

EU PORT LABOUR STUDY

Preliminary conclusions

CONFERENCE ON THE EUROPEAN PORTS POLICY REVIEW:
UNLOCKING THE GROWTH POTENTIAL
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THE STUDY

SCOPE

- Port labour
 - Port workers or ‘dockers’
 - Sea ports only, in 22 maritime Member States
- Three aspects of port labour
 - Organisation of labour market
 - Training
 - Health and safety

AMBITION

- A database and toolbox for policy makers
 - Collection of figures and sources of law
 - Description of current situation
 - Inventory of legal and policy issues
 - Outline of possible policy actions at EU level

DISCLAIMER

- My task is delicate
 - The subject is contentious and taboo-ridden
 - The rejection of PP1 and PP2 is fresh in the memories
 - The study also reports on problems and subjective opinions of stakeholders
- Don't shoot the messenger (or the European Commission)
- Thanks to all contributors

THE PORT LABOUR MARKET: FACTS

Market organisation (1)

- Employers
 - Authorised operators
 - Terminal concessionaires
 - Port authorities
 - Subsidiaries of port authorities
 - Self-employed
 - Pools

Market organisation (2)

- Workers
 - Under normal (permanent or fixed-term) employment contract
 - Under specific conditions: registered and / or pool workers
 - Auxiliary / supplementary workers supplied by a pool
 - Temporary agency workers
 - Self-employed

Historical background

- 1200-1800: corporations
- 1800-1900: free hiring
- 1900-1945: regulated pools
- 1945-1980: social security, nationalisation, unitisation
- 1980-current: reforms, gradual deregulation

Special characteristics ?

- (Ir)regularity of demand
- From unskilled work to multi-skilling
- Different occupational risk levels

THE PORT LABOUR MARKET: EXISTING INTERNATIONAL AND EU LAW

ILO Instruments

- ILO Dock Work Convention (C137)
 - obliging States Parties to encourage permanent or regular employment of dockers and to grant priority of employment to registered dockers
 - 8 EU Member States bound
 - 'interim status'
- ILO Dock Work Recommendation (R145)
- ILO Occupational Safety and Health (Dock Work) Convention (C152)
 - national laws and regulations must regulate health and safety in dock work
 - 9 EU Member States bound
- ILO Occupational Safety and Health (Dock Work) Recommendation (R160)
- ILO/IMO Code of Practice on Security in Ports (2004)
- ILO Code of Practice on Safety and Health in Ports (2005)
- ILO Guidelines on training in the port sector (2012)

EU Law (1)

- Ports Package 1 & 2
 - Authorisations for port service providers
 - Free choice of personnel subject to labour law (as far as compatible with EU law)
 - Self-handling
 - Voted down by the European Parliament

EU Law (2)

- The Treaty (TFEU)
 - non-discrimination
 - free movement of goods
 - free movement of services
 - freedom of establishment
 - free movement of workers
 - prohibition on anti-competitive agreements between undertakings
 - prohibition on abuses of a dominant position by an undertaking
 - prohibition on state aid

EU Law (3)

- Case law on exclusive rights of port labour pools
- Collective agreements can also be tested against four freedoms
- Directive on Services in the Internal Market (Directive 2006/123/EC or Bolkestein Directive) does not apply to "services in the field of transport, including port services, falling within the scope of Title V of the Treaty" and to "services of temporary work agencies"

EU Law (4)

- Social policy provisions in TFEU
- Working Time Directive (Directive 2003/88/EC) (which allows derogations for dock workers)
- Posting of Workers Directive (Directive 96/71/EC)
- Transfer of Undertakings Directive (Directive 2001/23/EC)
- Temporary Agency Work Directive (Directive 2008/104/EC)
- Recognition of Professional Qualifications Directive (Directive 2005/36/EC)
- Recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning
- Safety and Health Directive (Directive 89/391/EC)

THE PORT LABOUR MARKET: ISSUES

Restrictions

- Restrictions on employment
- Restrictive working practices
- A global phenomenon, addressed by ILO (1957), World Bank (1990), EU and national authorities and law courts (since 1980s)
- In some cases intertwined with restrictions on access to the port services market
- Not every restriction is incompatible with EU Law: some can be justified if certain conditions are met

Restrictions on employment (1)

- Compulsory membership of labour pool for service providers
- Exclusive right of labour pool to supply (all or some) workers
- Mandatory registration of port workers
- Compulsory membership of trade union (closed shop)
- Compulsory appointment or nomination of pool members / employees / registered workers by trade union (closed shop)
- Priority of engagement for unionised workers (preferential shop)
- Privileges for relatives of workers (nepotism)
- Training / qualification requirements
- Special or discriminatory minimum age requirements
- Language skills requirements
- Lack of transparency in definition of (territorial or functional) scope of exclusive rights or of other restrictions

Restrictions on employment (2)

- Extension of territorial scope to dry areas beyond ship / shore interface
- Extension of scope to logistics work
- Lack of transparency in granting of membership / employment / nomination / registration of workers
- Limitation of number of pool or registered workers
- Impossibility of scaling down the pool or to deregister workers
- Minimum percentage of permanent vs casual workers
- Prohibitions or restrictions on supply of workers by temporary work agencies
- Exclusive right of pool to supply (all or some) workers combined with right of pool to provide handling services to third parties (right to compete with employers of pool workers)
- Exclusive right of pool to supply (all or some) workers combined with restrictive working practices

Restrictions on employment (3)

- Overmanning resulting from mandatory manning scales
- Decision on manning levels taken by public authority and/or unions
- Exclusive classification of jobs (ban on multi-skilling)
- Compulsory classification of workers in one shift
- Prohibition or restrictions on self-handling
- Prohibition or restrictions on permanent employment contracts
- Restriction of access to handling services market (exclusive rights or limitation of number of authorised operators, either legal or factual)
- Compulsory financial contribution to or shareholder status in pool
- Exclusive right of pool to provide training / prohibition or restrictions on market access for other training providers
- Inefficiency of sanctioning system ('job for life')

Restrictive working practices

- Limited working days and hours
- Non-respect of official working hours (late starts, early knocking off; unjustified interruptions of work and breaks; unauthorised absences)
- Exclusive delegation of employer's authority to foremen
- Restrictions on the use of new cargo handling technologies

Effect of restrictions

- In many cases, restrictions substantially increase costs, affect productivity and efficiency, act as a barrier to the creation of jobs and impact negatively on the competitive position of the port
- Cases where traffic flows shifted
- In some ports, restrictions have little or no impact
- Several ports declared themselves restriction-free
- Some highly regulated pool systems are efficient and accepted by social partners due to the absence of unjustified restrictions
- Some Member States are currently preparing further reform

Difficult employment and industrial relations

- In some ports, employers complain about
 - closed shop
 - casual employment and ineffective sanctioning system preventing employers from exercising normal authority over pool workers
 - constant threat of work stoppages – but ship owners insist that ships may never be blocked
 - use of port labour pool as power base for the unions
- In some ports, unions complain about
 - impossibility to defend workers at individual companies
 - refusal by employers to conclude collective agreements
 - exploitation of workers at sub-standard wage and labour conditions

Self-handling

- No general demand by shipowners to introduce self-handling
- Self-handling is certainly not the big issue
- It can be an issue in specific cases
 - Project cargo / special purpose vessels
 - Self-unloading ships and barges
 - Lashing on board short sea ro-ro vessels (competitive distortions between ports)
 - Lines wishing to operate 24/7

Temporary agency workers (1)

- Used in some ports, prohibited in others, or used for specific jobs only
- Diverging opinions
 - ‘Unnecessary because unskilled and availability not guaranteed’
 - ‘Leads to social dumping’
 - ‘Useful for certain jobs or to break open the market and remove unjustified restrictions’
 - In some ports, there are specific commercial port labour agencies supplying trained port workers

Temporary agency workers (2)

- The matter is already regulated at EU level today
- Directive 2008/104/EC, Art. 4:
 - Prohibitions or restrictions on the use of temporary agency work shall be justified only on grounds of general interest relating in particular to the protection of temporary agency workers, the requirements of health and safety at work or the need to ensure that the labour market functions properly and abuses are prevented.
 - Obligation to review prohibitions and restrictions (deadline: 5 Dec 2011)

Specific disincentives resulting from restrictions

- Short sea shipping
- Inland shipping
- Logistics in port areas

Substandard legal framework

- In some ports:
 - Legal uncertainty
 - Lack of transparency
 - Absence of the rule of law

Training issues

- No uniformity
- Not regulated in every Member State or port
- A number of dedicated vocational schools
- New training programmes and certification systems are emerging
- Company-based training at container terminals
- Individual employers not keen on training casual workers
- Trend towards multiskilling (impossible in some ports due to strict classifications between workers)
- Exclusive right of training providers

Health and safety issues (1)

- Regulatory approaches in Member States are diverse
 - Specific prescriptive regulations
 - Application of general health and safety laws and regulations
 - Soft-law guidance or best practices

Health and safety issues (2)

- EC Ports Policy Communication (2007):
'unacceptable safety level in ports'
- Impression that safety level has substantially improved
- Frequency, incidence and severity rates remain very high, in some cases the highest in the economy
- In several Member States and ports, statistical data are lacking
- Substantiated conclusions at EU level are impossible

Health and safety issues (3)

- Causes of high rates
 - ‘inherently dangerous’ (disputed by others)
 - ‘insufficient risk management by companies’
 - ‘machismo of workers’
 - ‘overmanning of gangs’
 - ‘understaffing or wrong priorities of Labour Inspectorate’
- Supplementary, auxiliary or temporary workers are often untrained

CONCLUSIONS

A labour market in transition

- High diversity of organisational patterns, training and health and safety regimes across the EU
- Trend from regulation to deregulation, from *leges speciales* to general labour law
- Diverging views on the need to maintain *leges speciales*
- A number of Member States and ports have improved their port labour arrangements
- In a number of ports, restrictions and health and safety remain very big issues

POSSIBLE FUTURE EU ACTION

THEORETICALLY POSSIBLE INSTRUMENTS

- Do nothing
- Research, cooperation and pr projects
- Social dialogue
- Clarification through soft law
- Imposing conditions in the context of related policies
- Infringement procedures (including in relation to Temporary Work Agencies Directive)
- Port Services Directive (or Regulation)
- Port Labour Directive (or Regulation)

SELECTION CRITERIA (1)

- The choice is delicate, each option has pros and cons and I express no personal preference
- Policy-makers and stakeholders may wish to take into account:
 - subsidiarity
 - proportionality
 - effectiveness, i.e. directly tackling the real issues rather than proclaiming general principles
 - preference for social dialogue

SELECTION CRITERIA (2)

- acceptance in the port industry
- need to act due to inability of social partners and governments to solve issues at national or local level
- not jeopardising successful earlier reform schemes
- level playing field between Member States and ports / competitive and social distortions between Member States and ports resulting from current or future situation
- concerns about industrial action among port authorities, service providers and users

SELECTION CRITERIA (3)

- concrete economic results of EU measures
- interrelation between exclusive or preferential rights of employers, pools and workers
- legal certainty before, during and after implementation of EU policy
- consistency with other relevant EU policies
- time-effectiveness
- prevention of social dumping

Thank you very much
for not having shot