



At the meeting of the Governing Board

Puertos del Estado approves the modification of the Consolidated Text of the Law on State Ports and Merchant Shipping to adapt it to the EU Regulation

- **The Governing Board has also approved the notifications to the Commission on the procedure for handling complaints related to the application of the Regulation, the determination of the relevant authorities and the rules on penalties applicable to infringements of the Regulation.**

21-03-2019 (Ministry of Public Works). Next 24 March sees the entry into force of Regulation (EU) 2017/352 of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports, the main purpose of which is to establish a clear framework of transparent, fair and non-discriminatory provisions to improve the efficiency of the trans-European transport network and contribute to a climate that is more favourable to investment, thereby helping to reduce costs for users.

The Regulation respects the fact that different management models may exist in each Member State. Furthermore, it emphasises the freedom to provide port services and recognises the ability of the managing bodies to set their own charging systems in line with their commercial strategy and investment plans within the framework of the general ports policy of the Member State concerned.

The Regulation refers throughout to the need to comply fully with competition rules, and in particular with the rules of transparency, objectivity and non-discrimination related to the freedom to provide port services and set rates both for the provision of these services and for the use of port infrastructure. The references to compliance with competition rules include a particular emphasis on the behaviour of internal operators and situations where there is either no competition or where it is necessary to limit the number of providers in the market. It also emphasises the need to regulate charges for the use of port infrastructure



Press release

in an efficient manner, acknowledging that these charges may vary depending on certain circumstances and the managing body's economic strategy.

The Spanish regulation upholds the same principles and objectives as the EU Regulation in all aspects related to the matters regulated therein, and consequently it is simply a question of amending certain aspects to make the Spanish rules fully consistent with the EU rules.

However, it would be appropriate to introduce certain new provisions, under the aegis of the EU Regulation, such as the implementation of this Regulation in all ports and its application to pilotage services, and the creation of a payment system for the availability of towing and pilotage services.

Although the Regulation is for immediate implementation and does not require transposition into national law to be effective, certain aspects of the Spanish regulation will nevertheless need to be modified to incorporate specific changes as well as matters where the EU Regulation provides for a margin of discretion by the Member States.

The EU Regulation also makes it mandatory for the Member States to send certain notifications to the Commission by 24 March.

Furthermore, it is necessary to set up mechanisms to ensure compliance with the provisions regarding the transparency of financial relations.

With regard to transparency, there is an obligation to inform the Commission when the managing body of a port is in receipt of public funds, or when changes are made to the nature or level of port infrastructure charges. Additionally, and in accordance with the national rules, the managing body of the port must consult port users about specific aspects of its management. To comply with these obligations, the port authorities must report to the Shipping and Port Council within the time frames set out in the EU Regulation, maintaining the confidentiality of the information at all times.



Press release

With regard to the creation of a procedure for handling complaints, the Spanish regulation currently includes efficient mechanisms for complying with the EU Regulation in this respect since it meets the requirements of independence and objectivity. It will therefore not be necessary to create a procedure from scratch, which in any case would generate a certain degree of confusion regarding its status in our system of administration.

Consequently, complaints related to the freedom to provide port services will be handled through the administrative contentious procedure since infringements will refer to administrative acts issued by the port authorities and/or Puertos del Estado (licences, specifications, service provision resolutions or limitation on the number of providers). Complaints related to compliance with the transparency rules on the creation or implementation of charges for port services or for the use of port infrastructure will be handled by the port authority itself or Puertos del Estado, as applicable, and the rules on penalties will be those set out in the TRLPEMM (Spanish initials of the Consolidated Text of the Law on State Ports and Merchant Shipping).

The **Governing Board of Puertos del Estado** has therefore approved:

The official proposal to modify the Consolidated Text of the Law on State Ports and Merchant Shipping (TRLPEMM), which recommends:

- The definition and regulation of the fuel supply as a port service (it is currently treated as a commercial service).
- The integration of the collection of cargo residues into the waste collection port service.
- The introduction of various adjustments related to the minimum requirements for the provision of port services, the approval of specifications, the publication of the proposed limitation on the number of providers, public service obligations and the creation of maximum charges in certain situations.
- The introduction of a new charge for the availability of port services in certain cases.



Press release

- The creation of a transitional framework for the authorisations that are currently in force for the provision of the fuel supply commercial service.

The proposed notifications to the Commission on:

- The procedure for handling complaints related to the application of the Regulation.
- The determination of the relevant authorities referred to in Art. 17 of the Regulation.
- The rules for penalties applicable to infringements of the Regulation.
- The implementation of the Regulation in ports not included in the trans-European transport network.
- The application of the provisions of Chapter II and Art. 21 of the Regulation to pilotage.