obtaining statistics on injury rates in ports is problematic because of difficulties "coding" jobs, but believes the rate is "above the national all-industry average."

And how. To be in line with the 2010/11 national fatality rate of 0.6 deaths per 100,000 workers, docks should experience no more than one death a year. In recent months, the industry has had a fatality rate of around one a month. Depending on which employment figure you use, the last year's death total means docks are running at a fatality rate of at least five times and possibly over 20 times the UK average.

HSE's difficulties with its figures, though, mean it is statistically oblivious to the carnage. The deaths are there – it's just HSE doesn't know they are there.

[...]

The watchdog subsequently admitted its figures exclude deaths in cargo handling, one of the most deadly jobs in the ports, because the coding problems mean it can't separate out the dock-related cargo handling fatalities from those in air and road transport. Still, Hazards had little difficulty identifying five dock work deaths, all in jobs enforced by HSE, in the 13 weeks from 23 October 2011 alone.

Unbeknown to HSE, at least three other deaths on the docks do appear in its 2011/2012 fatalities list, which as of 27 February 2012 only included deaths up to the end of 2011. But one is classified as a "service" sector death and the other two are classified as deaths in "manufacturing".

[...]

Unite believes it can identify at least eight deaths in the last year. And there are others, but they don't appear in HSE's statistics because some fall under the remit of the Maritime and Coastguard Agency.

Shuffling the deaths into a series of different industry columns – water transport, cargo handling, service sector, manufacturing – and then amplifying the effect by splitting the casualties across different enforcing agencies so they don't all appear in a single annual body count, means a shockingly deadly industry can appear relatively benign.

HSE's inability to recognise deaths on the docks is not just a statistical oddity. If HSE cannot even identify dock-related fatalities in its own published figures, this casts serious doubt on the rationale underpinning its current hands-off approach to dock safety.

[...]

The law becomes irrelevant if there is no-one to police it. Provisional HSE statistics for 2010/11 record 69 major injuries to employees in "water transport," excluding cargo handling. But figures obtained by Hazards reveal only 7 – just one in 10 – were investigated by HSE. Five years ago, in 2006/07, HSE investigated 18 per cent of fatal and major injuries in the sector. By 2010/11, the official figures obtained by Hazards reveal, this had fallen to just 9 per cent.

²⁵⁷⁸ <http://www.hazards.org/deadlybusiness/docks.htm>. Hazards magazine presents itself as an independent, union-friendly publication (see <http://www.hazards.org/about hazards/index.htm>).

Still according to *Hazards*, Andy Green, the convenor of Unite at Tilbury Docks said:

We intend to expose the dock industry as a lethal environment which requires strict regulation and an HSE inspection and enforcement regime if we are to stem the loss of life in our docks and waterways. [...] Docks are a high risk industry, that's not a slanderous remark or a criticism, it's a fact. The workers within the industry need high health and safety standards, standards with teeth. The industry needs the HSE to undertake a high level of inspection and when needed enforcement. [...] Categorising the dock industry as low risk is bordering on criminal negligence; docks are death traps and should be treated with the respect they deserve. It's time the industry and the government faced the facts.

Finally, the publication reports that Unite raised concerns about excessive agency worker hours and that the Docks Regulations 1988, which unions believe place essential, thorough and specific requirements on a very different type of industry, are in the next tranche of laws to be scrapped under the government's plan to halve the number of health and safety regulations.

A shipping manager in Liverpool with 30 years of experience in the port commented on these "inflammatory" union statements that today, while still very dangerous, the port industry is much safer than twenty years ago and that the safety record improves year on year.

1965. In the opinion of Port Skills and Safety, the current labour regime in UK Ports is satisfactory and also offers sufficient legal certainty. The relationship between port employers and port workers and their respective organisations is considered good. The port labour regime has a positive impact on the competitive position of UK ports. Still according to Port Skills and Safety, UK ports organisations need a skilled, flexible workforce to deliver world class performance. An open and flexible labour market, with employment based on capability and merit, is said to be a priority for continuously improving safety and maintaining growth. Port Skills and Safety is of the opinion that the UK model does on the whole deliver on this need, though there is still work to be done to enhance UK existing workforce skills, to succession plan and train future generations and to continuously improve safety performance, while having regard to affordability.

Still according to Port Skills and Safety, the vast majority of UK port businesses are firmly and clearly of the view that they would not wish to return to a national scheme and that the present open market approach provides the best opportunities for a safe and economically successful sector.

Port Skills and Safety concludes that the current UK port labour model is the best model.

1966. In the same vein, ship owner DFDS considers the port labour regime in the ports of Dover and Immingham satisfactory and has no complaints in relation to legal certainty. The relationship with port workers' unions is good, and the UK port labour regime is seen as the best possible model. Especially in Dover, the ship owner applauds the freedom of choice of the service supplier (in-house or third party), the flexibility of the labour force and the much less stringent labour laws.

1967. With regard to EU action in the field of port labour, Port Skills and Safety believes that any EU action should focus on facilitation of open markets and removal of restrictive practices. Employment should be on the basis of capability and merit. The focus should be on common reasonable employment and safety laws applicable to all workers rather than on particular groups of workers.

1968. Ship owner DFDS sees a need to align rules and regulations on port labour at EU level, ensuring freedom for terminal operators or owners to choose to handle the jobs in-house or outsource to third party companies of their choice.

9.22.8. Synopsis

<p>1969.</p> <p align="center">SYNOPSIS OF PORT LABOUR IN THE UNITED KINGDOM²⁵⁷⁹</p>		
LABOUR MARKET		
Facts	The Law	Issues
<ul style="list-style-type: none"> • 120 commercial ports • Mix of management models • 519m tonnes • 6th in the EU for containers • 16th in the world for containers • Appr. 150-195 employers (?) • Appr. 18,000 port workers • Trade union density: between 50 and 95% 	<ul style="list-style-type: none"> • No <i>lex specialis</i> (Dock Labour Scheme abolished in 1989) • No Party to ILO C137 • Company CBAs • All permanent and temporary workers employed under general labour law • No restrictions on temporary agency work • Restrictive working practices eliminated 	<ul style="list-style-type: none"> • Job insecurity (locally) • Shortage of workers (locally)
QUALIFICATIONS AND TRAINING		
Facts	The Law	Issues
<ul style="list-style-type: none"> • Company-based training • Several training centres 	<ul style="list-style-type: none"> • Self-regulation by sector association Port Skills and Safety • National Occupational Standards and National Vocational Qualifications available 	<ul style="list-style-type: none"> • Only minority of temporary work agencies offers training
HEALTH AND SAFETY		
Facts	The Law	Issues
<ul style="list-style-type: none"> • No specific statistics available 	<ul style="list-style-type: none"> • Docks Regulations 1988, based on ILO C152 • Code of Practice Safety in Docks • Regulations on handling of dangerous goods • Regulations on Loading and Unloading of Fishing Vessels • No Party to ILO C32 or C152 	<ul style="list-style-type: none"> • Inaccuracy of accident statistics • Dispute over figures between employers and unions • Union concerns over high accident rates despite improvement of safety level • Proposed repeal of Docks Regulations

²⁵⁷⁹ 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.

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ANNEX B: INVENTORY OF CONVENTIONS, LAWS, REGULATIONS, COLLECTIVE AGREEMENTS AND CASE LAW

1. REGULATORY INSTRUMENTS

1.1. International regulatory instruments

1.1.1. ILO Instruments

- ILO Conventions

Weekly Rest (Industry) Convention, 1921 (ILO Convention No. 14)

Labour Inspection Convention, 1947 (ILO Convention No. 81)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (ILO Convention No. 87)

Right to Organise and Collective Bargaining Convention, 1949 (ILO Convention No. 98)

Discrimination (Employment and Occupation) Convention, 1958 (ILO Convention No. 111)

Workers' Representatives Convention, 1971 (ILO Convention No. 135)

Dock Work Convention, 1973 (ILO Convention No. 137)

Paid Educational Leave Convention, 1974 (ILO Convention No. 140)

Labour Relations (Public Service) Convention, 1978 (ILO Convention No. 151)

Occupational Safety and Health (Dock Work) Convention, 1979 (ILO Convention No. 152)

Human Resources Development Convention, 1975 (ILO Convention No. 142)

Collective Bargaining Convention, 1981 (ILO Convention No. 154)

Night Work Convention, 1990 (ILO Convention No. 171)

Protocol of 1995 to the Labour Inspection Convention, 1947

Private Employment Agencies Convention, 1997 (ILO Convention No. 181)

- ILO Recommendations

Labour Inspection Recommendation, 1947 (ILO Recommendation No. 81)

Discrimination (Employment and Occupation) Recommendation, 1958 (ILO Recommendation No. 111)

Dock Work Recommendation, 1973 (ILO Recommendation No. 145)

Occupational Safety and Health (Dock Work) Recommendation, 1979 (ILO Recommendation No. 160)

Night Work Recommendation, 1990 (ILO Recommendation No. 178)

Human Resources Development Recommendation, 2004 (ILO Recommendation No. 195)

- Other ILO instruments

ILO Code of practice 'Accident prevention on board ship at sea and in port' (1996)

ILO-IMO Code of practice on security in ports (2003)

ILO Code of practice 'Safety and health in ports' (2005)

ILO Port Safety and Health Audit manual (2005)

ILO Guidelines on training in the port sector (2011)

1.1.2. IMO instruments

International Maritime Dangerous Goods Code (IMDG Code) (1965)

International Convention for Safe Containers (CSC) (1972)

(Revised) Code of Safe Practice for Cargo Stowage and Securing (CSS Code) (1991)

Code of Practice for the Safe Loading and Unloading of Bulk Carriers (BLU Code) (1997)

(Revised) Recommendations on the Safe Transport of Dangerous Cargoes and Related Activities in Port Areas (2006)

1.1.2. Other international regulatory instruments

Universal Declaration of Human Rights, adopted on 10 December 1948

International Covenant on Civil and Political Rights, adopted on 16 December 1966

International Covenant on Economic Social and Cultural Rights, adopted on 16 December 1966

UN Convention on the Elimination of All Forms of Discrimination Against Women, adopted on 18 December 1979.

1.2. European regulatory instruments

Regulation No 17 implementing Articles 85 and 86 of the Treaty, *OJ* 21 February 1962, 13/204

Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, *OJ* 4 April 1964, L 56/850

Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community, *OJ* 19 October 1968, L 257/2

Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, *OJ* 19 October 1968, L 257/13

Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, *OJ* 28 June 1973, L 172/14

Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries, *OJ* 31 December 1986, L 378/1

Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport, *OJ* 31 December 1986, L 378/4

Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector, *OJ* 31 December 1987, L 374/1

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Directive 1999/95/EC of the European Parliament and of the Council of 13 December 1999 concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports, *OJ* 20 January 2000, L 14/29

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *OJ* 19 July 2000, L 180/22

Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues, *OJ* 28 December 2000, L 332/81

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, *OJ* 2 December 2000, L 303/16

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (the 'Transfers of Undertakings Directive'), *OJ* 22 March 2001 L 82/16

Commission Decision 2001/834/EC, 18 July 2001 on the State aid implemented by Italy in favour of the port sector *OJ* 29 November 2001, L 312/5

Directive 2001/96/EC of the European Parliament and of the Council of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers, *OJ* 16 January 2002, L 13/9

Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, *OJ* 4 January 2003, L 1/1

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (the 'Working Time Directive'), *OJ* 18 November 2003, L 299/9

Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, *OJ* 30 September 2005, L 255/22

Directive 2006/123/EC on services in the internal market, *OJ* 27 December 2006, L 376/36

Council Directive 2008/104/EC of 19 November 2008 on temporary agency work (the 'Temporary Agency Work Directive'), *OJ* 5 December 2008, L 327/9

Commission Recommendation No. 2009/824/EC of 29 October 2009 on the use of the International Standard Classification of Occupations (ISCO-08), *OJ* 10 November 2009, L 292/31

Commission Regulation (EC) No 1022/2009 of 29 October 2009 amending Regulations (EC) No 1738/2005, (EC) No 698/2006 and (EC) No 377/2008 as regards the International Standard Classification of Occupations (ISCO), *OJ* 30 October 2009, L 283/3

European Convention for the Protection of Human Rights and Fundamental Freedoms

European Social Charter on health and safety and the working environment

Treaty on European Union

Treaty on the Functioning of the European Union

1.3. National regulatory instruments

1.3.1. Belgium

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

General Regulations concerning Protection at Work which of 11 February 1946 and 27 September 1947 (Algemeen Reglement voor de Arbeidsbescherming (ARAB) / Règlement Général pour la Protection du Travail (RGTP))

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

Koninklijk Besluit van 26 november 1968 tot oprichting van een Bestendig bureau bij het Gewestelijk Paritair Comité voor de haven van Antwerpen, genaamd "Nationaal Paritair Comité der Haven van Antwerpen" / Arrête Royal du 26 novembre 1968 instituant un Bureau permanent

a la Commission paritaire régionale pour le port d'Anvers, dénommée " Nationaal Paritair Comite der Haven van Antwerpen

Koninklijk besluit van 6 november 1969 tot vaststelling van de algemene regels voor de werking van de paritaire comités en paritaire subcomités / Arrêté royal du 6 novembre 1969 déterminant les modalités générales de fonctionnement des commissions et des sous-commissions paritaires

Port Labour Act of 8 June 1972 (Wet van 8 juni 1972 betreffende de havenarbeid / Loi du 8 juin 1972 organisant le travail portuaire)

Royal Decree of 12 January 1973 establishing a (national) Joint Committee for ports (Koninklijk besluit van 12 januari 1973 tot oprichting en tot vaststelling van de benaming en van de bevoegdheid van het Paritair Comité van het havenbedrijf / Arrêté royal du 12 janvier 1973 instituant la Commission paritaire des ports et fixant sa dénomination et sa compétence)

Royal Decree of 12 August 1974 establishing (local) Joint Subcommittees for ports (Koninklijk besluit van 12 augustus 1974 tot oprichting en tot vaststelling van de benaming en van de bevoegdheid van paritaire subcomités voor het havenbedrijf en tot vaststelling van het aantal leden ervan / Arrêté royal du 12 août 1974 instituant des sous-commissions paritaires pour des ports, fixant leur dénomination et leur compétence et en fixant leur nombre de membres)

Employment Contract Act of 3 July 1978 (Wet van 3 juli 1978 betreffende de arbeidsovereenkomsten / Loi du 3 juillet 1978 relative aux contrats de travail)

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

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

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

Decreet van 19 April 1995 betreffende de organisatie en de werking van de loodsdienst van het Vlaamse Gewest en betreffende [de brevetten van havenloods en bootman / Décret du 19 avril 1995 relatif à l'organisation et au fonctionnement du service de pilotage de la Région flamande et relatif [aux brevets de pilote de port et de maître d'équipage

Act of 4 August 1996 on Welfare of Workers in the Performance of Their Work (Wet 4 augustus 1996 betreffende het welzijn van de werknemers bij de uitvoering van hun werk / Loi du 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail)

Flemish Ports Decree of 2 March 1999 (Decreet van 2 maart 1999 houdende het beleid en het beheer van de zeehavens)

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

Wet van 12 augustus 2000 houdende sociale, budgettaire en andere bepalingen / Loi du 12 août 2000 portant des dispositions sociales, budgétaires et diverses

Koninklijk besluit van 19 maart 2004 tot wijziging van het koninklijk besluit van 20 juli 1973 houdende zeevaartinspectiereglement

Royal Decree of 5 July 2004 on the registration of dockworkers (Koninklijk besluit van 5 juli 2004 betreffende de erkenning van havenarbeiders in de havengebieden die onder het toepassingsgebied vallen van de wet van 8 juni 1972 betreffende de havenarbeid / Arrêté royal du 5 juillet 2004 relatif à la reconnaissance des ouvriers portuaires dans les zones portuaires tombant dans le champ d'application de la loi du 8 juin 1972 organisant le travail portuaire)

Besluit van de Brusselse Hoofdstedelijke Regering van 18 november 2004 betreffende de voorschriften en procedures voor veilig laden en lossen van bulkschepen; Arrêté du Gouvernement wallon du 19 mai 2005 établissant des exigences et des procédures harmonisées pour le chargement et le déchargement sûrs des vraquiers

Decreet van 17 maart 2006 tot omzetting van Richtlijn 2001/96/EG van het Europees Parlement en de Raad van 4 december 2001 tot vaststelling van geharmoniseerde voorschriften en procedures voor het veilig laden en lossen van bulkschepen

Besluit van de Vlaamse Regering van 20 oktober 2006 tot uitvoering van het decreet van 17 maart 2006 tot omzetting van Richtlijn 2001/96/EG van het Europees Parlement en de Raad van

4 december 2001 tot vaststelling van geharmoniseerde voorschriften en procedures voor het veilig laden en lossen van bulkschepen

1.3.2. Bulgaria

Act of 28 January 2000 on Maritime Areas, Inland Waterways and Ports of the Republic of Bulgaria (Закон за морските пространства, вътрешните водни пътища и пристанища на Република България, обн. ДВ. бр. 12 от 11.02.2000 г., посл. изм., ДВ. бр. 53 от 13.07.2012 г.)

Ordinance No. 18 of 3 December 2004 on the registration of port operators in Bulgaria (Наредба № 18 от 3 декември 2004 г. за регистрация на пристанищните оператори в република България)

Ordinance No. 19 of 9 December 2004 on the registration of ports in the Republic of Bulgaria (Наредба № 19 от 9 декември 2004 г. за регистрация на пристанищата на република България)

Ordinance No. 9 of 29 July 2005 on the Requirements for Operational Suitability of Ports (Наредба № 9 от 29.07.2005 г. за изискванията за експлоатационна годност на пристанищата)

Ordinance No. 12 of 30 December 2005 (Наредба № 12 от 30.12.2005 г. за осигуряване на здравословни и безопасни условия на труд при извършване на товарно-разтоварни работи)

Разпореждане № 91 от 5.09.2006 г. относно изискванията и процедурите за безопасно товарене и разтоварване на кораби за насипни товари

Bulgarian Labour Inspection Act of 14 November 2008 (Закон за инспектиране на труда)

1.3.3. Cyprus

Port Workers (Regulation of Employment) Act of 31 December 1952 (Ο περί Λιμενεργατών (Ρύθμιση Απασχόλησης) Νόμος (ΚΕΦ.184))

Port Workers (Regulation of Employment) Regulations of 1952 (Οι περί Λιμενεργατών (Ρύθμιση Απασχόλησης) Κανονισμοί του 1952)

Cyprus Ports Authority Act No. 38 of 1973 (Ο περί Αρχής Λιμένων Κύπρου Νόμος του 1973 (N. 38/1973))

Occupational Safety and Health in Dockwork Regulations (No. 349/1991) (Οι περί Επαγγελματικής Ασφάλειας και Υγείας στις Εργασίες Λιμένων Κανονισμοί του 1991)

Safety and Health at Work Act of 1996 (Ο περί Ασφάλειας και Υγείας στην Εργασία Νόμος του 1996 (N. 89(I)/1996))

Act No. 70(I) of 2000 (Ο περί Ειδικού Τέλους επί των Απολαβών των Λιμενεργατών και Σημειωτών Νόμος τον 2000 (N. 70(I)/2000))

Regulations on the Manual Handling of Loads (Οι περί Ασφάλειας και Υγείας στην Εργασία (Χειρωνακτική Διακίνηση Φορτίων) Κανονισμοί του 2001)

Occupational Safety and Health in Dockwork (Medical Examinations) Order (No. 321/2002) (Το περί Επαγγελματικής Ασφάλειας και Υγείας στις Εργασίες Λιμένων (Ιατρικές Εξετάσεις) Διάταγμα του 2002)

Ο περί Εναρμονισμένων Απαιτήσεων και Διαδικασιών Ασφαλούς Φόρτωσης και Εκφόρτωσης των Φορηγών Πλοίων Μεταφοράς Φορτίου Χύδην Νόμος του 2004 (28(I)/2004)

Occupational Safety and Health in Dockwork (Identifying Competent International Organisations) Order (No. 55/2008) (Επαγγελματικής Ασφάλειας και Υγείας στις Εργασίες Λιμένων (Αναγνώριση Αρμόδιων Διεθνών Οργανώσεων) Διάταγμα του 2008)

Code of Practice for the Training of Mobile Crane Operators (Κώδικας Πρακτικής για την Εκπαίδευση Χειριστών Κινητών Γερανών)

1.3.4. Denmark

Copenhagen Freeport Act of 31 March 1960 (Lov om Københavns frihavn (Lov nr 141 af 31/03/1960))

Executive Order on Loading and Unloading of Ships of 18 May 1965 (Bekendtgørelse (BEK nr 181 af 18/05/1965) om regulativ for lastning og losning af skibe)

Circular No. 3057 of 29 September 1977 on Collaboration between the Danish Working Environment Authority and the Danish Maritime Authority on the Implementation of the

Regulations concerning Loading and Unloading Ships (Cirkulære om samarbejde mellem arbejdstilsynet og skibstilsynet om gennemførelse af regulativ for lastning og losning af skibe)

Port of Copenhagen Concession of 31 March 1980 (Bekendtgørelse af koncession for Københavns Frihavns- og Stevedoreselskab A/S til i Københavns Frihavn at udøve frihavnsvirksomhed (BEK nr 144 af 31/03/1980))

Royal Decree of 3 November 1989 (Bekendtgørelse (18 april 1991) af ILO-konvention nr. 152 af 25. juni 1979 om sikkerhed og sundhed i forbindelse med havnearbejde)

Order on Hoists and Winches (Bekendtgørelse om hejseredskaber og spil (BEK nr 1101 af 14/12/1992))

Ports Act of 28 May 1999 (Lov om havne (Lov nr 326 af 28/05/1999). A consolidated version was published under Bekendtgørelse af lov om havne (LBK nr 457 af 23/05/2012))

Regulations on Lifting Gear On Board Ships (Teknisk forskrift om hejsemidler og lossegrej m.v. i skibe (BEK nr 11643 af 12/10/2000))

Teknisk forskrift nr. 9639 af 09/10/2002 om lastning og losning af bulkskibe

Standard Regulations for the Observance of Good Order in Danish Commercial Ports (Bekendtgørelse om standardreglement for overholdelse af orden i danske erhvervshavne (BEK nr 1146 af 25/11/2004))

Metro Company and City Development Company Act of 6 June 2007 (Lov om Metroselskabet I/S og Arealudviklingselskabet I/S (Lov nr 551 af 06/06/2007))

Working Environment Act (Bekendtgørelse af lov om arbejdsmiljø (LBK nr. 1072 af 7. september 2010))

Bekendtgørelse om arbejdsmiljøfaglige uddannelser (BEK nr 1088 af 28/11/2011)

1.3.5. Estonia

Ports Act of 22 October 1997 (Sadamaseadus Vastu võetud 22. oktoobril 1997. A)

Occupational Health and Safety Act of 16 June 1999 (Töötervishoiu ja tööohutuse seadus)

Regulation No. 106 of 6 December 2000 (Nõuded kemikaali hoiukohale, peale-, maha- ja ümberlaadimiskohale ning teistele kemikaali käitlemiseks vajalikele ehitistele sadamas,

autoterminalis, raudteejaamas ja lennujaamas ning erinõuded ammooniumnitraadi käitlemisele vastu võetud teede- ja sideministri 6.12.2000. a määrusega nr 106)

Regulation No. 26 of the Minister of Social Affairs of 27 February 2001 (Raskuste käsitsi teisaldamise tervishoiu ja tööohutuse nõuded)

Regulation No 105 of the Government of the Republic of 20 March 2001 (Ohtlike kemikaalide ja neid sisaldavate materjalide kasutamise tervishoiu ja tööohutuse nõuded)

Employment Contracts Act of 17 December 2008 (Töölepingu seadus)

Puistlastilaevade lisaohutusnõuded, puistlastilaevade ohutu laadimise ja lossimise nõuded, puistlastilaevade terminalide ohutusnõuded ning laeva kapteni ja terminali esindaja teavitamise kord

1.3.6. Finland

Asetus (86/1976) satamissa käytettyjen uusien lastinkäsittelymenetelmien sosiaalisia vaikutuksia koskevan yleissopimuksen voimaansaattamisesta

Asetus (381/1982) työturvallisuutta ja- terveyttä satamatyössä koskevan yleissopimuksen voimaansaattamisesta

Act No. 955/1976 on Municipal Port Ordinances and Traffic Dues (Laki (955/1976) kunnallisista satamajärjestyksistä ja liikennemaksuista)

Act No. 1156/1994 on Private Public Ports (Laki (1156/1994) yksityisistä yleisistä satamista)

Act No. 55/2001 on Employment Contracts (Työsopimuslaki (55/2001))

Occupational Safety and Health Act (Työturvallisuuslaki (738/2002))

Laki eräiden irtolastialusten turvallisesta lastaamisesta ja lastin purkamisesta (2004/1206); Liikenne- ja viestintäministeriön asetus eräiden irtolastialusten turvallisesta lastaamisesta ja lastin purkamisesta

Government Decree No. 633/2004 on Occupational Safety in Loading and Unloading of Ships (Valtioneuvoston asetus (633/2004) alusten lastauksen ja purkamisen työturvallisuudesta)

Government Decree No. 251/2005 on the Transport and Temporary Storage of Dangerous Goods in a Port Area (Valtioneuvoston asetus (251/2005) vaarallisten aineiden kuljetuksesta ja tilapäisestä säilytyksestä satama-alueella)

1.3.7. France

Loi du 28 juin 1941 relative à l'organisation du travail de manutention dans les ports maritimes de commerce

Loi n° 47-1746 du 6 septembre 1947 sur l'organisation du travail de manutention dans les ports

Décret n° 55-314 du 14 mars 1955 portant application aux navires des dispositions prévues par la convention n° 32 du Bureau international du travail concernant la protection des travailleurs occupés au chargement et au déchargement

Décret n° 56-321 du 27 mars 1956 portant codification sous le nom de code des ports maritimes des textes législatifs les concernant

Décret n° 78-487 du 22 mars 1978 portant codification des textes législatifs concernant les ports maritimes (première partie: Législative) et revision du code des ports maritimes

Décret n° 81-245 du 9 mars 1981 portant publication de la convention internationale du travail n° 137 concernant les répercussions sociales des nouvelles méthodes de manutention dans les ports, adoptée par la conférence à sa cinquante-huitième session, à Genève, le 25 juin 1973

Loi n° 85-611 du 18 juin 1985 autorisant l'approbation de la Convention internationale du travail n° 152 concernant la sécurité et l'hygiène du travail dans les manutentions portuaires

Décret n°86-1274 du 10 décembre 1986 portant publication de la Convention internationale du travail n° 152 concernant la sécurité et l'hygiène du travail dans les manutentions portuaires, faite à Genève le 25 juin 1979

Arrêté du 23 novembre 1987 relatif à la sécurité des navires; see especially Division 214 of the Règlement

Loi n° 92-496 du 9 juin 1992 modifiant le régime du travail dans les ports maritimes

Arrêté du 25 septembre 1992 désignant les ports maritimes de commerce de la métropole comportant la présence d'une main-d'oeuvre d'ouvriers dockers professionnels intermittents et portant constitution de bureaux centraux de la main-d'oeuvre

Décret n° 92-1130 du 2 octobre 1992 portant modification du livre V du code des ports maritimes (deuxième partie: Réglementaire) relatif au régime du travail dans les ports maritimes

Arrêté du 29 septembre 1994 portant extension de la convention collective nationale de la manutention portuaire complétée par un avenant

Arrêté du 26 avril 1996 pris en application de l'article R. 237-1 du code du travail et portant adaptation de certaines règles de sécurité applicables aux opérations de chargement et de déchargement effectuées par une entreprise extérieure

Décret n°98-1084 du 2 décembre 1998 relatif aux mesures d'organisation, aux conditions de mise en oeuvre et aux prescriptions techniques auxquelles est subordonnée l'utilisation des équipements de travail et modifiant le code du travail

Loi n° 99-1140 du 29 décembre 1999 de financement de la sécurité sociale pour 2000

Arrêté du 7 juillet 2000 fixant la liste des ports susceptibles d'ouvrir droit à l'allocation de cessation anticipée d'activité des travailleurs de l'amiante en faveur des ouvriers dockers professionnels

Loi n° 2001-1246 du 21 décembre 2001 de financement de la sécurité sociale pour 2002

Ordonnance n° 2004-691 du 12 juillet 2004 portant diverses dispositions d'adaptation au droit communautaire dans le domaine des transports

Décret n° 2005-255 du 14 mars 2005 portant dispositions d'adaptation au droit communautaire dans le domaine portuaire et modifiant le code des ports maritimes

Loi n° 2008-660 du 4 juillet 2008 portant réforme portuaire

Loi n° 2008-789 du 20 août 2008 portant rénovation de la démocratie sociale et réforme du temps de travail

Décret n° 2008-1032 du 9 octobre 2008 pris en application de la loi n° 2008-660 du 4 juillet 2008 portant réforme portuaire et portant diverses dispositions en matière portuaire

Décret n° 2008-1240 du 28 novembre 2008 pris en application de l'article 11 de la loi n° 2008-660 du 4 juillet 2008 portant réforme portuaire

Ordonnance n° 2010-1307 du 28 octobre 2010 relative à la partie législative du Code des Transports

Arrêté du 21 février 2011 fixant le montant de l'indemnité de garantie des ouvriers dockers professionnels intermittents Arrêté du 21 février 2011 fixant le montant de l'indemnité de garantie des ouvriers dockers professionnels intermittents

Arrêté du 6 août 2012 portant extension de la convention collective nationale unifiée "ports et manutention" et d'accords et d'un avenant conclus dans le cadre de ladite convention collective (n° 3017)

Maritime Ports Code (Code des Ports Maritimes)

Labour Code (Code du Travail)

Transport Code (Code des Transports)

1.3.8. Germany

Gesetz zur Ordnung der nationalen Arbeit vom 20. Januar 1934; 12. Verordnung zur Durchführung des Gesetzes zur Ordnung der nationalen Arbeit (Bildung und Aufgaben von Gesamthafenbetrieben) vom 8. April 1935

Gesetz zu dem Übereinkommen Nr. 152 der Internationalen Arbeitsorganisation vom 25. Juni 1979 über den Arbeitsschutz bei der Hafearbeit vom 21. Juli 1982

Act on the Establishment of a Special Employer of Port Workers of 3 August 1950 (Gesetz über die Schaffung eines besonderen Arbeitgebers für Hafearbeiter, 3. August 1950)

Regulations on the Handling of Dangerous Goods in the Port of Hamburg (Landesgefahrgutverordnung Hafen Hamburg (LGGVHH) Vom 4. Juni 1996)

Act on the Implementation of Protective Measures for the Improvement of Safety and Health of Employees at Work (Gesetz über die Durchführung von Maßnahmen des Arbeitsschutzes zur Verbesserung der Sicherheit und des Gesundheitsschutzes der Beschäftigten bei der Arbeit (Arbeitsschutzgesetz - ArbSchG), 7. August 1996)

Vierte Schiffssicherheitsanpassungsverordnung vom 25. September 2002

Erste Gesetz zur Änderung des Arbeitnehmerüberlassungsgesetzes - Verhinderung von Missbrauch der Arbeitnehmerüberlassung (1. AÜGÄndG) vom 28. April 2011

Accident Prevention Rule BGV C 21 on Port Labour (Unfallverhütungsvorschrift BGV C 21 Hafearbeit)

Federal Guidelines on Container Packing (Richtlinien für das Packen von Lading außer Schüttgut in oder auf Beförderungseinheiten (CTUs) bei Beförderung mit allen Verkehrsträgern zu Wasser und zu Lande)

Gesetz betreffend der Anstellung eines Hafenspektors

Temporary Agency Work Act (Gesetz zur Regelung der Arbeitnehmerüberlassung (Arbeitnehmerüberlassungsgesetz - AÜG))

Bürgerliches Gesetzbuch, BGB

Sozialgesetzbuch, SGB

1.3.9. Greece

Act No. 5167/1932 on Port Workers (Νόμος 5167 ΠΕΡΙ ΤΡΟΠΟΠΟΙΗΣΕΩΣ ΚΑΙ ΣΥΜΠΛΗΡΩΣΕΩΣ ΤΟΥ ΝΟΜΟΥ 5453 ΤΗΣ 17 ΜΑΡΤΙΟΥ 1928 "ΠΕΡΙ ΚΥΡΩΣΕΩΣ ΤΟΥ ΑΠΟ 12 ΝΟΕΜΒΡΙΟΥ 1927 Ν.Δ. "ΠΕΡΙ ΚΥΡΩΣΕΩΣ ΤΟΥ ΑΠΟ 26 ΜΑΡΤΙΟΥ 1926 Ν.Δ. ΠΕΡΙ ΡΥΘΜΙΣΕΩΣ ΤΩΝ ΦΟΡΤΟΕΚΦΟΡΤΩΤΙΚΩΝ ΕΡΓΑΣΙΩΝ ΕΙΣ ΤΟΥΣ ΛΙΜΕΝΑΣ ΤΟΥ ΚΡΑΤΟΥΣ")

Legislative Decree No. 1254/1949 on Port Workers (Νομοθετικό Διάταγμα 1254 ΠΕΡΙ ΤΡΟΠΟΠΟΙΗΣΕΩΣ ΚΑΙ ΣΥΜΠΛΗΡΩΣΕΩΣ ΕΝΙΩΝ ΔΙΑΤΑΞΕΩΝ ΤΩΝ ΠΕΡΙ ΦΟΡΤΟΕΚΦΟΡΤΩΣΕΩΝ ΝΟΜΩΝ)

Act No. 1082/1980 (Νόμος 1082 ΠΕΡΙ ΤΡΟΠΟΠΟΙΗΣΕΩΣ, ΑΝΤΙΚΑΤΑΣΤΑΣΕΩΣ ΚΑΙ ΣΥΜΠΛΗΡΩΣΕΩΣ ΔΙΑΤΑΞΕΩΝ ΤΙΝΩΝ ΕΝΙΩΝ ΕΡΓΑΤΙΚΩΝ ΝΟΜΩΝ ΚΑΙ ΡΥΘΜΙΣΕΩΣ ΣΥΝΑΦΩΝ ΘΕΜΑΤΩΝ)

Presidential Decree No. 31/1990 on the qualifications of crane and machinery operators (Προεδρικό Διάταγμα 31 ΕΠΙΒΛΕΨΗ ΤΗΣ ΛΕΙΤΟΥΡΓΙΑΣ, ΧΕΙΡΙΣΜΟΣ ΚΑΙ ΣΥΝΤΗΡΗΣΗ ΜΗΧΑΝΗΜΑΤΩΝ ΕΚΤΕΛΕΣΗΣ ΤΕΧΝΙΚΩΝ ΕΡΓΩΝ)

Presidential Decree No. 405/1996 (Προεδρικό Διάταγμα 405 ΚΑΝΟΝΙΣΜΟΣ ΦΟΡΤΩΣΗΣ, ΕΚΦΟΡΤΩΣΗΣ ΔΙΑΚΙΝΗΣΗΣ ΚΑΙ ΠΑΡΑΜΟΝΗΣ ΕΠΙΚΙΝΔΥΝΩΝ ΕΙΔΩΝ ΣΕ ΛΙΜΕΝΕΣ ΚΑΙ ΜΕΤΑΦΟΡΑ ΑΥΤΩΝ ΔΙΑ ΘΑΛΑΣΣΗΣ)

Act 2688/1999 (Νόμος 2688 ΜΕΤΑΤΡΟΠΗ ΤΟΥ ΟΡΓΑΝΙΣΜΟΥ ΛΙΜΕΝΟΣ ΠΕΙΡΑΙΩΣ ΚΑΙ ΤΟΥ ΟΡΓΑΝΙΣΜΟΥ ΛΙΜΕΝΟΣ ΘΕΣ/ΝΙΚΗΣ ΣΕ ΑΝΩΝΥΜΕΣ ΕΤΑΙΡΕΙΕΣ)

Act No. 2738/1999 (Νόμος 2738 ΣΥΛΛΟΓΙΚΕΣ ΔΙΑΠΡΑΓΜΑΤΕΥΣΕΙΣ ΣΤΗ ΔΗΜΟΣΙΑ ΔΙΟΙΚΗΣΗ ΜΟΝΙΜΟΠΟΙΗΣΕΙΣ ΣΥΜΒΑΣΙΟΥΧΩΝ ΑΟΡΙΣΤΟΥ ΧΡΟΝΟΥ ΚΑΙ ΑΛΛΕΣ ΔΙΑΤΑΞΕΙΣ)

Act No. 2932/2001 (Νόμος 2932 ΕΛΕΥΘΕΡΗ ΠΑΡΟΧΗ ΥΠΗΡΕΣΙΩΝ ΣΤΙΣ ΘΑΛΑΣΣΙΕΣ ΕΝΔΟΜΕΤΑΦΟΡΕΣ - ΣΥΣΤΑΣΗ ΓΕΝΙΚΗΣ ΓΡΑΜΜΑΤΕΙΑΣ ΛΙΜΕΝΩΝ ΚΑΙ ΛΙΜΕΝΙΚΗΣ ΠΟΛΙΤΙΚΗΣ - ΜΕΤΑΤΡΟΠΗΣ ΛΙΜΕΝΙΚΩΝ ΤΑΜΕΙΩΝ ΣΕ ΑΝΩΝΥΜΕΣ ΕΤΑΙΡΕΙΕΣ ΚΑΙ ΑΛΛΕΣ ΔΙΑΤΑΞΕΙΣ)

Act No. 2987/2002 (Νόμος 2987 ΤΡΟΠΟΠΟΙΗΣΗ ΤΩΝ ΔΙΑΤΑΞΕΩΝ ΤΟΥ Ν. 959/1979 «ΠΕΡΙ ΝΑΥΤΙΚΗΣ ΕΤΑΙΡΕΙΑΣ» (ΦΕΚ 192 Α) ΚΑΙ ΡΥΘΜΙΣΗ ΑΛΛΩΝ ΘΕΜΑΤΩΝ ΑΡΜΟΔΙΟΤΗΤΑΣ ΤΟΥ ΥΠΟΥΡΓΕΙΟΥ ΕΜΠΟΡΙΚΗΣ ΝΑΥΤΙΛΙΑΣ)

Presidential Decree No. 66/2004 (Προεδρικό Διάταγμα 66 ΚΑΘΟΡΙΣΜΟΣ ΕΝΑΡΜΟΝΙΣΜΕΝΩΝ ΑΠΑΙΤΗΣΕΩΝ ΚΑΙ ΔΙΑΔΙΚΑΣΙΩΝ ΓΙΑ ΤΗΝ ΑΣΦΑΛΗ ΦΟΡΤΩΣΗ ΚΑΙ ΕΚΦΟΡΤΩΣΗ ΤΩΝ Φ/Γ ΠΛΟΙΩΝ ΜΕΤΑΦΟΡΑΣ ΧΥΔΗΝ ΦΟΡΤΙΩΝ ΣΕ ΣΥΜΜΟΡΦΩΣΗ ΠΡΟΣ ΤΗΝ ΟΔΗΓΙΑ 2001/96/ΕΚ ΤΟΥ ΕΥΡΩΠΑΪΚΟΥ ΚΟΙΝΟΒΟΥΛΙΟΥ ΚΑΙ ΤΟΥ ΣΥΜΒΟΥΛΙΟΥ ΤΗΣ 4/12/2001)

Act No. 3755/2009 (Νόμος 3755 ΚΥΡΩΣΗ ΤΗΣ ΣΥΜΒΑΣΗΣ ΠΑΡΑΧΩΡΗΣΗΣ ΤΩΝ ΛΙΜΕΝΙΚΩΝ ΕΓΚΑΤΑΣΤΑΣΕΩΝ ΤΩΝ ΠΡΟΒΛΗΤΩΝ II ΚΑΙ III ΤΟΥ ΣΤΑΘΜΟΥ ΕΜΠΟΡΕΥΜΑΤΟΚΙΒΩΤΙΩΝ ΤΗΣ ΑΝΩΝΥΜΗΣ ΕΤΑΙΡΕΙΑΣ «ΟΡΓΑΝΙΣΜΟΣ ΛΙΜΕΝΟΣ ΠΕΙΡΑΙΩΣ Α.Ε.» (ΟΛΠ Α.Ε.) ΚΑΙ ΡΥΘΜΙΣΗ ΣΥΝΑΦΩΝ ΘΕΜΑΤΩΝ)

Internal Regulations on Organisation and Operations (Αριθμ. 8311.2/01/10/28-01-2010 Νέος Κανονισμός Εσωτερικής Οργάνωσης και Λειτουργίας (Κ.Ε.Ο.Λ.) της εταιρείας Οργανισμός Λιμένος Πειραιώς ανώνυμη εταιρεία (ΟΛΠ Α.Ε.))

Act No. 3846 of 2010 on Guarantees related to Occupational Safety (Νόμος 3846 Εγγυήσεις για την Εργασιακή Ασφάλεια και άλλες διατάξεις)

Act No. 3850/2010 (Νόμος 3850 ΚΥΡΩΣΗ ΤΟΥ ΚΩΔΙΚΑ ΝΟΜΩΝ ΓΙΑ ΤΗΝ ΥΓΕΙΑ ΚΑΙ ΤΗΝ ΑΣΦΑΛΕΙΑ ΤΩΝ ΕΡΓΑΖΟΜΕΝΩΝ)

Act No. 3919/2011 (Νόμος 3919 ΑΡΧΗ ΤΗΣ ΕΠΑΓΓΕΛΜΑΤΙΚΗΣ ΕΛΕΥΘΕΡΙΑΣ, ΚΑΤΑΡΓΗΣΗ ΑΔΙΚΑΙΟΛΟΓΗΤΩΝ ΠΕΡΙΟΡΙΣΜΩΝ ΣΤΗΝ ΠΡΟΣΒΑΣΗ ΚΑΙ ΑΣΚΗΣΗ ΕΠΑΓΓΕΛΜΑΤΩΝ)

Act No. 4024/2011 (Νόμος 4024 ΟΣΥΝΤΑΞΙΟΔΟΤΙΚΕΣ ΡΥΘΜΙΣΕΙΣ, ΕΝΙΑΙΟ ΜΙΣΘΟΛΟΓΙΟ - ΒΑΘΜΟΛΟΓΙΟ, ΕΡΓΑΣΙΑΚΗ ΕΦΕΔΡΕΙΑ ΚΑΙ ΑΛΛΕΣ ΔΙΑΤΑΞΕΙΣ ΕΦΑΡΜΟΓΗΣ ΤΟΥ ΜΕΣΟΠΡΟΘΕΣΜΟΥ ΠΛΑΙΣΙΟΥ ΔΗΜΟΣΙΟΝΟΜΙΚΗΣ ΣΤΡΑΤΗΓΙΚΗΣ 2012-2015)

Act No. 4046/2012 (ΕΓΚΡΙΣΗ ΤΩΝ ΣΧΕΔΙΩΝ ΣΥΜΒΑΣΕΩΝ ΧΡΗΜΑΤΟΔΟΤΙΚΗΣ ΔΙΕΥΚΟΛΥΝΣΗΣ ΜΕΤΑΞΥ ΤΟΥ 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)

Circular No. 3643/249 of 28 February 2012 (Αριθ. πρωτ.: 3643/249/28.2.2012 Εφαρμογή των άρθρων 1, 2 και 3 του Ν. 3919/2011 (ΦΕΚ 32 Α') και του άρθρου 1 παρ. 16 του Ν. 4038/2012 (ΦΕΚ 14 Α') Αθήνα 28-2-2012 Α.Π.: 3643/249)

Emergency Act No. 38/2012 (Ρύθμιση θεμάτων για την εφαρμογή της παρ. 6 του άρθρου 1 του ν. 4046/2012)

1.3.10. Ireland

Docks (Safety, Health and Welfare) Regulations, 1960

Docks (Safety, Health and Welfare) (Forms) Regulations, 1965

Dangerous Substances (Oil Jetties) Regulations, 1979

Safety, Health and Welfare at Work (Biological Agents) Regulations 1994

Harbours Acts 1996

Harbours (Amendment) Act 2000

Safety, Health and Welfare at Work (Chemical Agents) Regulations 2001

Safety, Health and Welfare at Work (Confined Spaces) Regulations 2001

European Communities (Safe Loading and Unloading of Bulk Carriers) Regulations 2003

Safety, Health and Welfare at Work Act 2005

Safety Health and Welfare at Work (Construction) Regulations, 2006

Safety, Health and Welfare at Work (General Application) Regulations 2007

CLP Regulations (Classification, Labelling and Packaging of substances and mixtures) Regulations 2008

Harbours (Amendment) Act 2009

Industrial Relations Act

Payment of Wages Act

Protection of Employees (Fixed-Term Work) Act

REACH Regulations (Registration, Evaluation, Authorisation and Restriction of Chemicals)

Terms of Employment (Information) Acts

Unfair Dismissals Acts

1.3.11. Italy

Act No. 833/1978 on the establishment of the national health service (Legge 23 dicembre 1978, n. 833, Istituzione del servizio sanitario nazionale)

Legge 10 aprile 1981, n. 157, Ratifica ed esecuzione delle convenzioni numeri 74, 109, 129, 132, 134, 135, 136, 137, 138 e 139 dell'Organizzazione internazionale del lavoro

L. 19 novembre 1984, n. 862, Ratifica ed esecuzione delle convenzioni dell'Organizzazione internazionale del lavoro (OIL) numeri 148, 149, 150, 151 e 152 adottate nel corso della 63^a, della 64^a e della 65^a sessione della Conferenza generale

Act No. 84 of 28 January 1994 on the reform of port legislation (Legge 28 gennaio 1994, n. 84, Riordino della legislazione in materia portuale)

Decree No. 585/1995 on the regulations governing the issuance, suspension and revocation of authorisations for the exercise of port activities (Decreto 31 marzo 1995, n. 585, Regolamento recante la disciplina per il rilascio, la sospensione e la revoca delle autorizzazioni per l'esercizio di attivita' portuali)

Decree-Law No. 535/1996 on urgent measures for the port, maritime, shipbuilding and shipping sectors as well as measures to ensure certain air connections (Decreto-Legge 21 ottobre 1996, n. 535, Disposizioni urgenti per i settori portuale, marittimo, cantieristico ed armatoriale, nonche' interventi per assicurare taluni collegamenti aerie)

Legge 23 dicembre 1996, n. 647, Conversione in legge, con modificazioni, del decreto-legge 21 ottobre 1996, n. 535, recante disposizioni urgenti per i settori portuale, marittimo, cantieristico ed armatoriale, nonche' interventi per assicurare taluni collegamenti aerie

Decree-Law No. 669/1996 on urgent provisions on tax, financial and accounting matters to complete the budgetary measures for 1997 (Decreto-Legge 31 dicembre 1996, n. 669,

Disposizioni urgenti in materia tributaria, finanziaria e contabile a completamento della manovra di finanza pubblica per l'anno 1997)

Legge 28 febbraio 1997, n. 30, Conversione in legge, con modificazioni, del decreto-legge 31 dicembre 1996, n. 669, recante disposizioni urgenti in materia tributaria, finanziaria e contabile a completamento della manovra di finanza pubblica per l'anno 1997

Legge 27 febbraio 1998, Conversione in legge, con modificazioni, del decreto-legge 30 dicembre 1997, n. 457, recante disposizioni urgenti per lo sviluppo del settore dei trasporti e l'incremento dell'occupazione

Act No. 485/98 on delegation to the government on occupational safety in the maritime ports sector (Legge 31 dicembre 1998, n. 485, Delega al Governo in materia di sicurezza del lavoro nel settore portuale marittimo)

Legislative Decree No. 272/1999 on safety and health in cargo handling and ship maintenance and repair (Decreto Legislativo 27 luglio 1999, n. 272, Adeguamento della normativa sulla sicurezza e salute dei lavoratori nell'espletamento di operazioni e servizi portuali, nonché di operazioni di manutenzione, riparazione e trasformazione delle navi in ambito portuale, a norma della legge 31 dicembre 1998, n. 485)

Act No. 472/1999 on measures in the transport sector (Legge 7 dicembre 1999, n. 472, Interventi nel settore dei trasporti)

Act No. 186/2000 on amendments to Act No. 84/1994 relating to port operations and the supply of temporary port work (Legge 30 giugno 2000, n. 186, Modifiche alla legge 28 gennaio 1994, n. 84, in materia di operazioni portuali e di fornitura del lavoro portuale temporaneo)

Decree No. 132/2001 on regulations concerning the binding criteria for the regulation of port services by port and maritime authorities, in accordance with Article 16 of Act No. 84/1994 (Decreto 6 febbraio 2001, n. 132, Regolamento concernente la determinazione dei criteri vincolanti per la regolamentazione da parte delle autorità portuali e marittime dei servizi portuali, ai sensi dell'articolo 16 della legge n. 84/1994)

Act No. 172/2003 on provisions for the reorganisation and revitalisation of recreational boating and nautical tourism (Legge 8 luglio 2003, n. 172, Disposizioni per il riordino e il rilancio della nautica da diporto e del turismo nautico)

Decreto Legislativo 10 settembre 2003, n. 276, Attuazione delle deleghe in materia di occupazione e mercato del lavoro, di cui alla legge 14 febbraio 2003, n. 30

Legge 27 luglio 2004, n. 186, Conversione in legge, con modificazioni, del decreto-legge 28 maggio 2004, n. 136, recante disposizioni urgenti per garantire la funzionalità di taluni settori della pubblica amministrazione. Disposizioni per la rideterminazione di deleghe legislative e altre disposizioni connesse

Decreto del Ministro delle Infrastrutture e dei Trasporti del 16 dicembre 2004 recante recepimento della direttiva 2001/96/CE in materia di "Requisiti e procedure armonizzate per la sicurezza delle operazioni di carico e scarico delle navi portarinfuse"

Act No. 247/2007 on rules implementing the Protocol of 23 July 2007 on social security, labour and competitiveness to promote fairness and sustainable growth and additional rules on labour and social security (Legge 24 dicembre 2007, n. 247, Norme di attuazione del Protocollo del 23 luglio 2007 su previdenza, lavoro e competitività per favorire l'equità e la crescita sostenibile, nonché ulteriori norme in materia di lavoro e previdenza sociale)

Legislative Decree No. 81/2008 on the implementation of Article 1 of Act 123/2007 relating to health and safety in the workplace (Decreto Legislativo 9 aprile 2008, n. 81, Attuazione dell'articolo 1 della legge 3 agosto 2007, n. 123, in materia di tutela della salute e della sicurezza nei luoghi di lavoro)

Ordinanza N. 347 del 22 aprile 2011, Organizzazione del settore del lavoro portuale nel porto di Venezia: definizione, anche ai fini della sicurezza, dei segmenti di operazioni portuali appaltabili e dei servizi specialistici, complementari e accessori al ciclo delle operazioni portuali, da rendersi ai soggetti autorizzati ai sensi degli articoli 16 e 18 della legge 84/1994

Legge 12 luglio 2011, n. 106, Conversione in legge, con modificazioni, del *decreto-legge 13 maggio 2011, n. 70*, concernente Semestre Europeo - Prime disposizioni urgenti per l'economia

Legge 24 marzo 2012, n. 27, Conversione in legge, con modificazioni, del *decreto-legge 24 gennaio 2012, n. 1*, recante disposizioni urgenti per la concorrenza, lo sviluppo delle infrastrutture e la competitività

Decree-Law No. 5/2012 on simplification and development (Decreto-Legge 9 febbraio 2012, n. 5, Disposizioni urgenti in materia di semplificazione e di sviluppo)

Decreto legislativo 2 marzo 2012, n. 24 Attuazione della direttiva 2008/104/CE, relativa al lavoro tramite agenzia interinale

Legge 4 aprile 2012, n. 35, Conversione in legge, con modificazioni, del *decreto-legge 9 febbraio 2012, n. 5*, recante disposizioni urgenti in materia di semplificazione e di sviluppo

Legge 28 giugno 2012, n. 92, Disposizioni in materia di riforma del mercato del lavoro in una prospettiva di crescita

Legge 7 agosto 2012, n. 134, Conversione in legge, con modificazioni, del *decreto-legge 22 giugno 2012, n. 83*, recante misure urgenti per la crescita del Paese

1.3.12. Latvia

Ports Act of 12 July 1994 (Likums par ostām)

Ventspils Freeport Act of 19 December 1996 (Ventspils brīvostas likums)

Liepāja Special Economic Zone Act of 17 February 1997 (Liepājas speciālās ekonomiskās zonas likums)

Riga Freeport Act of 28 March 2000 (Rīgas brīvostas likums)

Labour Protection Act of 20 June 2001 (Darba aizsardzības likums)

Labour Act of 6 July 2001 (Darba likums)

State Labour Inspectorate Act of 19 June 2008 (Valsts darba inspekcijas likums)

1.3.13. Lithuania

Klaipėda State Seaport Act No. I-1340 of 16 May 1996 (Lietuvos Respublikos Klaipėdos Valstybinio Jūrų Uosto Įstatymas (1996 m. gegužės 16 d. Nr. I-1340))

Order No. 264 of 7 July 1997 of the Ministry of Transport and Communications (Lietuvos Respublikos Susisiekimo Ministerijos Įsakymas (1997 m. liepos 7 d. Nr. 264 Dėl Klaipėdos Valstybinio Jūrų Uosto Naudojimo Taisyklių Patvirtinimo))

Labour Code (Act No. IX-926 of 4 June 2002) (Lietuvos Respublikos Darbo Kodeksas)

Occupational Safety and Health Act (Act No. IX-1672 of 1 July 2003 (Darbuotojų Saugos Ir Sveikatos (DSS) Įstatymas)

Lietuvos Respublikos Saugios laivybos įstatymo pakeitimo įstatymas Nr. X-116; Susisiekimo ministro 2004 sausio 15 d. įsakymas 3-24 Dėl Saugaus sausakrūvių laivų pakrovimo ir iškrovimo taisyklių patvirtinimo

1.3.14. Malta

Ordinance No. XXI of 28 April 1939 "that regulates the employment of Stevedores and Port Labourers and makes other provisions regarding this"

Ordinance XIV of 1962 to regulate the employment of port workers and to make other provisions connected therewith (Chapter 171 of of the Laws of Malta)

Act XXVI of 1989 to provide for the establishment of a Freeport system in Malta and to regulate its operation (Chapter 334 of the Laws of Malta)

Act XVII of 1991 to provide for the establishment of ports in Malta, for the registration and licensing of boats and ships and to regulate the use thereof within the territorial waters of Malta and to establish fees and dues and other matters ancillary to shipping (Chapter 352 of the Laws of Malta)

Act XXVIII of 2000 to provide for the establishment of an Authority to be known as the Occupational Health and Safety Authority, an Occupational Health and Safety Appeals Board, and for the exercise by or on behalf of that Authority of regulatory functions regarding resources relating to Occupational Health and Safety and to make provision with respect to matters connected therewith or ancillary thereto

Act XVIII of 2002 Relating to the Mutual Recognition of Qualifications (Chapter 451 of the Laws of Malta)

Merchant Shipping Notice No. 60 of 21 April 2004 on Safe Loading and Unloading of Bulk Carriers

Act XV of 2009 to provide for the establishment of a body corporate to be known as the Authority for Transport in Malta which will assume the functions previously exercised by the Malta Maritime Authority, the Malta Transport Authority and the Director and Directorate of Civil Aviation and for the exercise by or on behalf of that Authority of functions relating to roads, to transport by air, rail, road, or sea, within ports and inland waters, and relating to merchant shipping; to provide for the transfer of certain assets to the Authority established by this Act; and to make provision with respect to matters ancillary thereto or connected therewith (Chapter 499 of of the Laws of Malta)

Ports (Handling of Baggage) Regulations, S.L. 499.42

Tallying of Goods Regulations, S.L. 499.05

1.3.15. Netherlands

Stevedores Act (Wet van 16 oktober 1914 houdende bepalingen in het belang van de personen, werkzaam bij het laden en lossen van zeeschepen (Stuwadoorswet))

Stevedoring Safety Regulations (Stuwadoors-Veiligheidsbesluit van 5 september 1916)

Wet van 20 december 1995 tot regeling van tijdelijke bijdragen aan havenbedrijven voor herstructurering van de arbeidsvoorziening in havens ter vervanging van hoofdstuk V van de Werkloosheidswet (Wet tijdelijke bijdrage herstructurering arbeidsvoorziening havens)

Labour Conditions Regulations (Besluit van 15 januari 1997, houdende regels in het belang van de veiligheid, de gezondheid en het welzijn in verband met de arbeid (Arbeidsomstandighedenbesluit))

Labour Conditions Act (Wet van 18 maart 1999, houdende bepalingen ter verbetering van de arbeidsomstandigheden (Arbeidsomstandighedenwet 1998 or Arbwet))

Wet van 22 december 2005 tot goedkeuring van het voornemen tot opzegging van het op 25 juni 1973 te Genève totstandgekomen Verdrag betreffende de havenarbeid, 1973 (Verdrag nr. 137, aangenomen door de Internationale Arbeidsconferentie in haar achtenvijftigste zitting; Trb. 1974, 70)

1.3.16. Poland

Labour Code (Act of 26 June 1974) (Kodeks pracy)

Regulation of the Minister of Transport and Maritime Economy on health and safety at work in sea and inland ports of 6 July 1993 (Rozporządzenie Ministra Transportu i Gospodarki Morskiej z dnia 6 lipca 1993 r. w sprawie bezpieczeństwa i higieny pracy w portach morskich i śródlądowych)

Act on Ports and Harbours of 20 December 1996 (Ustawa z dnia 20 grudnia 1996 r. o portach i przystaniach morskich)

Ministerial Decree of 2 July 2001 (Rozporządzenie Ministra Zdrowia z dnia 2 lipca 2001 r. w sprawie terytorialnego zakresu działania oraz siedzib portowych inspektorów sanitarnych)

National Labour Inspectorate Act of 13 April 2007 (Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy)

1.3.17. Portugal

Decreto n.º 56 de 1 de Agosto de 1980 Aprova, para ratificação, a Convenção n.º 137, relativa às repercussões sociais dos novos métodos de manutenção nos portos

Decree-Law No. 358/89 (Decreto-Lei n.º 358/89 de 17 de Outubro de 1989 Define o regime jurídico do trabalho temporário exercido por empresas de trabalho temporário)

Decree-Law No. 280/93 of 13 August 1993 establishing the legal regime of port labour, as rectified by Rectification No. 202/93 of 30 October 1993 (Decreto-Lei n.º 280/93 de 13 de Agosto de 1993 Estabelece o regime jurídico do trabalho portuário)

Decree-Law No. 298/93 of 28 August 1993 establishing the regime of port operations, as amended by Decree-Law no. 65/95 of 7 April 1995 (Decreto-Lei n.º 298/93 de 28 de Agosto de 1993 Estabelece o regime de operação portuária)

Regulatory Decree No. 2/94 of 28 January 1994 regulating the carrying out of port activities (Decreto Regulamentar n.º 2/94 de 28 de Janeiro de 1994 Regulamenta o exercício da actividade portuária)

Ordinance No. 178/94 of 29 March 1994 laying down rules on the granting of licences to Port Labour Companies (Portaria n.º 178/94 de 29 de Março de 1994 Estabelece normas sobre a atribuição de licença às entidades que pretendam exercer a actividade de cedência de mão-de-obra portuária)

Decree-Law No. 324/94 of 30 December 1994 approving the general conditions for public service concessions for cargo handling in ports (Decreto-Lei n.º 324/94 de 30 de Dezembro de 1994 Aprova as bases gerais das concessões do serviço público de movimentação da cargas em áreas portuárias)

Labour Code (Act No. 99/2003 of 27 August 2003) (Código del Trabajo)

Occupational Safety and Health Act No. 102/2009 of 10 September 2009 (Lei n.º 102/2009 de 10 de Setembro Regime jurídico da promoção da segurança e saúde no trabalho)

1.3.18. Romania

Ordinance No. 22/1999 on the Administration of Ports and Waterways, the Use of Water Transport Infrastructure of the Public Domain and the Development of Shipping Activities in Ports and Inland Waterways (Ordonanta 22 (r. 2) din 29 ianuarie 1999 (Ordonanta 22/1999) privind administrarea porturilor si a cailor navigabile, utilizarea infrastructurilor de transport naval apartinand domeniului public, precum si desfasurarea activitatilor de transport naval in porturi si pe caile navigabile interioare)

Order No. 287 of 27 February 2003 on the Authorisation of Economic Operators Performing Shipping Activities (Ordinul 287 din 27 februarie 2003 (Ordinul 287/2003) privind autorizarea agentilor economici care desfasoara activitati de transport naval)

Act No. 319/2006 on Safety and Health at Work (Legea nr. 319 din 14 iulie 2006 securității și sănătății în muncă)

Government Decree No. 1425 of 2006 (Hotararea de Guvern 1425 din 2006 pentru aprobarea Normelor metodologice de aplicare a prevederilor Legii securitatii si sanatatii in munca nr. 319 din 2006)

Government Decision No. 1051 of 9 August 2006 "on the minimum safety and health requirements for the manual handling of loads that present a risk to workers, particularly of back injury" (Hotărâre nr. 1051 din 9 august 2006 privind cerințele minime de securitate și sănătate pentru manipularea manuală a maselor care prezintă riscuri pentru lucrători, în special de afecțiuni dorsolombare)

Procedural Rules on the Issuance of Port Worker's Books and the Registration of Port Workers of 5 April 2011 (Metodologia din 5 aprilie 2011 (Metodologia din 2011) de eliberare a carnetelor de lucru in port si de inregistrare a muncitorilor portuari)

Order No. 1832/856 of 6 July 2011 for the Approval of the Classification of Professions in Romania (Ordin nr. 1832/856 din 6 iulie 2011 privind aprobarea Clasificarii ocupatiilor din Romania — nivel de ocupatie (sase caractere))

1.3.19. Slovenia

Decree of 30 January 2002 (Uredba o določitvi pristanišč, ki so namenjena za mednarodni javni promet)

Employment Relations Act of 24 April 2002 (Zakon O Delovnih Razmerjih (Zdr))

National Professional Qualifications Act of 20 December 2006 (Zakon o nacionalnih poklicnih kvalifikacijah)

Decree No. 721-9/2008/11 of 10 July 2008 on the management of the cargo port of Koper, port operations and the granting of concessions for the management, administration, development and maintenance of port infrastructure in the port (Uredba o upravljanju koprskega tovornega pristanišča, opravljanju pristaniške dejavnosti, podelitvi koncesije za upravljanje, vodenje, razvoj in redno vzdrževanje pristaniške infrastrukture v tem pristanišču)

Health and Safety at Work Act of 24 May 2011 (Zakon O Varnosti In Zdravju Pri Delu (ZVZD-1))

1.3.20. Spain

Instrumento de Ratificación de España [de 22 de marzo 1977] del Convenio número 137 de la Organización Internacional del Trabajo sobre las Repercusiones Sociales de los Nuevos Métodos de Manipulación de Cargas en los Puertos, hecho el 25 de junio de 1973

Instrumento de Ratificación de 13 de febrero de 1982 del Convenio de la OIT número 152, sobre «Seguridad e Higiene en los Trabajos Portuarios», hecho en Ginebra el 25 de junio de 1979

Act No. 2/86 of 23 May 1986 (Real Decreto-ley 2/1986, de 23 de mayo, sobre el servicio público de estiba y desestiba de buques)

Royal Decree No. 371/1987 of 13 March 1987 (Real Decreto 371/1987, de 13 de marzo, por el que se aprueba el reglamento para la ejecución del Real Decreto-ley 2/1986, de 23 de mayo, de estiba y desestiba)

National Regulations on the Handling of Dangerous Goods in Ports (Real Decreto 145/1989, de 20 de enero, por el que se aprueba el Reglamento Nacional de Admisión, Manipulación y Almacenamiento de Mercancías Peligrosas en los Puertos)

Statute of Workers (Real Decreto legislativo 1/1995, de 24 de marzo, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores)

Act No. 31/1995 of 8 November 1995 on Labour Risk Prevention (Ley 31/1995, de 8 de noviembre, de Prevención de Riesgos Laborales; see also Real Decreto 39/1997, de 17 de enero, por el que se aprueba el Reglamento de los Servicios de Prevención)

Act No. 48/03 of 26 November 2003 on the economic regime and the provision of services of in port of general interest (Ley 48/03, de 26 de noviembre, de régimen económico y de prestación de servicios de los puertos de interés general)

Royal Decree No. 1033/2011 of 15 July 2011 (Real Decreto 1033/2011, de 15 de julio, por el que se complementa el Catálogo Nacional de Cualificaciones Profesionales, mediante el establecimiento de cuatro cualificaciones profesionales de la familia profesional Marítimo-Pesquera)

Act on the Ports of the State and on Merchant Shipping (Real Decreto Legislativo 2/2011, de 5 de septiembre, por el que se aprueba el Texto Refundido de la Ley de Puertos del Estado y de la Marina Mercante)

1.3.21. Sweden

Employment (Co-Determination in the Workplace) Act (Lag (1976:580) om medbestämmande i arbetslivet (Medbestämmandelagen, MBL)

Work Environment Act (Arbetsmiljölagen (1977:1160))

Work Environment Ordinance (Arbetsmiljöförordningen (SFS 1977:1166))

Act (1983:293) on the Establishment, Enlargement and Closure of Public Waterways and Public Ports (Lag (1983:293) om inrättande, utvidgning och avlysning av allmän farled och allmän hamn)

Public Order Act (Ordningslag (1993:1617))

Environmental Code (Miljöbalk (1998:808))

Provisions of the Swedish Work Environment Authority on Dock Work and the General Recommendations on the Implementation of the Provisions (Arbetsmiljöverkets föreskrifter om hamnarbete samt allmänna råd om tillämpningen av föreskrifterna (AFS 2001:09))

Port Labour Ordinance

1.3.22. United Kingdom

An Act to abolish the Dock Workers Employment Scheme 1967 and repeal the Dock Workers (Regulation of Employment) Act 1946, to make provision for the dissolution of the National Dock Labour Board and for connected purposes

Docks Regulations 1988

1.4. Foreign regulatory instruments

United States of America

22 CFR Ch. I § 89.1 Prohibitions on Longshore Work by U.S. Nationals

1.5. Collective agreements

1.5.1. Belgium

Codex for Mechanics in the port of Antwerp

Codex for the General Register in the port of Antwerp

Codex for the General Register in the port of Zeebrugge-Brugge

Codex for the Logistics Register in the port of Antwerp

Codex for the Logistics Register in the port of Zeebrugge-Brugge

Codex for the port of Ghent

Codex for the ports of Ostend and Nieuwpoort

Collectieve arbeidsovereenkomst van 8 mei 2000 tot vaststelling van het statuut van havenarbeider van het aanvullend contingent aan de haven van Gent

1.5.2. Bulgaria

Agreement concluded by Port of Varna EAD with SPO Confederation Varna East, SPO Confederation Varna West, SS "Support" and the Dockers' Syndicate on 12 January 2010

1.5.3. Denmark

Common National Agreement for the Transport and Logistics Sector for 2012-2014

Lokale bestemmelser aftalt mellem 3F Transport, Logistik & Byg Århus (Tidl. Havnearbejdernes Fagforening i Århus) og Arbejdsgiverforeningen for Handel, Transport og Service for Aarhus og Omegn gældende for havnearbejde på Århus Havn 2004 - 2007

Overenskomst 2010 - 2012 er indgået mellem DI Overenskomst II (DSA) og 3F Aabenraa

Overenskomst 2012-2014 indgået mellem DI Overenskomst II (HTS Arbejdsgiverforeningen, Hovedstadsområdet) for Udviklingselskabet By & Havn I/S og 3F/BJMF, Bygge-, Jord- og Miljøarbejdernes Fagforening

Overenskomst 2012-2014 mellem DI Overenskomst II (HTS-A Vendsyssel) og 3F, Frederikshavn gældende for arbejdere beskæftiget hos Skagen Lossekompani ApS

Overenskomst mellem Bilfærgernes Rederiforening og 3F Fagligt Fælles Forbund, Transportgruppen TransporTgruppen Overenskomst 2010-2012 for trosseførere
Tillægsoverenskomst til Fællesoverenskomst 2010 - 2012 mellem DI Overenskomst II (Bornholms Havne- og Købmandsforening) og 3F Bornholm vedrørende lastning og losning

Tillægsoverenskomst (til Fællesoverenskomst) mellem DI Overenskomst II (Nakskov og Omegns Arbejdsgiverforening) og 3 F, Vestlolland (2010-2012)

Tillægsoverenskomst 2012-2014 til fællesoverenskomst mellem DI Overenskomst II (HTS-Arbejdsgiverforeningen Nordjylland) og 3F, Aalborg gældende for havnearbejdere i Aalborg

Tillægsoverenskomst til Fællesoverenskomsten 2012-2014 Indgået mellem DI Overenskomst II (Vejle Arbejdsgiverforening) og 3 F, Vejle gældende for havnearbejdere i Vejle

Tillægsoverenskomst til Fællesoverenskomst 2012-2014 indgået mellem DI Overenskomst II (Vejle Arbejdsgiverforening/DSA) og 3F Vejle og 3F Midtjylland gældende for Claus Sørensen A/S, Terminal Vejle Nord og Engesvang

Tillægsoverenskomst til Fællesoverenskomst 2012 - 2014 mellem DI Overenskomst II og 3F Transport, Logistik og Byg, Århus

Tillægsoverenskomst til Fællesoverenskomsten 2012-2014 mellem DI Overenskomst II (Sydvestjysk Arbejdsgiverforening) og 3F Esbjerg Transport for Esbjerg Havn

Tillægsoverenskomst til Fællesoverenskomst 2012-2014 mellem DI Overenskomst II (DSA) og 3F - Skagerak gældende for Claus Sørensen A/S, Hirtshals (frysehus og pakkeri)

Tillægsoverenskomst til Fællesoverenskomst 2012 - 2014 mellem DI Overenskomst II (DSA) og Fagligt Fælles Forbund, Randers (Transportarbejdere)

Tillægsoverenskomst til Fællesoverenskomsten 2012-2014 om løn- og arbejdsforhold ved havnearbejde i Horsens indgået mellem DI Overenskomst II (HTS-A, Horsens) og 3F, Horsens

1.5.4. Finland

Collective Agreement for Harbour and Warehouse Terminal Employees in the Forwarding Industry (Huolinta-alan varastoterminaali- ja satamatyöntekijöitä koskeva työehtosopimus) between the Service Sector Employers PALTA (Palvelualojen työnantajat PALTA ry, aiemmin Erityispalvelujen Työnantajaliitto ry) and Transport Workers Union AKT for the period between 10 March 2010 and 31 January 2012

Collective Agreement for permanent employees in stevedoring (Ahtausalan vakinaisia työntekijöitä koskeva työehtosopimus) between the Finnish Port Operators Association and Transport Workers Union AKT for the period between 19 March 2010 and 31 January 2012

Collective Agreement for salaried employees working in stevedoring (Ahtausalan toimihenkilöiden työehtosopimus) between the Finnish Port Operators Association and the Union of Salaried employees PRO for the period between 1 May 2010 and 30 April 2012

Collective Agreement for supervisors working in stevedoring (Ahtausalan työnjohtajien työehtosopimus) between the Finnish Port Operators Association and the Union of Port Foremen AHT for the period between 11 May 2010 and 31 March 2012

1.5.5. France

Accord du 6 juillet 2005 relatif à la formation professionnelle

Accord du 30 octobre 2006 relatif à l'organisation du travail sur le port de Montoir - Saint-Nazaire

Accord du 19 décembre 2006 relatif à la création de certificats de qualification professionnelle dans la manutention portuaire (filière exploitation portuaire)

Accord du 17 mars 2011 relatif à la formation professionnelle

Accord du 25 octobre 2011 relatif aux conditions d'emploi et à la revalorisation des salaires (Bordeaux)

Accord-cadre interbranches du 30 octobre 2008 conclu en application de l'article 11 de la loi du 4 juillet 2008 portant réforme portuaire

Avenant N° 2 du 17 mars 2011 relatif à la création des CQP

Conditions d'emploi et de rémunération particulières des personnels dockers des entreprises de manutention dans les ports maritimes du département du nord - Avenant du 18 avril 2006

Convention collective nationale de la manutention portuaire du 31 décembre 1993

Convention Collective Nationale Unifiée "Ports & Manutention" of 10 March 2011

Emploi, RTT et salaires des dockers (Bordeaux) - Accord du 11 juillet 2000

1.5.6. Germany

Besitzstandstarifvertrag mit Anlagen für die Hafentarbeiter der Lübecker Seehafenbetriebe, 28. Mai 1998

Geschäftsordnung Hafenbetriebsverein Lübeck e.V., 28. Mai 1998

Rahmentarifvertrag für die Umschlagarbeiter der Lübecker Seehafenbetriebe, 30. April 1998

Rahmentarifvertrag für gewerbliche Arbeitnehmer und Arbeitnehmerinnen in Logistik-Unternehmen des Hamburger Hafens gültig ab 01.07.2007

Satzung für den Gesamthafenbetrieb Hamburg vom 30. April 1969 i.d.F. vom 26. Juni 1994

Vereinbarung über die Schaffung eines besonderen Arbeitgebers für Hafentarbeiter in Hamburg (Gesamthafenbetrieb), 9 Februar 1951

Vereinbarung über die Schaffung eines besonderen Arbeitgebers für Hafentarbeiter in Lübeck (Gesamthafenbetrieb), 31. März 1985

Vereinbarung über die Schaffung eines besonderen Arbeitgebers für Hafentarbeiter in Rostock (Gesamthafenbetrieb), 16 Januar 1992

Vereinbarung über die Schaffung eines Gesamthafenbetriebes für die Häfen im Lande Bremen (Bremen-Stadt und Bremerhaven), 01. März 1982

Verwaltungsordnung für den Gesamthafenbetrieb im Lande Bremen, 5. September 1989

Verwaltungsordnung für den Gesamthafenbetrieb Lübeck, 6. Februar 1986

Verwaltungsordnung für den Gesamthafenbetrieb Rostock, 14 März 1994

1.5.7. Italy

C.C.N.L. dei lavoratori dei porti, 1 gennaio 2009 - 31 dicembre 2012

1.5.8. Malta

Collective Agreement between Malta Freeport Terminals LTD and Union Haddiema Maghqudin regarding Senior Shift Leaders, Senior Planners, Duty Supervisors, Shift Leaders, Supervisors Equipment / Operators of 23 June 2005

1.5.9. Netherlands

Collective Agreement for Terminal Operators, Gate Inspectors and Mechanics of APM Terminals Rotterdam, 1 July 2009 - 30 September 2011

Collective Agreement of DFDS Seaways at Vlaardingen, 1 January 2011 - 31 December 2011

Collective Agreement of ECT, 1 July 2009 - 1 October 2012, version of September 2010

Collective Agreement of IGMA, 1 April 2009 - 31 March 2011

Collective Agreement of International Lashing Services, 1 July 2009 - 31 December 2011

Collective Agreement of Matrans Marine Services, 1 July 2009 - 30 September 2012

Collective Agreement of Rotterdam Port Services, 2009 – 2011

Collective Agreement of Verbrugge Terminals, 2008 - 2010

Collective Bargaining Agreements of EMO, 1 January 2009 - 1 January 2011 and 1 January 2011 - 1 January 2013

Collective Labour Agreement for the General Cargo Sector in the Port of Rotterdam for 1975

Collective Labour Agreement of Stena Line Stevedoring at Hoek van Holland, 1 January 2009 - 31 December 2010

1.5.10. Portugal

ACT entre a OPERFOZ - Operadores do Porto da Figueira da Foz, L.^{da}, e outra e o Sind. dos Conferentes de Cargas Marítimas de Importação e Exportação dos Dist. de Lisboa e Setúbal e outros, Lisboa, 15 de Novembro 1993

CCT entre a AOPL - Assoc. de Operadores do Porto de Lisboa e outra e o Sind. dos Conferentes de Cargas Marítimas de Importação dos Dist. de Lisboa e Setúbal e outros, Lisboa, 12 de Novembro de 1993

CCT entre a Assoc. dos Operadores Portuários dos Portos do Douro e Leixões e outra e o Sind. dos Estivadores e Conferentes Marítimos e Fluviais do Dist. do Porto e outro, Matosinhos, 29 de Setembro de 1993

1.5.11. Slovenia

Collective labour agreement of 18 September 2008 between Luka Koper and the two representative trade unions

1.5.12. Spain

III Acuerdo para la regulación de las relaciones laborales en el sector portuario, Madrid, 27 September 1999

Convenio Colectivo de Sociedad de Estiba y desestiba del Puerto de Algeciras-La Línea (published on 10 February 2009)

Convenio Colectivo de trabajo del sector portuario de la Provincia de Barcelona para el período 18.6.2010-31.12.2014

Convenio Colectivo Provincial regulador de las condiciones de trabajo en las empresas estibadoras portuarias de la provincia de Barcelona y los trabajadores de las mismas. Barcelona, 1 de enero de 2008

Estibadores portuarios Sociedad de Estiba y Desestiba del Puerto de Almería (SESTIALSA). Convenio colectivo (valid from 1 January 2006 to 31 December 2011)

1.5.13. Sweden

Hamn- och Stuveriavtalet mellan Sveriges Hamnar och Svenska Transportarbetareförbundet (Port and Stevedoring Agreement between Ports of Sweden and Swedish Transport Workers' Union)

2. CASES

2.1. International cases

CFA case No. 120, Report No. 17, *National Federation of Christian Publishing, Paper, Cardboard and allied Trade Unions / France*

CFA case No. 188, Report No. 34, *Swiss Printing Workers' Union and the Swiss Federation of National Christian Trade Unions / Denmark*

2.2. European cases

ECJ 10 December 1968, Commission / Italy, 7/68, *ECR* 1968, 423

ECJ 1 July 1969, Commission / Italy, 24/68, *ECR* 1969, 193

ECJ 12 July 1973, Geddo, 2/73, *ECR* 1973, 865

ECJ 21 June 1974, Reyners, 2/74, *ECR* 1974, 631

ECJ 11 July 1974, Dassonville, 8/74, *ECR* 1974, 837

ECJ 4 December 1974, Van Duyn, 41/74, *ECR* 1974, 1337

ECJ 12 December 1974, Walrave and Koch, 36/74, *ECR* 1974, 1405

ECJ 8 April 1976, Royer, 48/75, *ECR* 1976, 497

ECJ 15 June 1978, Defrenne, 149/77, *ECR* 1978, 1365

ECJ 20 February 1979, Cassis de Dijon, 120/78, *ECR* 1979, 649

ECJ 14 October 1980, Burgoa, 812/79, *ECR* 1980

ECJ 14 July 1981, Oebel, 155/80, *ECR* 1981, 1993

ECJ 17 December 1981, Webb, 279/80, *ECR* 1981, 3305

ECJ 11 March 1986, Conegate, 121/85, *ECR* 1986, 1007

ECJ 12 March 1987, German beer, 178/84, *ECR* 1987, 1227

ECJ 2 February 1988, Blaizot, 24/86, *ECR* 1988, 379

ECJ 7 July 1988, Wolf, 154-155/87, *ECR* 1988, 3897

ECJ 13 December 1989, Corsica Ferries, C-49/89, *ECR* 1989, 4441

ECJ 27 March 1990, Rush Portuguesa, C-113/89, *ECR* 1990, I-1417

ECJ 23 April 1991, Höfner and Elser, C-41/90, *ECR* 1991, I-1979

ECJ 7 May 1991, Vlassopoulou, C-340/89, *ECR* 1991, I-2357

ECJ 25 July 1991, Collectieve Antennevoorziening Gouda, C-288/89, *ECR* 1991, I-4007

ECJ 25 July 1991, Aragonesa, C-1/90 and C-176/90, *ECR* 1991, I-4151

ECJ 10 December 1991, Merci, C-179/90, *ECR* 1991, I-5889

ECJ 31 March 1993, Kraus, C-19/92, *ECR* 1993, I-1663

ECJ 24 November 1993, Keck and Mithouard, C-267/91, *ECR* 1993, I-6097

ECJ 24 March 1994, Schindler, C-275/92, *ECR* 1994, I-1039

ECJ 14 July 1994, Peralta, C-379/92, *ECR* 1994, I-3453

ECJ 28 March 1995, Evans Medical Ltd and Macfarlan Smith Ltd, C-324/93, *ECR* 1995, I-563

CFI 6 June 1995, UIC, T-14/93, *ECR* 1995, II-1503

ECJ 30 November 1995, Gebhard, C-55/94, *ECR* 1995, I-4165

ECJ 15 December 1995, Bosman, C-415/93, *ECR* 1995, I-4921

ECJ 28 March 1996, Guiot, C-272/94, *ECR* 1996, I-1905

ECJ 26 September 1996, Data Delecta Aktiebolag and Ronny Forsberg / MSL Dynamics Ltd, C-43/95, *ECR* 1996, I-4661

ECJ 11 March 1997, UIC, C-264/95, *ECR* 1997, I-1287

ECJ 5 June 1997, Greek tourist guides, C-398/95, *ECR* 1997, I-3091

ECJ 17 July 1997, GT-Link, C-242/95, *ECR* 1997, I-4449

ECJ 15 January 1998, Kalliope Schöning, C-15/96, *ECR* 1998, I-47

ECJ 12 February 1998, Raso, C-163/96, *ECR* 1998, I-533

ECJ 28 April 1998, Decker, C-120/95, *ECR* 1998, I-1831

ECJ 28 April 1998, Kohll, C-158/96, 1998, I-1931

ECJ 18 June 1998, Corsica Ferries, C-366/96, *ECR* 1998, I-3949

ECJ 16 September 1999, Becu, C-22/98, *ECR* 1999, I-5665

ECJ 21 September 1999, Albany, C-67/96, *ECR* 1999, I-5751

ECJ 21 September 1999, Brentjens, C-115/97, C-116/97 and 117/97, *ECR* 1999, I-6025

ECJ 21 September 1999, Drijvende bokken, C-219/97, *ECR* 1999, I-6121

ECJ 23 November 1999, Arblade, C-369/96 and C-376/96, *ECR* 1999, I-8453

ECJ 6 June 2000, Angonese, C-281/98, *ECR* 2000, I-4139

ECJ 4 July 2000, Haim, C-424/97, *ECR* 2000, I-5123

ECJ 11 July 2000, Kemikalieinspektionen, C-473/98, *ECR* 2000, I-5681

ECJ 3 October 2000, Corsten, C-58/98, *ECR* 2000, I-7919

CFI 12 December 2000, Aéroports de Paris, T-128/98, *ECR* 2000, II-3929

ECJ 20 February 2001, Analir, C-205/99, *ECR* 2001, I-1271

CFI 20 March 2001, Pietro Chiesa, T-59/00, *ECR* 2001, II-1019

ECJ 19 February 2002, Wouters, C-309/99, *ECR* 2002, I-1577

CFI 28 February 2002, Compagnie Générale Maritime, T-86/95, *ECR* 2002, II-1011

ECJ 24 October 2002, Aéroports de Paris, C-82/01 P, *ECR* 2002, I-9297

ECJ 5 November 2002, Überseering, C-2088/00, *ECR* 2002, I-9919

CFI 19 March 2003, CMA CGM, T-213/00, *ECR* 2003, II-913

CFI 17 June 2003, Coe Clerici Logistics SpA, T-52/00, *ECR* 2003, II-2123

ECJ 23 September 2003, Commission / Denmark, C-192/01, *ECR* 2003, I-9693

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ECJ 16 September 2004, Merida, C-400/02, *ECR* 2004, I-8471

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2.3.4. Finland

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2.3.13. Sweden

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ANNEX C: QUESTIONNAIRE FORM

CONTEXT AND PURPOSE

The Portius Port Labour Team is currently conducting a study on Port Labour, Health, Safety and Qualifications on behalf of the European Commission, DG MOVE (ref: MOVE/C2/2010-81-1).

The Portius Port Labour Team is an *ad hoc* consortium formed by Prof Dr Eric Van Hooydonk, Studio Legale Zunarelli, Global Port Training and Portius - International and EU Port Law Centre.

The aim of the study is to provide an in-depth overview on labour related issues in the stevedoring sector in EU ports (labour conditions, labour arrangements, training and qualifications, health and safety issues), to identify possible shortcomings in these areas and to propose recommendations, including action at EU level.

The study deals with all cargo handling and passenger terminal services but not with technical-nautical services (pilotage, towage and mooring).

In order to ensure maximum efficiency and quality of the study, the Portius Port Labour Team favours an interactive process in which consultation of the different stakeholders is of high importance. To that end, the Portius Port Labour Team is conducting the present questionnaire.

The Portius Port Labour Team kindly requests you to complete the questionnaire and return it either by e-mail to eric@portius.org, by fax to +32 3 248 88 63 or by mail to Portius, Emiel Banningstraat 21-23, 2000 Antwerp, BELGIUM, before 1 December 2011.

You are kindly invited to submit responses to all questions, but of course we will take into account partial replies to the questionnaire as well.

Please add any background data, studies, papers, laws and regulations which you consider relevant.

If you want all, or any part, of your response to be treated as confidential, please state so explicitly. No findings will be published which enable readers to identify any individual respondent.

Your contribution is essential to the success of the study.

Many thanks in advance
Prof Dr Eric Van Hooydonk

QUESTIONNAIRE

A. Identification and contact details

A.1. Please provide the name and address of your organisation as well as the contact person for this questionnaire

name:

address:

country:

contact person:

contact details (phone or email):

website:

A.2. Please indicate the role of your organisation

- ministry
- governmental agency
- port authority employing port workers
- port authority not employing port workers
- employee organisation representing port workers only
- employee organisation representing port and transport workers
- employee organisation representing port and other workers
- employer organisation representing port employers only
- employer organisation representing port and other employers
- employer of port workers
- other, please specify:

A.3. Please indicate the territorial scope of your organisation (multiple answers possible)

one port, please specify:

more than one port, please specify:

region, please specify:

country, please specify:

B. Draft national fact sheet

B.1. Please have a look at the attached draft fact sheet regarding port labour in your country and send us your corrections, additions or any other relevant data or suggestions.

C. Statistical data

C.1. Are there statistics on the number of port employers and port workers (including categories of port workers) in your port, region or country? If so, please provide us with these statistics or state where they can be consulted. If not, provide us with estimates. Please note that the study deals with all cargo handling and passenger terminal services but not with technical-nautical services (pilotage, towage and mooring). Please do not include figures on retired port workers.

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C.2. How many port workers (with the exclusion of retired port workers) are a member of a trade union?

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Which percentage of the total number of port workers does this represent?

- in the port:
- in the region:
- in the country:

Please state the name of the trade union(s) and, if possible, provide membership details for each union.

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C.3. Are there statistics on the number, types and causes of (1) occupational accidents (including categories of accidents and near-accidents) and (2) occupational diseases (for example, caused by exposure to chemicals, emissions, dust or noise) in your port, region or country where port workers were involved? If so, please provide us with these statistics or state where they can be consulted.

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D. Legal framework

D.1. Do specific legal instruments on port labour (law, decree, act, regulations, ...) apply in your port, region or country? If so, please provide us with the details (issuing authority, date, official title) and the text of these instruments.

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If applicable, please specify which of the following aspects are dealt with in the legal framework (multiple answers possible):

- labour organisation (e.g. employment and registration of port workers, provisions on a pool system)
- training of port workers
- health and safety of port workers.

D.2. Are there any collective labour agreements in your company, port, region or country which specifically relate to port labour? If so, please provide us with the details (parties, date, official title, scope of application) and the text of these instruments (preferably in English, French, German, Dutch, Italian or Spanish).

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If applicable, please specify which of the following aspects (*i.e.* the main three subjects of the study) are dealt with in the collective labour agreements (multiple answers possible):

- labour organisation (e.g. employment and registration of port workers, provisions on a pool system)
- training of port workers
- health and safety of port workers.

D.3. In case port labour is covered by a specific legal framework or a specific collective labour agreement, do these instruments include a definition of port labour and lay down the territorial scope of the regime? If so, please provide the definition and the delimitation (and if applicable, relevant maps indicating port boundaries).

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E. Labour arrangements

E.1. Are port workers in your port, region or country employed by (multiple answers possible):

- the government (or a governmental or national agency)
- a national port authority
- a local port authority
- a pool
- a terminal operator or other company
- a shipping company
- other, please specify:

In this respect, is there a distinction between the situation of port workers working on shore and workers working on board?

- yes
- no.

If yes, please clarify:

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Does the port labour regime make a distinction between port workers in the narrow sense (who are employed at the ship/shore-interface) and warehouse or logistics workers employed within the port?

- yes
- no.

If yes, please clarify:

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E.2. Do port employers have to be licensed (or obtain any other form of registration, recognition or authorisation, other than the ownership or right of use over a terminal or port land)?

- yes
- no.

If yes, please state by whom, under which conditions and for which duration the licence is granted:

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E.3. Is there any legal or factual obligation on port employers to be a member of an employers' association or a similar professional organisation?

- yes
- no.

If yes, please state the name, status and role of this organisation:

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E.4. Is there competition between various port employers (such as terminal operators) in your port(s)?

- yes
- no.

E.5. Which categories of port workers exist in your port, region or country (multiple answers possible)?

- permanent workers (under a normal employment contract with a single employer)
- regularly employed casual or temporary workers (always or in most cases employed by the same employer)
- irregularly employed casual or temporary workers (or reserve workers)
- occasionally employed workers (for example, students)
- other categories, namely:

E.6. Do port workers in your port, region or country have to be registered?

- yes
- no.

If yes, is the register a register within the meaning of ILO Convention 137 (ensuring priority of employment for registered workers)?

- yes
- no.

E.7. Which conditions have to be fulfilled in order to obtain a registration as a port worker?

- minimum age, please specify:
- training, please specify:
- physical requirements, please specify:
- mental requirements, please specify:
- language skills, please specify:
- good behaviour
- no criminal record
- trade union membership
 - legal requirement
 - factual requirement

other, please specify:

E.8. Do registered port workers enjoy any exclusivity or priority of employment?

- exclusivity
- priority
- neither exclusivity, nor priority.

E.9. Is there a pool system (with the exclusion of job recruitment or employment agencies) for port workers in your port, region or country?

- yes
- no.

If yes,

- please provide the name of the pool or pools:

- please specify who manages the pool:

- public body
- employer organisation
- employee organisation
- joint management (employer and employee organisation)
- tripartite management (public body, employer and employee organisation).

- are workers – from a strict labour law perspective – employed by the pool or directly by the individual employer?

- by the pool
- by the individual employer.

- how and by whom is the number of registered or pool workers set?

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- please explain how the pool (and its infrastructure, staff, dispatching etc.) is financed:

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E.10. How are port workers in your port, region or country employed (multiple answers possible)?

- permanently
- on an annual basis
- on a monthly basis
- on a weekly basis
- on a daily basis
- for a shift
- for a shift or a half shift
- on another basis, namely:

Is permanent employment of port workers by individual employers allowed?

- yes
- no
- in some cases, please specify:

Are port workers recruited via hiring halls?

- yes
- no
- in some cases, please specify:

Is it allowed to employ temporary port workers via job recruitment or employment agencies outside the pool?

- yes
- no
- in some cases, please specify:

If yes, please provide the names of these agencies as well as details on the categories of the workers concerned and on their share in the overall employment in the port, region or country.

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E.11. If a port worker is temporarily unemployed, does he receive an income?

- yes
- no.

If yes, specify whether the income is an unemployment benefit, attendance money or another form of income guarantee. Please also specify how the income guarantee is financed.

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E.12. Can port workers be transferred temporarily from employer to employer?

- yes
- no
- in some cases, please specify:

If yes, how often does this occur?

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E.13. Can port workers be transferred temporarily to another port?

- yes
- no
- in some cases, please specify:

If yes, how often does this occur?

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.....

E.14. Are service providers from other EU countries allowed to establish themselves in your port, region or country?

- yes
- no.

In the absence of establishment, are service providers from other EU countries allowed to offer port services in your port, region or country?

- yes
- no.

If yes, are they allowed to employ port workers of their own choice?

- yes
- no.

If yes, do these port workers have to be registered or otherwise authorized before they can carry out their work?

- yes
- no.

E.15. Do legal (criminal, administrative, financial) sanctions apply to breaches of rules on employment of port workers?

- yes
- no.

If yes, please specify:

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E.16. Who enforces the rules on labour arrangements (multiple answers possible)?

- public prosecutor
- police
- national transport ministry or agency
- national employment ministry or agency
- port authority
- harbour master
- terminal operator or company
- trade unions
- other, please specify:

E.17. Are applicable rules on labour arrangements properly enforced?

- yes
- no.

If not, please specify:

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E.18. In case a port or port terminal is transferred to a new operator or employer, is he under an obligation to take over port workers (under identical contractual conditions)?

- yes
- no.

F. Training

F.1. Are there any local / regional / national / sector minimum requirements regarding skills and competences for port workers?

- yes
- no.

If yes, please provide us with these requirements:

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.....

F.2. How is training for port workers organised in your port, region or country (multiple answers possible)?

- by an official education institution (regular school)
- at company level
- at port level
- at national level
- by a public organisation
- by a private organisation
- by a mixed public-private organisation
- by an organisation managed by an association of employers
- by an organisation managed by trade unions
- by an organisation managed jointly by employers and unions
- by a jointly managed labour pool.

F.3. If applicable, state the name, address and website and briefly describe the infrastructure and equipment (for example, crane or straddle carrier simulators) of the port training institution(s):

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F.4. Which types of formal port training or instruction – apart from on-the-job learning – are available in your port, region or country (multiple answers possible)?

- specialized training as part of a regular educational programme (secondary school)
- continued or advanced training after regular educational programme
- induction courses for new entrants (indicate whether compulsory or voluntary)
- courses for the established port worker (indicate whether compulsory or voluntary)
- training in safety and first aid (indicate whether compulsory or voluntary)
- specialist courses for certain categories of port workers such as
 - crane drivers (indicate whether compulsory or voluntary)
 - container equipment operators (indicate whether compulsory or voluntary)
 - ro-ro truck drivers (indicate whether compulsory or voluntary)
 - forklift operators (indicate whether compulsory or voluntary)
 - lashing and securing personnel (indicate whether compulsory or voluntary)
 - tallymen (indicate whether compulsory or voluntary)
 - signalmen (indicate whether compulsory or voluntary)
 - reefer technicians (indicate whether compulsory or voluntary)
- training aimed at the availability of multi-skilled or all-round port workers (indicate whether compulsory or voluntary)
- retraining of injured and redundant port workers (indicate whether compulsory or voluntary).

F.5. Are there any local / regional / national / sector curricula for the training of port workers in your port, region or country?

- yes
- no.

If yes, provide us with these curricula:

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G. Health and safety

G.1. Are there in your port, region or country specific rules on health and safety in port work?

- yes
- no.

If yes, please specify:

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G.2. In your view, are applicable rules on health and safety satisfactory?

- yes
- no.

If not, please specify:

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G.3. Who enforces the rules on health and safety in port work (multiple answers possible)?

- public prosecutor
- police
- national transport ministry or agency
- national employment ministry or agency
- port authority
- harbour master
- terminal operator or company
- trade unions

other, please specify:

G.4. Are applicable rules on health and safety properly enforced?

- yes
- no.

If not, please specify:

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.....

.....

G.5. Does any legal regime, scheme or system for the reporting of occupational accidents and / or occupational diseases apply in your port, region or country?

- yes
- no.

If yes, describe the regime, scheme or system:

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H. Policy issues

H.1. Has port labour in your port, region or country been the subject of recent (1985-present) reforms, or are any such reforms envisaged in the near future?

- yes
- no.

If yes, please specify:

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H.2. In your view, which legal and policy issues (including legal but also operational problems) in the field of port labour deserve priority attention? At which level (local, regional, national, EU) should these issues be addressed?

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H.3. Do you consider the current port labour regime (in other words, the set of rules governing employment arrangements, training, health and safety) in your port, region or country satisfactory?

- yes
- no.

If not, please specify:

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H.4. Does the current port labour regime offer sufficient legal certainty?

- yes
- no.

If not, please specify:

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H.5. Do you consider the current relationship between port employers and port workers and their respective organisations

- excellent
- good
- satisfactory
- unsatisfactory
- bad.

Please specify:

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H.6. Does the current port labour regime directly impact on the competitive position of your port(s)?

- yes, positive impact
- yes, negative impact
- no.

If yes, please describe the nature and relative effect of this impact and provide data on concrete cases (especially on contracts with customers and shifts of cargo flows):

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H.7. Do sub-standard or otherwise unacceptable labour conditions exist in your terminal, company, port, region or country? If so, indicate their nature (multiple answers possible):

- job insecurity
- temporary unemployment
- unfavourable employment practices
- lack of social security
- no freedom of association
- insufficient involvement of trade unions in decision making
- other obstacles to trade unionism
- unhealthy working conditions
- unsafe working conditions
- lack of training
- other, please specify:

Please provide additional details on the conditions:

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H.8. Do restrictive rules or practices apply in your terminal, company, port, region or country?
If so, indicate their nature (multiple answers possible):

Restrictions on employment

- prohibition on employment of permanent workers
- prohibition on employment of temporary workers through employment agencies
- prohibition on self-handling (for example for lashing and unlashng)
- prohibition on employment of non-nationals or workers employed by employers from other EU or non-EU countries
- mandatory use of port workers for non-port work
- exclusive rights for certain categories of workers
- mandatory composition of gangs
- ban on multi-skilling or multi-tasking
- exclusive right of trade union members (closed shop)
- other, please specify:

Restrictive working practices

- limited working days and hours
- inadequate duration of shifts
- late starts, early knocking off
- unjustified interruptions of work and breaks
- unauthorised absences
- overmanning
- inadequate composition of gangs
- ban on mobility of labour between hold and hold, ship and ship, ship and shore and between shore jobs
- limitations on use of new techniques
- other, please specify:

If so, do you consider these restrictive rules or practices as a major competitive disadvantage?

- yes
- no.

Please provide additional details on the restrictions:

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H.9. Which port labour regime (inside or outside your country or the EU) would you consider as a model or a best practice?

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H.10. Do you believe that there is a need or scope for EU action in the field of port labour? If so, do you have any specific suggestion?

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THANK YOU FOR YOUR COOPERATION

ANNEX D: METHODOLOGY OF QUESTIONNAIRE AND OVERVIEW OF INDIVIDUAL RESPONSES

A first draft questionnaire was presented to the European Commission together with the interim report of 15 September 2011. On that occasion, it was decided to give the European social partners (ETF, IDC-E, ESPO and FEPORT) the opportunity to comment on the draft questionnaire. The draft questionnaire was also presented at the ETF dockers meeting of 24 October 2011. The social partners' comments on the draft questionnaire were taken into consideration for the drafting of the final version. This final version of the questionnaire was sent to the European Commission, ETF, ESPO, FEPORT and IDC-E on 7 November 2011. The European Commission forwarded the questionnaire to the national administrations, whereas ETF, ESPO, FEPORT and IDC-E forwarded the questionnaire to their membership.

The table below show the response to the questionnaire.

	national administrations	employers organisations	employee organisations	port authorities	shipowners	TOTAL
1. Belgium	X	X	X X X	X X X	X	9
2. Bulgaria	X		X			2
3. Cyprus	forwarded to port authority			X		1
4. Denmark	X	X		X		3
5. Estonia						0
6. Finland	X	X		X		3
7. France	announced	X	X		X X X	5
8. Germany	X					1
9. Greece				X X X X X	X	6
10. Ireland	X			X X X X	X	6
11. Italy	X	X	X X X	X X X X		9
12. Latvia	X		X			2
13. Lithuania	forwarded to third parties	X X	X X	X		5
14. Malta	forwarded to port authority			X		1

15. Netherlands			X	X X		3
16. Poland	X			X		2
17. Portugal	X					1
18. Romania	forwarded to port authorities			X X X X		4
19. Slovenia	X			X		2
20. Spain	X	XX	X X	X	X	7
21. Sweden	forwarded to third parties	X	X X			3
22. United Kingdom		X			X X	3
TOTAL	12	11	16	30	9	78

ANNEX E: INDEX OF TABLES

Volume 1

Table 1. Overview of maritime cargo throughput (2011), EU port ranking (2011), EU and world container ranking (2009) and prevalent management models (2012) in EU ports, by Member State (sources: Portius Port Labour Questionnaire, UNCTAD)250

Table 2. Numbers of port employers and workers in the European Union by Member State, 2012.....269

Volume 2

Table 3. Evolution of port labour employment in Antwerp, 1980-2012 (source: Flemish Ports Commission and CEPA) 29

Table 4. Evolution of port labour employment in Zeebrugge, 1980-2012 (source: Flemish Ports Commission and CEWEZ)..... 30

Table 5. Evolution of port labour employment in Ghent, 1980-2012 (source: Flemish Ports Commission and CEPG) 31

Table 6. Evolution of port labour employment in Ostend, 1980-2012 (source: Flemish Ports Commission and CEWO) 32

Table 7. Composition of the port labour pool in Antwerp, 30 June 2012 (source: CEPA)..... 33

Table 8. Estimates of union membership shares in the General Register of port workers in Antwerp, Zeebrugge-Brugge and Ghent, 2012, in per cent (source: replies to Portius port labour questionnaire and interviews with trade union representatives) 35

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) 43

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; our adaptation)..... 44

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).....	45
Table 12. Occupational accidents in the General Register of port workers in Zeebrugge-Brugge, with frequency and severity rates, 2001-2011 (source: CEWEZ).....	49
Table 13. Incidence rate of occupational accidents in the port of Ghent, 2002-2011 (source: CEPG, Joint Safety Service, Annual report 2011).....	49
Table 14. Severity rate of occupational accidents in the port of Ghent, 2002-2011 (source: CEPG, Joint Safety Service, Annual report 2011).....	50
Table 15. Number of port workers involved in occupational accidents and days of incapacity in the port of Ostend, 2006-2009 (source: CEWO)	50
Table 16. Total employment and trade union membership in Bulgarian ports, 2009 (source: ILO Report on Social Dialogue in Bulgarian Ports)	140
Table 17. Number of port workers and licensed porters in the ports of Limassol and Larnaca, 2003-2012 (source: Cyprus Port Authority).....	167
Table 18. Number of accidents in Cypriot ports, 2007-2011 (source: Department of Labour Inspection, Cyprus)	172
Table 19. Accident Frequency Index in ports and selected other industries in Cyprus, 2011 (source: Department for Labour Inspection, Cyprus).....	173
Table 20. Number of workplaces and employees in NACE Code 'Operation of harbours and piers' in Denmark, 2007-2011 (source: Danish Working Environment Authority)	194
Table 21. Number of employers and employees in NACE Code 522400 'Cargo handling' in Denmark, 2007-2011 (source: Statistics Denmark / Working Environment Authority).....	194
Table 22. Type of injuries at work in NACE Code 522210 'Operation of harbours and piers' in Denmark, 2007-2011 (source: Danish Working Environment Authority)	200
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)	201
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)	201
Table 25. Type of injuries at work in NACE Code 522400 'Cargo handling' in Denmark, 2007-	

2011 (source: Danish Working Environment Authority).....	202
Table 26. Mode of injuries at work in NACE Code 522400 'Cargo handling' in Denmark, 2007-2011 (source: Danish Working Environment Authority).....	202
Table 27. Incidence rate 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)	203
Table 28. Employment in the seaport sector of Estonia, 2006 (source: ECOTEC / El Konsult).....	222
Table 29. Number of occupational accidents involving port workers in Estonia, 2004-2012 (source: Ministry of Social Affairs)	224
Table 30. Permanent employment at cargo handlers and port authorities in Finland, 2006 (source: ECOTEC)	240
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))	247
Table 32. Number of accidents involving stevedores (dock workers) in Finland by branch of business, 1999-2011 (source: Federation of Accident Insurance Institutions (FAII))	248
Table 33. Number of accidents involving stevedores (dock workers) in Finland by cause of accident, 1999-2011 (source: Federation of Accident Insurance Institutions (FAII)).....	250
Table 34. Number of accidents involving stevedores (dock workers) in Finland by type of injury, 1999-2011 (source: Federation of Accident Insurance Institutions (FAII)).....	252
Table 35. Number of accidents involving stevedores (dock workers) in Finland by sex, 1999-2011 (source: Federation of Accident Insurance Institutions (FAII))	252
Table 36. Number of accidents involving stevedores (dock workers) in Finland by age group, 1999-2011 (source: Federation of Accident Insurance Institutions (FAII)).....	253
Table 37. Number and frequency of occupational accidents in Finland, by branch of business, 2005-2011 (source: Federation of Accident Insurance Institutions (FAII)).....	254
Table 38. Recognised occupational diseases involving port workers in Finland, 2005-2010 (source: Finnish Registry of Occupational Diseases, Finnish Institute of Occupational Health)	255
Table 39. Suspected occupational diseases involving port workers in Finland, 2005-2010 (source: Finnish Registry of Occupational Diseases, Finnish Institute of Occupational	

Health)	255
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)	256
Table 41. Number of port workers in France, 2001-2002 (source: ECOTEC Research & Consulting based on Ifremer)	292
Table 42. Total number of professional port workers holding a 'Carte G' in French ports, 1950-2011 (source: CAINAGOD)	293
Table 43. Number of professional dockers (permanent and casual) in the 7 metropolitan Ports Autonomes of France, 2007 (source: UNIM and Canaigod)	293
Table 44. Occupational accidents in loading, unloading and handling of cargo in French seaports involving permanent and casual workers (Risk code 631AA), 2007-2010 (source: L'Assurance Maladie - Risques Professionnels)	302
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 (Risk code 631AA) and other comparable sectors, 2008-2010 (source: L'Assurance Maladie - Risques Professionnels)	303
Table 46. Number of pool workers in the port of Hamburg, 2007-2012 (source: Gesamthafenbetrieb Hamburg).....	374
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.).....	375
Table 48. Port workers in Bremen and Bremerhaven by employer, 2010-2012 (source: Annual Report for 2011 of the Unternehmensverband Bremische Häfen e.V.)	375
Table 49. Pool workers in the ports of Bremen and Bremerhaven, 2010-2012 (source: Gesamthafenbetrieb im Lande Bremen e.V.)	376
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.)	376
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.).....	376
Table 52. Number of port workers in Rostock, 1995-2012 (source:	

Gesamthafenbetriebsgesellschaft Rostock)	377
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) ..	382
Table 54. Number of workplace accidents in stevedoring, shipment, transshipment and storage in German ports, 2007-2011 (source: Berufsgenossenschaft Handel und Warendistribution) ..	388
Table 55. Number and incidence rate 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.)	389
Table 56. Number of employees of the Piraeus Port Authority by category, 30 September 2012 (source: Piraeus Port Authority).....	422
Table 57. Number of port workers employed by PCT and its subcontractors at the COSCO/PCT terminal in Piraeus, 2009-2012 (source: COSCO/PCT).....	423
Table 58. Number of employees of the Thessaloniki Port Authority by category, 2009-2011 (source: Thessaloniki Port Authority).....	423
Table 59. Number of occupational accidents in the port of Piraeus, 2009-2011 (source: Piraeus Port Authority).....	427
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)	428
Table 61. Occupational accidents in the port of Thessaloniki, 2004-2011 (source: Thessaloniki Port Authority).....	428
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)	463
Table 63. Number of port workers in Genoa, 1985-2009 (source: Port Authority of Genoa)....	509
Table 64. Number of workers employed by temporary port work providers and agencies in Italian ports (source: Mario Sommariva, 2011).....	512
Table 65. Number of port workers employed by authorised operators, labour pools and terminal concessionaires in selected Italian ports, 2012 (source: ISFORT)	513
Table 66. Modes of operation in port services and distribution of port workers in selected Italian ports, 2012 (source: ISFORT)	515

Table 67. Overview of port traffic, port service providers, workforce and operations in 10 Italian ports, 2012 (source: ISFORT).....	516
Table 68. Incidence rate of occupational accidents in the port of Gioia Tauro, 2008 (source: ISFORT)	528
Table 69. Number of employees engaged in cargo-handling at Latvian ports, 1997-2004 (source: ECOTEC)	556
Table 70. Number of occupational accidents in water transport and warehousing and support for transportation activities in Latvia, 2008-2011 (source: State Labour Inspectorate)	558
Table 71. Number of occupational accidents in the loading, unloading and storage sector in Lithuania, 2002-2011 (source: State Labour Inspectorate)	570
Table 72. Fatal and non-fatal accidents in port work in Lithuania, 2002-2011 (source: State Labour Inspectorate)	571
Table 73. Fatal occupational accidents in Lithuania by economic activity, 2002-2011 (source: State Labour Inspectorate).....	572
Table 74. Non-fatal occupational accidents in Lithuania by economic activity, 2002-2011 (source: State Labour Inspectorate)	573
Table 75. Frequency rate of occupational accidents in Lithuania by economic activity, 2008-2011 (source: State Labour Inspectorate)	574
Table 76. Incidence rate of occupational accidents in Lithuanian ports, 2008-2011 (source: State Labour Inspectorate).....	575
Table 77. Fees payable to port workers for the handling of general cargo in Maltese ports (source: Part I of the Second Schedule to the Port Workers Regulations)	614
Table 78. Fees payable to port workers for the handling of unitised cargo in Maltese ports (source: Part II of the Second Schedule to the Port Workers Regulations)	616
Table 79. Fees payable to foremen of port workers engaged in the supervision of the handling of cargo in Maltese ports (source: First Schedule to the Port Workers Regulations)	622
Table 80. Excerpt from the Schedule to the Maltese Mutual Recognition of Qualifications Act.....	625
Table 81. Number of registered port workers and foremen in Maltese ports, 1996-2012 (source: Parliamentary Questions and Answers and Transport Malta).....	627

Table 82. Types of occupational accidents with and without injury at Malta Freeport, 2011 (source: Malta Freeport)	633
Table 83. Pool workers vs. permanently employed port workers in the port of Amsterdam, 1960-1981 (source: Boot, 2011).....	657
Table 84. Number of port workers and labour productivity in Rotterdam, 1990-2008 (source: Poot and Luijsterburg, 2009)	673
Table 85. Number of inspections in ports by the Dutch Labour Inspectorate, 2003-2011 (source: Dutch Labour Inspectorate)	679
Table 86. Percentage of employees working always or mostly under pressure of time in Dutch ports, 2006 (source: FNV)	681
Table 87. Opinions of safety and prevention officers at Dutch port companies on the expected impact of liberalisation on professional skills (source: FNV).....	690
Table 88. Number of maritime economy entities active in cargo-handling and storage in seaports by legal form, 2007-2010 (source: Central Statistical Office of Poland)	707
Table 89. Number of maritime economy entities active in cargo-handling and storage in seaports by maritime province (voivodship), 2007-2010 (source: Central Statistical Office of Poland).....	708
Table 90. Number of employed persons active in cargo-handling and storage in seaports, 2007-2010 (source: Central Statistical Office of Poland).....	709
Table 91. Number of employed persons active in cargo-handling and storage in seaports by maritime province (voivodship), 2007-2010 (source: Central Statistical Office of Poland).....	709
Table 92. Number of maritime economy entities active in cargo-handling and storage in seaports by number of employed persons, 2007-2010 (source: Central Statistical Office of Poland).....	710
Table 93. Number of full and part-time employees employed by entities active in cargo-handling and storage in seaports employing more than 9 persons, 2007-2010 (source: Central Statistical Office of Poland).....	710
Table 94. In-house training programme for STS, RTG, R/S and IMV at the DCT terminal in the port of Gdańsk (source: DCT)	713
Table 95. Number of occupational accidents in Polish seaports investigated by the National Labour Inspectorate, 2010-2012 (source: National Labour Inspectorate)	715

Table 96. Number of occupational accidents at lakes, rivers, ports and on board all types of vessels, platforms, etc. in Poland, 2010-2011 (source: National Labour Inspectorate / Central Statistical Office)	716
Table 97. Number of port operators and pool companies in Portuguese ports, November 2012 (source: Instituto Portuário e dos Transportes Marítimos)	736
Table 98. Number of port workers in Portuguese ports, 31 July 2012 (source: Instituto Portuário e dos Transportes Marítimos)	737
Table 99. Number of accidents at port operations in Romanian ports, 2011 (source: Labour Inspection or Romania)	765
Table 100. Number of employees and port workers (indicated with *) at the Port of Koper, 2011 (source: Luka Koper)	780
Table 101. Number of occupational accidents in the port of Koper, as reported to the Ministry of Labour, 2009-2011 (source: Ministry of Labour and Labour Inspectorate of Slovenia)	785
Table 102. Number of occupational accidents in the port of Koper, as reported to the Labour Inspectorate, 2002-2012 (source: Labour Inspectorate of the Republic of Slovenia)	786
Table 103. Number of port workers in Spain, 2005-2010 (source: Puertos del Estado)	817
Table 104. Number of port workers registered with the port labour pool in individual Spanish ports, 2008-2012 (source: ANESCO)	818
Table 105. Number of port workers in Barcelona, 2005-2012 (source: Servicio de Prevención Mancomunado de las empresas estibadores del Puerto de Barcelona, PREVESTIBA)	819
Table 106. Number of port workers in Spanish ports by professional group, 31 December 2010 (source: Puertos del Estado)	820
Table 107. Accidents in Spanish ports, 2001, by type (source: Puertos del Estado)	826
Table 108. Accidents in the port of Las Palmas in 2011 (unknown source)	827
Table 109. Number of accidents and diseases in cargo-handling (NACE code 52441) in Swedish ports, 2007-2011 (source: Swedish Work Environment Authority)	857
Table 110. Number of accidents and diseases in cargo-handling (NACE code 52441) in Swedish ports 2007-2011, by gender and age groups (source: Swedish Work Environment Authority)	858
Table 111. Breakdown of 'on port' port labour employment in UK ports, 2009/10 (source:	

Databuild / Department of transport)	897
Table 112. Breakdown of 'off port' port labour employment in UK ports, 2009/10 (source: Databuild / Department of transport)	898
Table 113. Breakdown of all port labour employment on and off port in UK ports, 2009/10 (source: Databuild / Department of transport)	899
Table 114. Number of registered dock workers and port workers in the UK, 1950-2012 (source: Dempster based on NDLB Annual Reports and our estimate)	900
Table 115. Accident rate estimates in UK ports, 2009/10 (source: Department of Transport, 2010)	911
Table 116. Number of reported major accidents in water transport in the UK, 2010-2011 (provisional) (source: Health and Safety Executive)	912
Table 117. Number of reported major accidents in cargo handling in the UK, 2010-2011 (provisional) (source: Health and Safety Executive)	913
Table 118. Dangerous occurrences for water transport in the UK (not cargo handling) (source: Health and Safety Executive)	917
Table 119. Dangerous occurrences for water transport in the UK (not cargo handling) (source: Health and Safety Executive)	917

ANNEX F: INDEX OF FIGURES

Volume 1

Figure 1. A kaleidoscope of port labour jobs in Europe today	16
Figure 2. Programmability of the demand for port labour in Italian ports by cargo category, 2012 (source: ISFORT, our translation)	31
Figure 3. Reasons to rely on temporary workers in Italian ports, 2012 (source: ISFORT, our translation)	32
Figure 4. Nocturnal harbour activity at Hamburg's Hansahöft in 1926, painted by Martin Frost (1875-1928). By that time, the port could already rely on a formalised pool of temporary workers supplementing regular workers (source: Kunsthalle Hamburg)	39
Figure 5. The Changing World of Port Work (source: ILO)	42
Figure 6. Statues of <i>The Dockworker (De Dokwerker)</i> in Amsterdam (left) and <i>The Porter (De Buildrager)</i> in Antwerp (right) expressing not only the typical professional pride of the dockers but also the sincere affection for these workers among port city inhabitants (photos by S. Sepp and the author)	45
Figure 7. Two extremes of technological development in the year 2012: manual unloading of timber in the Mekong Delta, Viet Nam, January 2012 (top; photo by the author) vs. the largely automated Europe Container Terminals at Rotterdam (bottom, source: www.ect.nl)	49
Figure 8. The port worker training cycle as set out in the ILO Guidelines on Training in the Port Sector, 2011 (source: ILO)	80
Figure 9. Acrobatic manual dock work in Antwerp's southern barge docks in the days of old ..	84
Figure 10. Table of contents of the ILO Code of Practice on Safety and Health in Ports (source: ILO)	89
Figure 11. Cargo handling symbols as explained in the ILO Code of Practice on Safety and Health in Ports (source: ILO)	99
Figure 12. Correct position of signaller as explained in the ILO Code of Practice on Safety and Health in Ports (source: ILO)	99
Figure 13. Port workers belonging to the Lagrasso family who are supposedly involved in restrictive working practices and crime, according to an official 2012 report by the Waterfront	

Commission of New York Harbor. The amounts in USD indicate annual earnings. 'ILA' refers to the union International Longshoreman's Association (source: Waterfront Commission of New York Harbor)116

Figure 14. Results of a survey by the International Transport Workers' Federation on the supply of adequate safety equipment, November 2011 (source: ITF).....127

Figure 15. Protests from port workers against the second proposal for a EU port liberalisation directive156

Figure 16. Provision of port worker training in 14 EU Member States, 2009 (source: Turnbull).....209

Figure 17. Accreditation of port worker training in 14 EU Member States, 2009 (source: Turnbull).....209

Figure 18. Training paths for safety in logistics developed under the EU-funded Watermode project, 2012 (source: Watermode).....211

Figure 19. The approach of port employers towards health and safety policy, according to trade unions affiliated to the European Transport Workers' Federation, 2009 (source: Turnbull)224

Figure 20. Positions of main stakeholders on port labour in 2007, according to the Accompanying document to the European Commission's 2007 Communication on a European Ports Policy (source: European Commission).....233

Figure 21. On 15 June 2012, a conference of ETF- and IDC-affiliated port workers' unions from 11 different countries who convened at Antwerp discussed possible further EU initiatives relating to port labour. The unions branded these initiatives as a further attempt at port liberalisation and an attack on organised labour in European docks, and not in fact an effort at improving efficiency and competitiveness as the European Commission has represented (photos by BTB, Antwerp)246

Figure 22. EU Member States bound by ILO Convention No. 137, 2012.....252

Figure 23. EU Member States bound by ILO Conventions No. 32 and No. 152, 2012.....253

Figure 24. EU Member States bound by ILO Convention No. 137 by dates of ratification vs. EU membership, 2012.....254

Figure 25. EU Member States bound by ILO Convention No. 32 by dates of ratification vs. EU membership, 2012.....255

Figure 26. EU Member States bound by ILO Convention No. 152 by dates of ratification vs. EU membership, 2012.....256

Figure 27. EU Member State ratifications of ILO Conventions No. 32, 137 and 152 by date vs. date of EU membership, 2012.....	257
Figure 28. <i>Leges speciales</i> on employment of port workers in the EU by Member State, 2012.....	258
Figure 29. Levels of port labour-specific collective bargaining in the European Union by Member State, 2012	259
Figure 30. Port labour reform schemes in the EU by Member State and trigger, 1987-2012 ...	261
Figure 31. Registration of port workers in the EU by Member State, 2012	263
Figure 32. Exclusive or preferential rights of pool workers in EU ports by Member State, 2012.....	264
Figure 33. Regulated and deregulated port labour markets in the EU by Member State, 2012.....	265
Figure 34. Port labour systems in the EU by category, 2012.....	266
Figure 35. Estimated number of employers of port workers in the EU by Member State, 2012.....	267
Figure 36. Estimated number of port workers in the EU by Member State, 2012	268
Figure 37. Estimated trade union density among port workers and all employees in the EU by Member State, 2012	270
Figure 38. Specific training requirements for port workers in the EU by Member State, 2012.....	272
Figure 39. Geographical level of specific training provision for port workers in the EU by Member State, 2012	273
Figure 40. Existence of port worker training centres or schools in the EU by Member State, 2012.....	274
Figure 41. Public, joint and employer management of training for port workers in the EU by Member State, 2012	275
Figure 42. Availability of national qualification and certification system for port labour in the EU by Member State, 2012.....	276

Figure 43. <i>Leges speciales</i> on health and safety of port workers in the EU by Member State, 2012.....	277
Figure 44. Availability of specific statistics on occupational accidents involving port workers in the EU by Member State, 2012	278
Figure 45. Reported occurrence of restrictive working practices in port labour in the EU by Member State, 2012	283
Figure 46. Possible occurrence of closed shop situations in EU ports by Member State, 2012.....	285
Figure 47. Prohibitions and restrictions on self-handling in EU ports by Member State, 2012.....	287
Figure 48. Prohibitions and restrictions on temporary agency work in port labour in the EU by Member State, 2012	288
Figure 49. Overall appraisal of national port labour regimes in the EU by employers, by Member State, 2012	297
Figure 50. Overall appraisal of national port labour regimes in the EU by trade unions, by Member State, 2012	298
Figure 51. Overall appraisal of national port labour regimes in the EU by port authorities and national administrations, by Member State, 2012	299
Figure 52. Overall appraisal of national port labour regime in the EU by ship owners, by Member State, 2012	300
Figure 53. Support for future EU initiatives in the field of port labour among stakeholders, 2012.....	301
Figure 54. Possible effects of port reform on employment (source: The World Bank)	324

Volume 2

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)	19
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).....	20
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).....	21
Figure 58. Categories of port workers in Antwerp, 2012 (source: CEPA)	25
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).....	37
Figure 60. Port worker training programmes in Antwerp, 2012 (source: CEPA/OCHA and Turnbull).....	38
Figure 61. Incidence rate of port labour accidents in Antwerp, 2001-2011 (source: CEPA)	46
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)...	47
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).....	48
Figure 64. Casual vs. permanent port workers in Antwerp, 1960-2012 (source: CEPA).....	59
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 (photo is by Stora Enso).	67
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).	68
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 hiring facility 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).	74
Figure 68. Demo screenshot of a step in the electronic hiring procedure proposed by the Antwerp employers' association CEPA in July 2012, which has not yet been accepted by the trade unions (source: CEPA)	76
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).	104
Figure 70. Incidence rate of accidents vs. permanency of employment in Antwerp, 2010 (source: CEPA).....	111
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)	114
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)	135
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) ..	137
Figure 74. Results of a questionnaire on customer satisfaction on services provided by third parties at Cypriot ports, 2010 (source: Cyprus Ports Authority).....	182
Figure 75. The first holders of an official port worker's certificate in Denmark, photographed in Aalborg in 2012 (source: 3F)	198
Figure 76. Online Temporary Stevedore's Application Form of Rauma Stevedoring (source: Rauma Stevedoring)	237
Figure 77. OHSAS 18001 certificate of Oy Rauma Stevedoring Ltd, Rauma, 2003 (source: Rauma Stevedoring).....	245
Figure 78. Workplace accidents among wage earners in Finland, by occupation, 2008 (source: Ministry of Social Affairs and Health)	246
Figure 79. Specimen of a 'Carte G' for a professional port worker in France, issued on the basis of the Port Labour Act of 6 September 1947 (source: www.metiers-portuaires.fr and Mrs Karine Le Petit)	279

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).....283

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).....343

Figure 82. The Hamburg port area as defined for port management and port labour purposes (source: Hamburg Port Authority)362

Figure 83. Number of port workers in Bremen, 1990-2012 (source Gesamthafenbetrieb im Lande Bremen e.V.)373

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).378

Figure 85. BS OHSAS 18001:2007 Management System Certificate issued to Diakinisis Port and Co. E.E., 28 May 2011 (source: Diakinisis Port)445

Figure 86. Training certificate for port workers of Diakinisis Port, 10 May 2012 (source: Diakinisis Port).....446

Figure 87. Table of contents of the draft Irish Code of Practice for Health and Safety in Dock Work (source: Health and Safety Authority)467

Figure 88. Main accident triggers in Irish ports, 2005-2009 (source: Health and Safety Authority).....471

Figure 89. Main occupations involved in accidents in Irish ports, 2005-2009 (source: Health and Safety Authority).....472

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).....487

Figure 91. Delimitation of the port area of Ancona (source: Ancona Port Authority).....506

Figure 92. Distribution of port workers among authorised operators, labour pools and terminal

concessionaires in selected Italian ports, 2012, in per cent (source: ISFORT)	521
Figure 93. Training plan for new workers at Contship Italia, 2009 (source: Marcucci / Contship Italia)	528
Figure 94. Training timeframe leading to multiskilling at Contship Italia, 2009 (source: Marcucci / Contship Italia)	529
Figure 95. Number of accidents during port operations in the port of Genoa, 2001-2009 (source: ISFORT based on data provided by 3 local health authorities)	534
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)	535
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).....	535
Figure 98. Frequency index of occupational accidents in the port of Genoa and selected other sectors, 1980-2006 (source: Fabiano, Currò, Reverberi and Pastorina).....	537
Figure 99. Main issues in the organisation of port services and the port labour market in 10 Italian ports, 2012 (source: ISFORT)	541
Figure 100. Impact of the Italian Port Reform Act No. 84/94 as judged by stakeholders, 2012 (source: ISFORT).....	551
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).....	553
Figure 102. Impact of national collective bargaining in the Italian port sector, 2012 (source: ISFORT)	554
Figure 103. Appraisal of the professional training level among Italian port workers by stakeholders, 2012 (source: ISFORT)	555
Figure 104. The Freeport Zone at the port of Marsaxlokk as defined in the Schedule to the Malta Freeports Act.....	611
Figure 105. The porters' guild house at Schiedam from 1725. When a ship arrived, the bell called the workers to report at the house, where the work was allocated by the throw of a dice (photo by the author).....	662
Figure 106. The porters' guild house at Maassluis from 1765 (photo by the author).....	663
Figure 107. Possession of a VCA Safety Certificate by Dutch port workers, 2004-2006 (source:	

FNV)	686
Figure 108. Overall safety indicator in Dutch ports, 2004-2006 (source: FNV)	689
Figure 109. Evolution of the number of reported serious accidents in the ports of Rotterdam (including airports), 1997-2005 (source: Dutch Labour Inspectorate and FNV)	690
Figure 110. Scenarios for the development of jobs in the port of Rotterdam, 2008-2030 (source: Rotterdam Port Authority)	702
Figure 111. Artist's impression of the Maasvlakte 2 expansion area in Rotterdam which is due to open in 2013. Trade union FNV voiced concerns over the impact on employment at existing terminals, labour conditions at the new facilities and the introduction of new technologies (source: Rotterdam Port Authority)	706
Figure 112. The port area of Koper as defined in the Slovenian Port Decree, upon its adoption in 2008.	785
Figure 113. On 1 September 2011, Slovenian President Dr Danilo Türk met activists from the Invisible Workers of the World (IWW) who presented the situation of temporary workers employed by the contractors of Luka Koper (photo: Stanko Gruden/STA).	807
Figure 114. National classification of port workers in Spain (source: National Collective Agreement on Port Work of 27 September 1999, Art. 12(1))	823
Figure 115. The Liverpool footballer Robbie Fowler supported the famous strike by the Liverpool Dockers, an industrial dispute which lasted from 1995 to 1998. Fowler was fined 2,000 Swiss francs by UEFA, when, after scoring the winning goal in a televised European Cup Winners Cup quarter-final match, he removed his Liverpool shirt to reveal a t-shirt bearing the message '500 Liverpool Dockers sacked since 1995' (source: various websites)	900
Figure 116. Principal responsibilities for health and safety within Peel Ports (source: Corporate Health and Safety Policy Statement of Peel Ports Group)	917
Figure 117. Accident trends 2006/07 to 2010/11p for water transport in the UK (not including cargo handling) (source: Health and Safety Executive)	921
Figure 118. Accident trends 2006/07 to 2010/11p for cargo handling in the UK (source: Health and Safety Executive)	922
Figure 119. Details of all injuries (major & over 3 day) to employees in water transport in the UK for 2010/11p by accident kind code (source: Health and Safety Executive)	923
Figure 120. Details of all injuries (major & over 3 day) to employees in cargo handling in the UK for 2010/11p by accident kind code (source: Health and Safety Executive)	924

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ABOUT THE AUTHOR

Prof Dr Eric Van Hooydonk is a practising lawyer in Antwerp and a professor of law at Ghent University. His research fields and main areas of practice are maritime law, international law of the sea, seaport law and the law of public undertakings. His doctoral thesis (1994) consisted of an in-depth analysis of the legal aspects of port management in Belgium. From 2000 to 2010, Prof. Van Hooydonk chaired the European Institute of Maritime and Transport Law in Antwerp. In 2007, he was appointed Chairman of the Royal Commission for the Reform of Belgian Maritime Law which prepares, on his initiative, a new Maritime Code for Belgium. In 2009, he founded Portius, the world's first ever international and EU port law centre. Prof. Van Hooydonk is a Titulary Member of the Comité Maritime International (CMI) and a member of several professional and scientific associations as well as of editorial boards of legal reviews including Droit Maritime Français, Journal of International Maritime Law, Jurisprudence du Port d'Anvers and Tijdschrift Vervoer & Recht. In 2009, he was appointed as Chair of Flanders Water Heritage, an umbrella organisation for shipping, port and other water-related heritage. Prof. Van Hooydonk has run a niche law firm in Antwerp since 1995 which focuses, inter alia, on consultancy and litigation in port matters.

Prof Van Hooydonk's expertise in European law on seaports is evidenced by various studies which he carried out on behalf of the European Commission (DG TREN), the European Seaports Organisation, the Federation of European Private Port Operators, the Flemish Government, the Royal Belgian Shipowners' Association, several port authorities and private port service providers etc., by conferences which he organised on European seaport law and by the numerous presentations on that topic which he made before international audiences.

Books on port law by Prof Van Hooydonk in English include: European Seaports Law. EU Law of Ports and Port Services and the Ports Package (2003), The Impact of EU Environmental Law on Ports and Waterways (2006), Places of Refuge. International Law and the CMI Draft Convention (2010).