

**THE EUROPEAN PORTS  
REGULATION AND ITS IMPACT  
ON THE SECTOR  
CONFERENCE, BARCELONA,  
21-22 SEPTEMBER 2017**

EDITORIAL BOARD

MIGUEL ÁNGEL COLLADO YURRITA

JOAN EGEA FERNÁNDEZ

JOSÉ IGNACIO GARCÍA NINET

LUIS PRIETO SANCHÍS

FRANCISCO RAMOS MÉNDEZ

SIXTO SÁNCHEZ LORENZO

JESÚS-MARÍA SILVA SÁNCHEZ

JOAN MANUEL TRAYTER JIMÉNEZ

ISABEL FERNÁNDEZ TORRES

BELÉN NOGUERA DE LA MUELA

RICARDO ROBLES PLANAS

JUAN JOSÉ TRIGÁS RODRÍGUEZ

*Publications Editor*

**THE EUROPEAN PORTS  
REGULATION AND ITS IMPACT  
ON THE SECTOR  
CONFERENCE, BARCELONA,  
21-22 SEPTEMBER 2017**

Coordination:

**Román Eguinoa de San Román**

Secretario General de la Autoridad Portuaria  
de Barcelona

Editor:

**Pilar Fernández Bozal**

Socia Responsable de Derecho Público de EY  
Decana de la Facultad de Derecho de la UIC

## Collection: Derecho y Administración

Editors:

Joan Manel Trayter Jiménez

(Professor of Administrative Law. Universidad de Girona)

Belén Noguera de la Muela

(Lecturer in Administrative Law)

Sponsored by:



All rights reserved. Pursuant to arts. 270, 271 and 272 of the Criminal Code, anyone who reproduces, plagiarises, distributes or publicly communicates, in whole or in part, a literary, artistic or scientific work on any type of medium without the authorisation of the owners of the intellectual property rights thereto or their assignees shall be liable to a fine and a term of imprisonment.

© 2019 The authors

© 2019 Atelier

Santa Dorotea 8, 08004 Barcelona

e-mail: [atelier@atelierlibros.es](mailto:atelier@atelierlibros.es)

[www.atelierlibros.es](http://www.atelierlibros.es)

Tel. 93 295 45 60

I.S.B.N.: 978-84-17466-48-0

Legal deposit: B-7449-20199

Design and layout: Addenda, Pau Claris 92, 08010 Barcelona

[www.addenda.es](http://www.addenda.es)

# SUMMARY

INTRODUCTION . . . . .	9
THE EUROPEAN PORTS REGULATION: IMPACT ON THE SECTOR (BARCELONA, 21-22 SEPTEMBER 2017) . . . . . Mr. Knut Fleckenstein	15
REGULATION OF PORT SERVICES IN SPAIN AND THE NEW EUROPEAN LEGAL FRAMEWORK . . . . . Ricardo Alonso Soto	19
PORT SERVICES, COMMERCIAL ACTIVITIES AND PUBLICLY-OWNED PROPERTY. . . . . Bartomeu Trias Prats	33
THE EUROPEAN REGULATION ON PROVISION OF PORT SERVICES AND PUBLICLY-OWNED PORT PROPERTY . . . . . Francisco Javier Jiménez de Cisneros Cid	51
DOMESTIC RULES FOR PORT SERVICES CHARGES AND EUROPEAN REGULATION 2017/352* . . . . . Roberto Ignacio Fernández López	75
THE EUROPEAN PORTS REGULATION AND ITS IMPACT ON THE SECTOR . . . . . Ángel Mato Adrover	89

**8 / Summary**

REGULATION (EU) 2017/352 AND STATE PORT SYSTEM . . . . .	95
Juan Ramón García Notario	
FUNDING PORT INFRASTRUCTURES FROM THE STATE AID STANDPOINT . . . . .	105
Andrés M. González Sanfiel	
THE PORT CHARGES SYSTEM . . . . .	115
Francisco José Villar Rojas,	
THE SPANISH (STATE) PORT MODEL . . . . .	129
Román Eguinoa de San Román	
THE PORT SERVICE REGULATION: A PERSPECTIVE FROM HAMBURG . . . . .	153
Dr. Kai-Dieter Classen, LL.M. (Berkeley)	
THE PORT SERVICES AND TRANSPARENCY REGULATION (EU 2017/352): A BASIC IN THE TOOLKIT OF A PORT LAWYER . . . . .	173
Frans van Zoelen	

# INTRODUCTION

The vast bulk of the European Union's maritime traffic goes through the maritime ports in the Trans-European Transport Network set up by Regulation (EU) No 1315/2013 of 11 December of the European Parliament and of the Council.

This means ports play a crucial role in the logistics chain and are viewed as drivers of innovation and modernisation. Consequently and as part of efforts to enhance access to the port services market and ensure the financial transparency and autonomy of maritime ports, the European authorities have passed Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports. The Regulation entered into force on 24 March 2017 and will be directly applicable as of 24 March 2019 without needing to be enacted in Member States' domestic legal systems.

To mark the entry into force of the Regulation, Ernst & Young Abogados and the Port of Barcelona hosted a conference to examine the impact the Regulation will have on the industry. Experts and specialists in the field from European institutions, academia and business in Spain and from leading European ports were invited to take part. They all shared their expertise, experience and vision of the Regulation.

The conference was held on 21-22 September 2017 in the Foyer of the Gran Teatre del Liceu in Barcelona under the tagline ‘The European Ports Regulation and its Impact on the Sector’. It featured talks and roundtables at which numerous specialists in the field shared their impressions and examined the implications of the entry into force of the Regulation for port services, financial transparency and the current port model of Member States.

The speakers at the conference were as follows:

- **Knut Fleckenstein**, Rapporteur of the Regulation in the European Parliament
- **Dr Ricardo Alonso Soto**, Emeritus Professor of Commercial Law at the Autonomous University of Madrid
- **Dr Bartomeu Trias Prats**, Lecturer at the University of the Balearic Islands
- **Francisco Javier Jiménez de Cisneros Cid**, Professor of Administrative Law at the Autonomous University of Madrid
- **Dr Roberto Ignacio Fernández López**, Lecturer at the University of Vigo
- **Antonio Molinero**, Manager of the Colegio Oficial Nacional de Prácticos
- **Ángel Mato**, General Manager of ANARE
- **Francisco Peleteiro**, Secretary General of the Asociación Española de Amarradores
- **Joaquín Tornos Mas**, Professor of Administrative Law at the University of Barcelona
- **Félix Navarro de Pablo**, Director of Legal Services at the Port of Barcelona
- **Andrés González Sanfiel**, Lecturer at the University of La Laguna
- **Francisco Villar Rojas**, Professor of Administrative Law at the University of La Laguna
- **Kai-Dieter Classen**, Hamburg Port Authority
- **Juan Manuel Contreras**, Deputy Director of Public Grants and Reports on Draft Legislation at the CNMC



- **Paolo Emilio Signorini**, Autorità di Sistema Portuale del Mar Ligure Occidentale
- **Pino Musolino**, Autorità di Sistema Portuale del Mare Adriatico Settentrionale
- **Frans Van Zoelen**, Havenbedrijf Rotterdam, N.V.
- **Claire Merlin**, Marseille Fos Port Authority
- **Román Eguinoa de San Román**, Secretary General of the Barcelona Port Authority

There was a great response from the public as operators, public authorities and users came along to hear the speakers' opinions at first-hand.

The conference was arranged so that the topics discussed dealt with the two major issues addressed by the Regulation: the framework it establishes for port services and the common rules for transparency.

Interest in the conference was warranted since after several frustrated attempts, finally an EU regulation has specifically addressed port issues and does so from a stance different to the one our legislation has taken when regulating ports of general interest. Indeed, it might even be said that in some respects the Regulation even uses an approach which conflicts with the one adopted by our State port legislation.

It seems fair to say that the papers more than came up to expectations.

We had the valuable testimony of the rapporteur of the Regulation in the European Parliament, Mr Knutt Fleckenstein, who explained the undeniable need for the Regulation along with the complexity of the gruelling negotiations which ended with agreement on the text finally approved.

Renowned academics and specialists in the field examined the port services framework provided for in the Regulation from the twofold standpoint of freedom to provide services and port regulations; its relation to the regulation of other port activities and publicly-owned port property; the role the latter is to play in the world that comes after the Regulation; the taxation perspective in the analysis of port charges; and the issue

of State aid which the Regulation now openly brings into the port arena.

The roundtables explored these issues from an academic and practical viewpoint and experienced sector professionals made significant contributions to this latter aspect.

We had the chance to learn the views of authorities and legal experts from some of Europe's biggest ports including Hamburg, Rotterdam, Marseille, Genoa and Venice about the EU regulation.

Finally, Spain's National Commission on Markets and Competition presented its recommendations for promoting competition, an issue of enormous interest in the new framework looming for ports.

This publication brings together the papers - in some cases slightly revised by their authors - which were presented at the conference on specific issues in the Regulation. We have tried as far as possible to respect the order in which they were given in the conference programme. Unfortunately, on this occasion we have not been able to include a summary of the fascinating discussions which took place at the roundtables. If the event is repeated in the future, as we hope it will be, this aspect will be remedied.

As for the topic itself, the impact of the Regulation on the sector, we can add little to what was said in the papers.

Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 aims to resolve a number of shortcomings in European ports, such as the current lack of autonomy of port managers and the need to make financial relations between public authorities and ports suitably transparent.

To do that it lays down common rules of the game for all on basic issues in the competitiveness of our ports such as access to services and financial transparency.

In fact the Regulation has not just come out of the blue. There is a raft of precedents and EU case law that clearly applies to ports. In a way what the Regulation does is anticipate future court rulings and advocate the application of competition law to port services and port infrastructures.

Its implementation will depend primarily on the Member States. They have little leeway given the direct binding force of this EU regulation, but it is clear that they will have to adapt their domestic legislations to it.

The Conference discussed the extent to which the model regulated by Spain's Royal Legislative Decree 2/2011, of 2 September, enacting the Recast Text of the State-owned Ports Body and Merchant Navy Act, will be impacted.

Our model is based on the idea of a port system and coordination of ports of general interest in which the capacity of these ports to decide what they earn for the use of port infrastructures is extremely restricted by the need to comply with the principle of legality. In our view it needs at least some changes since otherwise it may encounter serious problems when Regulation (EU) 2017/352 is applied.

In short, Spain still has the chance to decide what it wants to do.

Our thanks and acknowledgement go to the professionals who took part in this Conference as they contribute to improving these infrastructures every day.

ROMÁN EGUINO DE SAN ROMÁN  
Secretary General of the Barcelona Port Authority

PILAR FERNÁNDEZ BOZAL  
Partner responsible for Public Law at EY  
Dean of the Faculty of Law at the UIC