

REVISION OF DECISION NO. 57/2018 – METHODOLOGIES AND CRITERIA TO ENSURE EQUITABLE AND NON- DISCRIMINATORY ACCESS TO PORT INFRASTRUCTURE.

Annex "A" to decision no. 242/2025 of 19 December 2025

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1. Purpose and scope of application of the measures

- 1.1 These regulatory measures lay down principles, criteria and methodologies aimed at ensuring equitable, transparent and non-discriminatory access to port infrastructure and to the services provided to port users falling within the remit of the Port System Authorities ("PSA") established pursuant to Article 6 of Law No 84 of 28 January 1994, that are referred to in Annex "A" to that Law.

1.2 These measures shall apply to:

- (i) concessions and amending agreements not yet granted as of the date of its entry into force;
- (ii) concessions and amending agreements granted prior to the date of entry into force of this regulatory act, in the event of updates or revisions thereto involving amendments to the concession or subsequent changes in the legal or economic position of the concessionaire;
- (iii) concessions and amending agreements in force as of the date of its entry into force, solely with respect to Measures 3.7, 3.13, 3.18, 3.19, 3.20, 4, 5 and 15.

2. Definitions

- 2.1 **Analysis of the service market structure (AMS):** analysis referred to in Measure 5, carried out annually by each PSA to assess the degree of efficiency of operators and the distribution of supply within the port areas falling within its jurisdiction and, in any event, within its remit.
- 2.2 **Business Plan:** the set of documents submitted by the entity participating in the procedure for the award of a port concession, setting out the objectives and strategies of the business activities that the entity, as an economic operator in the transport sector, intends to carry out within the port estate covered by the concession.
- 2.3 **Demand forecasts:** the analytical and forward-looking framework laid down in Annex 1, providing a quantification of demand estimates—broken down by traffic segments served and types of activities carried out within the port estate—together with a scenario analysis based on external factors such as the relevant market, the macroeconomic environment and strategic positioning vis-à-vis competitors, covering the duration of the concession.
- 2.4 **Duration of the port concession:** the limited period of validity of the concession granted by the PSA pursuant to Article 18 of Law No 84 of 28 January 1994 for the performance of port operations, and pursuant to Article 36 of the Navigation Code for cargo handling and passenger services.
- 2.5 **Economic and Financial Plan (EFP):** the document referred to in Article 2(3)(g)(2) of Ministerial Decree No 202 of 2022, drawn up in accordance with the template laid down in Annex 1.
- 2.6 **Essential infrastructure:** infrastructure for which the conditions of (i) shareability, (ii) non-substitutability and (iii) non-duplicability at socially sustainable cost have been cumulatively verified, as referred to in Measure 8 of this regulatory act.
- 2.7 **Extension of the duration of the port concession:** the possibility to request an extension of the duration of the concession pursuant to Article 6(2) of Ministerial Decree No 202 of 2022.

- 2.8 **Intermediate update:** an amending agreement, or addendum, modifying the terms and conditions of the concession or of the amending agreement.
- 2.9 **Investment Programme (IP):** the document referred to in Article 2(3)(g)(1) of Ministerial Decree No 202 of 2022.
- 2.10 **Key Performance Indicators (KPIs):** performance indicators identified by the Authority and used for the development of sector benchmarks, as referred to in Annex 4.
- 2.11 **Port concession:** any administrative act referred to in Article 18 of Law No 84 of 1994 and in Article 36 of the Navigation Code.
- 2.12 **Port Master Plan (PMP):** the planning and regulatory document referred to in Article 5 of Law No 84 of 28 January 1994.
- 2.13 **Port operations:** the operations referred to in Article 16(1) of Law No 84 of 28 January 1994.
- 2.14 **Port services:** the services referred to in Article 16(1) of Law No 84 of 28 January 1994.
- 2.15 **Port System Authority (PSA):** a non-economic public body of national relevance, operating under a special legal regime and vested with administrative, organisational, regulatory, budgetary and financial autonomy, as provided for in Article 6 of Law No 84 of 28 January 1994.
- 2.16 **Port users:** all natural and legal persons using public and/or private services provided within the port area falling within the remit of a PSA.
- 2.17 **Public quay:** a quay located within the port estate and designated for public use.
- 2.18 **Rail service area within the port:** port area falling within the remit of the Port System Authority in which railway shunting operations are functionally carried out to serve port users.
- 2.19 **Report on the award of railway shunting services (RoA):** the document referred to in Measure 13.7, in which the PSA describes the characteristics of the service to be awarded, as well as the methodology for determining the corresponding charges.
- 2.20 **Sector benchmark:** reference values established by the Authority, which the PSAs shall take into account when determining the variable component of concession fees, as well as in the monitoring and assessment of the concessionaire's performance.
- 2.21 **Single provider of railway shunting services:** entity entrusted with the exclusive right to provide railway shunting services to third parties within the territorial remit of the Port System Authority or within a rail service area located therein.
- 2.22 **Strategic System Planning Document (SSPD):** the strategic planning document referred to in Article 5 of Law No 84 of 1994.
- 2.23 **Variations in port taxes and dues:** amounts determined by the PSAs in respect of port operators, in the form of: (a) variations (increases or reductions) in the anchorage tax and the port tax (Article 22(2) of Decree-Law No 69 of 2013); (b) surcharges on cargo loaded and unloaded (Article 5(8), final sentence, of Law No 84 of 28 January 1994); (c) additional charges on port taxes, fees and dues for the performance of supervisory tasks and for the provision of security services provided in port security plans (Article 1(984) of Law No 296 of 2006).

3. Award of concessions for port areas and docks

- 3.1 This Measure shall apply to concessions for port areas and quays referred to in Article 18 of Law No 84 of 28 January 1994, as well as, insofar as consistent with this Measure and to the extent that it may be considered relevant, to concessions of maritime State property granted pursuant to Article 36 of the Navigation Code for the provision of cargo handling and passenger transport services.
- 3.2 The principles and provisions laid down in this Measure shall apply to the determination of the content of the agreements referred to in Article 18(6) of Law No 84 of 28 January 1994.
- 3.3 Port areas and docks covered by a concession are first identified on the basis of the port strategic programming and planning guidelines as defined in the programming and planning documents referred to in Article 5 of Law No 84/1994 (Strategic System Planning Document and Port Master Plan) and in the programming instruments referred to in Article 9 of the same Law (Three-Year Operational Plan).
- 3.4 In defining the programming and planning instruments referred to above, the envisaged functions for port areas and docks are identified having regard to the specific objectives to be pursued, in accordance with methodologies of qualitative and quantitative analysis aligned with national and international best practices, and designed to ensure the optimal use of areas, both in terms of efficiency and public value, while guaranteeing transparency and appropriate forms of publicity.
- 3.5 Booking of operating areas for non-concession holders referred to in Article 18 (4) of Law No 84/1994 shall be guaranteed in accordance, *inter alia*, with the principles of transparency, equity and non-discrimination, through the adoption by the PSA of specific regulation, in accordance with Measure **Errore. L'origine riferimento non è stata trovata.** below.
- 3.6 The PSAs shall ensure that the subject matter of the concessions, together with the associated Investment Programme (hereinafter: IP) and the Economic and Financial Plan (hereinafter: EFP), is consistent with the programming and planning instruments referred to in Measure **Errore. L'origine riferimento non è stata trovata.** The definition of the subject matter of the concession, the IP and the EFP shall enable a clear and objective identification of the authorized activities, including with regard to traffic types and the corresponding volumes. The concession acts shall expressly specify the admissible traffic composition, the related traffic volumes, expressed in the appropriate units of measurement, and any applicable degrees of substitutability between different traffic types, together with the relevant calculation methodologies. The demand forecasts defined in the concession act may be updated by the concessionaire every five years, provided that the revised estimates do not entail a reduction exceeding 15% compared to those initially submitted. More substantial variations may be authorised by the PSA subject to the opinion of the Authority. The concessions acts shall also provide for renegotiation mechanisms concerning the assumptions defined at the tender stage, by laying down criteria to verify that any variations in the admissible traffic composition do not substantially modify the subject matter and activities covered by the concession and, in any event, remain consistent with the applicable port planning instruments.
- 3.7 The Port System Authorities shall monitor compliance by concessionaires with the concession acts and the related IP and EFP and shall notify the Authority of any request for revision or update that is relevant to the performance of the activities falling within its remit.
- 3.8 Concessions shall be awarded without undue delay, following the publication of a notice, by means of a public tendering procedure initiated *ex officio* or at the request of a party, provided that such

publication is consistent with the applicable programming and planning acts and with the objectives and purposes identified by the PSA for the areas and quays concerned.

3.9 The economic and financial plans, which the entities participating in the procedures referred to in Measure 3.8 are required to submit, shall be prepared by those entities on the basis of the EFP template laid down in Annex 1. Prior to the launch of the above-mentioned competitive selection procedure, the PSA shall transmit the EFP template to the Authority, which may issue its views within 60 days of receipt of all the necessary information. The EFPs shall be transmitted to the Authority in an editable format and shall be accompanied by an explanatory report, signed by the legal representative of the company, setting out the content, methodology and assumptions adopted. The report shall include at least the following information:

- i) a description of the assumptions underlying the demand forecasts;
- ii) a description of the assumptions underlying the depreciation rates applied to each asset included in the "depreciation schedule";
- iii) a detailed description of the accounting methodologies adopted, the valuation criteria, the allocation criteria and the allocation drivers applied, in relation to each of the income-statement and balance-sheet items specified in the accounting templates;
- iv) a description of the assumptions underlying the forecasts of financing requirements;
- v) a description of the calculation methodologies for the indicators referred to in (6) to (9) of "Template 2 – Forecast Financial Plan".

3.10 The Authority may also issue opinions on the award procedures and concession-granting proceedings, including at the request of the PSA, and may propose, where appropriate, the adoption of measures for the suspension, lapse or revocation of concession acts, pursuant to Article 37(3) of Decree -Law No. 201/2011.

3.11 Award procedures shall be initiated, including upon application by an interested party, in such a way as to ensure effective and wide dissemination of information to interested operators, with due regard, in particular, to the principles of cost-effectiveness, efficiency, impartiality, equal treatment, transparency, non-discrimination, proportionality, environmental protection and energy efficiency, and taking due account at all times of the provisions laid down in Measure 5. To that end, a specific call for competition shall be drawn up, which shall at least specify:

- (a) appropriate arrangements and deadlines to ensure effective participation in the procedure; in particular, for the receipt of applications for the award of concessions, a time limit of no less than 30 days from the date of publication of the notice shall be provided, and 45 days where the procedure is initiated upon application by an interested party;
- (b) the quantification of the concession obligations in terms of the volumes and types of investments, the related implementation timetable, traffic targets, and employment levels;
- (c) the maximum duration of the concession, indicating the proportional scoring incentives applicable to Business Plans with a shorter duration, while ensuring compliance with the commitments relating to the volumes and types of investments, traffic targets and employment levels;
- (d) pre-determined criteria for the selection of applications, including the relevant weightings, such as the weights and scores assigned to technical and economic elements, giving particular importance

to investment plans and their implementation timelines, the objectives to be achieved, and the capacity to provide a complete operational cycle;

- (e) the criteria and arrangements for carrying out any intermediate updates, through the conclusion of amending agreements or *addenda*, for concessions with a duration exceeding 10 years; such updates may include a revision of the IP capable of generating positive economic effects for the asset subject to concession; in any event, the updates shall not entail any formal and/or substantive alteration of the subject matter, type or nature of the concession in force and shall be aimed at enhancing efficiency, improving performance and optimising the use of the public maritime area subject to concession, in compliance with its duration;
- (f) the subjective requirements for participation, including technical and economic requirements, to be defined in an accurate, objective, transparent, equitable and non-discriminatory manner, which applicants must meet for the award of the concession pursuant to Article 18 of Law No 84/1994
- (g) the necessary information on the amount of the fixed concession fee, which may be subject to improvement at the tender stage, and on the maximum amount of the variable concession fee, together with an indication of the circumstances that may give rise to reductions in such variable fee component, in accordance with the incentive mechanisms laid down in Measure **Errore. L'origine riferimento non è stata trovata.**;
- (h) a system of penalties applicable in the event of non-compliance with the IP, the demand forecasts and the employment levels set out in the Business Plan;
- (i) all the necessary information concerning the arrangements for managing the relationship between the PSA and the Concessionaire, the arrangements governing the transfer of the assets subject to concession to the incoming contractor upon expiry of the concession, as well as other end-of-concession arrangements, including the criteria for the assessment and determination of any compensation due.
- (j) the time limit, determined having regard to the duration, subject matter, type and nature of the concession, from which, within an appropriate period prior to the expiry of the concession, the outgoing Concessionaire or other interested parties may submit an application for the award of a new concession in respect of the asset concerned.

3.12 The outcome of the award procedures shall be promptly communicated to the participants and made public in the same manner as the notices referred to in paragraph 3.11.

3.13 At the time of the award of a concession, and in the event of any subsequent transfer of shareholdings in the concessionaire resulting in a change of control within the meaning of Article 2359 of the Civil Code, the PSA shall assess the competitive conditions. This assessment shall take into account, *inter alia*, the presence or absence of public quays of adequate capacity. For this purpose, and where appropriate also by seeking opinions from the competent Authorities, the PSA may provide for the inclusion in the concession agreements of appropriate conditions aimed at identifying minimum shares of cargo-handling capacity to be guaranteed to shipping companies not linked to the concessionaire. To enable such assessment, the concessionaire shall provide the PSA with information on the situations of control referred to in Article 2359 of the Civil Code, as well as on any relationship, including *de facto* relationships, with other entities already holding concessions in any national port. On an annual basis, the PSAs shall inform the Authority of the application of the provisions set out in this Measure.

3.14 The concession acts shall:

- (a) expressly identify and quantify the penalties, sanctions, grounds for the lapse or revocation of the concession, including those linked to non-compliance with the commitments undertaken by the concessionaires under the relevant IP and EFP, with the prior pre-determination of the relevant criteria, procedures and time limits, as well as the related monitoring arrangements;
- (b) specify, where provided for in the notices and in accordance with the provisions of Measure **Errore. L'origine riferimento non è stata trovata.** concerning traffic types and with the requirements and indications set out in the relevant planning instruments, the admissible traffic compositions, including the related degrees of substitutability, in accordance with the arrangements laid down in Measure **Errore. L'origine riferimento non è stata trovata.**;
- (c) indicate any shares of cargo-handling capacity referred to in Measure **Errore. L'origine riferimento non è stata trovata.**;
- (d) regulate any arrangements for shared use and passive easements for the benefit of terminal operators and/or neighbouring operators that have an impact on the activities of the concessionaire, as well as berthing priorities and the occupation of the water areas in front of the quays, with a view to ensuring the highest overall productivity of the port. The concession acts shall also specify the arrangements governing any evolution of such shared-use and passive easement arrangements over the operational life of the concession;
- (e) identify the circumstances under which the concession acts may be updated through specific amending agreements or *addenda*, in a manner consistent with the call for competition referred to in Measure 3.11.

3.15 The duration of concessions and the level of concession fees shall be duly proportionate to the commitments undertaken in terms of the volume and type of investments and traffic set out in the IP and the EFP, taking into account the level of infrastructure development of the areas and quays concerned, as well as the additional elements referred to in Measure **Errore. L'origine riferimento non è stata trovata.** In particular, the duration of the concession shall be proportionate to the planned investments and to the IP and EFP prepared on the basis of the template laid down in Annex 1. The identification of the criteria for determining the duration of concessions shall be subject to a specific procedure of the Authority.

3.16 In accordance with the principles of equity and non-discrimination, taking into account the development objectives of each port, the concession fees consist of:

- a fixed component, proportionate to the size of the areas concerned and taking into account their location, intended use, state of maintenance and level of infrastructure available in the areas concerned for the performance of the activities, with particular regard to railway infrastructure within the asset subject to concession as well as to access infrastructure connecting to port railway terminals, together with any constraints and/or advantages objectively deriving therefrom, and the degree of participation of the concessionaire in the development of port infrastructure. This component may be re-determined where, during the term of the concession agreement, the level of infrastructure of the areas concerned changes. The unit fee applied for the purpose of determining the fixed component shall in no case be

lower than the minimum unit fee laid down by the applicable legislation and shall be calculated by each PSA in compliance with the port regulations currently in force;

- a variable component, additional to the fixed component, predetermined and subject to reduction through incentive mechanisms aimed at achieving improved production, energy and environmental efficiency of operations and improved service levels, in particular transport-related services, as well as at encouraging the intermodal development of the port, including through annual updating on the basis of the results achieved. In any event, such variable component shall not exceed 50% of the fixed component and may, moreover, be reduced, on the basis of the aforementioned incentive mechanisms, by up to a maximum of 75% of its maximum value.
- for the determination of concession fees, the PSAs shall apply the methodological frameworks laid down in Annex 2, in accordance with the sector benchmarks referred to in Annex 4, using for the variable component at least one key performance indicator (KPI) for each of the categories indicated therein. Such indicators may include, by way of example, the traffic actually handled, both in terms of vessel traffic and in terms of volume and type of cargo, taking into account the development of the specific market for the services provided by the concessionaire, as well as service quality indicators, such as average storage time of goods in storage areas, level of efficiency of modal shift operations, share of modal shift of freight by rail, level of energy and environmental efficiency of the overall port cycle, and productivity level per port unit area subject to concession.

3.17 The incentive mechanisms for determining reductions in the variable component of concession fees are regulated by the PSAs, including through the application of the methodological frameworks laid down in Annex 2. Such mechanisms shall, *inter alia*, be supported by appropriate qualitative and quantitative verification procedures, including from an accounting perspective, to assess the performance levels achieved annually by the concessionaire, against the target thresholds established by the PSAs at the time of award.

3.18 For the purpose of overseeing compliance with the commitments undertaken by concessionaires in relation to the implementation of the IP, the achievement of traffic targets and the maintenance of the prescribed employment levels, the PSAs shall carry out annual monitoring activities, the results of which shall be communicated to the Authority, and shall assess the application of penalties, insofar as such penalties are provided for in the call for competition. For the purpose of an effective and graduated application of the penalty system, the PSAs shall apply the economic and regulatory methodologies laid down in Annex 2.

3.19 In the performance of its tasks relating to ordinary and extraordinary maintenance within the port area, as well as to the promotion of infrastructure investment programmes involving contributions from the State or other public entities, the PSA shall ensure compliance with the principles of equity, transparency and non-discrimination, as well as with the commitments undertaken vis-à-vis the concessionaires. Where new infrastructure is developed within the port area through public funding and such infrastructure affects the competitive conditions foreseeable at the time of the conclusion of a concession act, the PSA shall assess the revision of that act in order to allow for the corresponding realignment of the EFP and the related commitments set out in the Business Plans, as well as the updating of concession fees, in accordance with the applicable legislative and regulatory provisions. In

cases of particular significance, where the revision of the existing concession act and the related EFP would entail a risk of altering the competitive balance of traffic, the PSA may, as an alternative, assess the revocation of the existing concession and the launch of a competitive procedure for its re-award, duly informing the Authority thereof.

- 3.20 Applications for the extension of the duration of a concession, submitted pursuant to Article 6 of Ministerial Decree No. 202/2022 and paragraph 12 of the Guidelines approved by Ministerial Decree No. 110/2023, together with the relevant supporting documentation, shall be notified to the Authority. The Authority shall issue a binding opinion within 30 days of receipt of all the necessary information, on the consistency of such applications with the relevant EFP.

4. Regulatory accounting of concessionaires of port areas and quays

- 4.1 Each concessionaire referred to in Measure 3 is required to submit to the PSAs separate accounts, adopting the regulatory accounting templates (income statements and balance sheets) set out in Annex 3, in respect of the activities carried out on the area under concession. Such accounts shall be accompanied by an explanatory report describing the contents, the methodology and the allocation choices adopted. The regulatory accounts and the explanatory report shall be signed either by a statutory auditor appointed pursuant to Article 2409-bis of the Civil Code or by the legal representative of the concessionaire.
- 4.2 The accounts submitted by the concessionaires shall enable the PSAs to verify the incentive mechanisms applied to the concession fees referred to in Measure 3 above, as well as compliance with the commitments undertaken by the concessionaire and the application of any penalties in cases of non-compliance or partial compliance.
- 4.3 The accounts kept by the concessionaires shall also enable the assessment of any compensation to be granted upon the termination of the concession in respect of authorised investments carried out by the outgoing concessionaire that have not been fully depreciated, including for the purposes of the estimates referred to in Article 8(3) of Ministerial Decree No. 202/2022. Where such compensation is granted, incentive mechanisms may be applied to the incoming concessionaire in respect of the portion of the investments that remains to be depreciated.

5. Efficiency of operations and structure of port service supply

- 5.1 Each year, the PSA shall carry out an analysis of the market structure of the services referred to in Measure 3 (hereinafter also "MSA") with respect to the port areas falling within its territorial scope and, in any event, its competence, with a view to assessing the degree of efficiency of operations and the structure of the supply system within the port areas concerned. The MSA relating to each reference year shall be transmitted to the Authority by the 1st of March of the following year.
- 5.2 The MSA shall also be prepared with reference to the market shares held by the undertakings operating in the a.m. port areas, broken down into the following product markets (and any relevant sub-segments):
- a. containerised cargo traffic;
 - b. conventional cargo traffic (general cargo, project cargo, etc.);

- c. rolling stock traffic (car carriers, etc.);
- d. liquid bulk cargo;
- e. solid bulk cargo;
- f. gas transport;
- g. passenger traffic (cruise services, ferry services, local services).

Data and parameters relating to traffic associated with concessions and terminals of an industrial nature shall be monitored and reported in a specific and separate section of the MSA.

In drawing up the MSA, the PSA shall examine the data and parameters describing the structure of the relevant port market. In particular, with regard to the market segments referred to above, the MSA shall include data and parameters relating to:

- (a) the number of undertakings operating in each market segment;
- (b) the distribution of the size of undertakings, expressed in terms of appropriate economic indicators;
- (c) the level of efficiency of operations, assessed through the performance indicators set out in Annex 4, and the supply-side structure within each market segment, having regard to traffic volumes and the size of State-owned maritime property granted under concession, including with reference to the shareholding structure (or, in any event, the ownership structure) of each undertaking concerned. Particular attention shall be devoted to the analysis of vertical integration between shipping activities, terminal operations and activities relating to the logistics chain as a whole, including a detailed identification of all activities and services managed through consortia, alliances or, in any event, in aggregated and/or integrated forms, together with a specification of their respective structures;
- (d) the degree of equitable, transparent and non-discriminatory access to landside services provided on port infrastructure (areas under concession and/or public quays).

- 5.3 The MSA shall also include a concise report on the supervisory activities carried out by the PSA with regard to the application of charges for port operations, in compliance with the principle of equitable, transparent and non-discriminatory access to port infrastructure, as well as any other elements that are useful and necessary for an adequate and comprehensive assessment of the structure of the relevant port market.
- 5.4 For the purposes of analysing the level of operational efficiency referred to in Measure 5.2 (c), the PSA shall take into account not only the provisions set out in the investment programme and in the financial and economic plan, but also the performance indicators (KPIs) referred to in Annex 4 and the corresponding benchmark values for operational efficiency applicable to each market segment referred to in Measure 5.2. Such benchmarks shall be made available by the Authority following the completion of the activities referred to in Measure 15.
- 5.5 Where, following the examination of the MSA, an assessment reveals an inefficient degree of supply and/or management of the supply system or, in any event, the presence of one or more undertakings capable of exercising — even potentially — a significant degree of market power *vis-à-vis* port users, the Authority may, pursuant to Article 37(3) of Decree-Law No. 201/2011 and where the conditions laid down by the applicable legal framework are met, propose to the competent PSA the suspension, lapse or revocation of the relevant concession acts. In the exercise of its functions, including

monitoring and reporting activities, the Authority shall act with a view to ensuring equitable and non-discriminatory access to port infrastructure and may, where deemed useful and/or necessary, involve other competent public authorities.

- 5.6 This Measure shall not apply to port areas falling within the competence of the PSAs where transshipment activities are predominantly carried out.

6. Authorisations for the conduct of port operations and the performance of services

- 6.1 Without prejudice to the provisions adopted by the Minister of Infrastructure and Transport pursuant to Article 16 (1) of Law No 84/1994, the identification of port operations and services shall include the prior determination and the periodic updating and publication of both the list of activities subject to the authorisations referred to in Article 16 and the elements necessary to identify which types of activities, not already included in that list, may nevertheless fall within the scope of activities eligible for authorization.
- 6.2 The assessment of the requirements laid down in Article 16 (4) (a) of Law No 84/1994 and in its implementing decrees, for the purpose of granting authorisations for the carrying out of port operations and the provision of services, shall be conducted with particular regard to compliance with the principles of transparency, non-discrimination and proportionality. Such assessment shall be based on indicators and on minimum threshold values for those indicators, which are established in advance and are appropriate to ensure the level of quality deemed essential for the performance of the activities concerned. Such indicators may also be identified by the PSA, where applicable and meaningful, among those set out in Annex 4.
- 6.3 The maximum number of authorizations for the performance of port operations and services, as determined by the PSA after consulting the local advisory committee pursuant to Article 16(7) of Law No. 84/1994, shall be duly justified in accordance with the principle of proportionality, and shall be made public prior to its adoption. The procedure shall ensure that interested parties are given the opportunity to submit observations through arrangements and within time limits that guarantee their effective participation in the proceedings.
- 6.4 In assessing applications for the granting of authorisations, compliance with the principles of transparency, equity and non-discrimination shall be ensured through the prior establishment of qualitative and quantitative indicators linked to the criteria laid down pursuant to Article 16 (4) of Law No 84/1994, with specific reference also to the operational programmes proposed by the applicants, and duly reflected in the relevant decisions. Such indicators shall, in particular, be applied for the purpose of determining rankings in cases where the number of applications exceeds the number of authorisations available. Those rankings shall be made public, ensuring their full and timely disclosure.
- 6.5 In the context of the award procedures referred to in Measure 3, the PSAs shall ensure that participating entities are given the opportunity to apply for the simultaneous granting of the authorisation required to carry out port operations, including in cases where such authorisation would exceed any existing numerical limitations.
- 6.6 The PSAs shall verify the continued fulfilment of the requirements by undertakings authorised to carry out the relevant activities, including for the purposes of subsequent assessments in the context of further applications for authorisation.

7. Access to quays for the performance of port operations by non-concessionaire undertakings

- 7.1 The PSAs shall regulate, under specific rules made publicly available on their websites, the procedures for access to and management of public quays intended for the performance of port operations by undertakings authorised to carry out such operations pursuant to Article 16 of Law No. 84/1994 and not holding concessions pursuant to Article 18 of the same Law. Such rules shall be adopted in compliance with the principles of transparency, equity and non-discrimination, with a view to ensuring the most efficient use of State-owned maritime property.
- 7.2 The above-mentioned rules shall provide, *inter alia*, for the arrangements governing the submission of occupation requests by interested undertakings, including the relevant time limits, as well as for predetermined criteria for the management of any conflicting requests, including with regard to berthing priorities, in coordination with the maritime authority.
- 7.3 In order to ensure equitable, non-discriminatory and transparent access to port infrastructure for applicants seeking access to the quays referred to in Measure 7.1, the PSAs shall draw up and publish on their websites a planning document, normally with a time horizon of at least three months. Without prejudice to the application of appropriate flexibility mechanisms in capacity allocation, such document shall allow for the accommodation of occasional or otherwise unforeseeable uses that cannot be planned sufficiently in advance. The planning document shall take into account the prevailing conditions, in particular the level of saturation and the available infrastructure capacity of the port as a whole, with a view to ensuring its efficient and optimal use.
- 7.4 The charges payable for the occupation of areas shall be determined and published in advance, on the basis of the port's commercial strategy and investment plans, and in compliance with competition rules. Such charges may be differentiated in line with the port's economic strategy and spatial planning policy, including, *inter alia*, with respect to specific categories of users or for the purpose of promoting a more efficient use of port infrastructure. The criteria for any such differentiation shall be transparent, objective and non-discriminatory. Any amendments to the charges shall be published at least two months prior to their entry into force.
- 7.5 In ports that lack adequate and/or sufficient public quays, concessions granted in accordance with the criteria laid down in Measure 3 shall, where necessary, provide for the possibility of access by other undertakings authorised to carry out port operations pursuant to Article 16 of Law No. 84/1994 and not holding concessions pursuant to Article 18 of the same Law, under access arrangements and selection criteria that are equitable, transparent and non-discriminatory.

8. Essential infrastructure

- 8.1 The PSAs shall identify, including by obtaining opinions from the competent Authorities, the essential infrastructure falling within their competence, understood as infrastructure for which the following conditions are cumulatively met: (i) shareability, (ii) non-substitutability, and (iii) non-duplicability at socially sustainable costs. The list of such infrastructure shall be published in accordance with the procedures set out in Measure 12.

- 8.2 The PSAs shall lay down the procedures governing access to and management of the essential infrastructure referred to above, with a view to ensuring compliance with the principles of transparency, equity and non-discrimination. For this purpose, they shall also oversee the application of cost-oriented access charges, linked to the costs actually incurred by the relevant operators, making use of the regulatory accounting instruments referred to in Measure 10.
- 8.3 The concessions referred to in Measure 3 shall clearly identify the obligations associated with the management of essential infrastructure.

9. Provision of services to port users

- 9.1 Any limitations imposed by the PSA on the number of service providers supplying services to port users, where such limitations are not required by statutory obligations, shall be duly reasoned. Any decision introducing such limitations shall be adopted following a specific procedure which, at the inquiry stage, provides for consultation with the potentially affected users.
- 9.2 The PSAs shall identify the activities involving the provision, against remuneration, of services of general interest to port users, as referred to in Article 6(4)(c) of Law No. 84/1994. The relevant list shall be published and regularly updated in accordance with the arrangements laid down in Measure 12.
- 9.3 The award of activities relating to the provision of services of general interest shall be carried out through competitive procedures, in compliance with the principles of transparency, equity and non-discrimination, with a view to ensuring effective competition and contestability in the relevant markets.
- 9.4 The agreement for the award of activities relating to the provision of services of general interest shall:
- allow for a clear and objective identification of the activities granted on an exclusive basis;
 - have a duration proportionate to the investments required for the performance of the activities;
 - provide for the prior establishment of minimum quality requirements for the services provided, together with a graduated system of penalties in the event of non-compliance with such requirements.
- 9.5 Services of general interest shall be organised and provided under the control and supervision of the Port System Authority, in compliance with the principles of transparency, equity and non-discrimination, in a manner that ensures—on the basis of measurable criteria—the maximisation of operational efficiency and the containment of costs for users. In light of market developments and the results of market monitoring activities, including any notifications or complaints received, the Authority reserves the right to initiate specific procedures for economic regulation and access with respect to particular categories of services.
- 9.6 In the context of the supervision of the provision of services to port users that are not exposed to effective competition, including port operations characterised by market concentration and/or vertical integration, the PSAs shall verify the equity of the conditions of supply and the appropriateness of the charges applied, ensuring that such charges are aligned with relevant and efficient costs, including through the use of regulatory accounting instruments referred to in Measure 10.

10. Regulatory accounting criteria for the operation of essential infrastructure and the provision of services not exposed to effective competition

10.1 In order to enable the PSAs to verify compliance with the principles and criteria governing the setting of charges for the use of essential infrastructure and for the provision of services not exposed to effective competition, concessionaires of essential infrastructure and providers of services to port users shall adopt the regulatory accounting templates (income statements and balance sheets) set out in Annex 3. Such regulatory accounts shall clearly reflect the separate allocation of income statement and balance sheet items relating to each activity subject to such verification, in a manner consistent with the statutory financial statements and taking into account the existence, under other concessions, of any non-regulated activities. For the purposes of this Measure, "regulated activities" shall mean activities relating to the operation of essential infrastructure and/or the provision of services not exposed to effective competition, as well as activities that are non-relevant or carried out outside the scope of the concessions. The regulatory accounts, which shall be submitted annually to the PSAs, shall be accompanied by an explanatory report describing their contents, the methodologies applied and the allocation choices adopted. The regulatory accounts shall be subject to statutory audit in accordance with Article 2409-bis of the Civil Code or, alternatively, shall be signed by the legal representative of the concessionaire. The explanatory report shall include at least the following information:

- i) a description of the assessments carried out to identify the activities subject to accounting separation;
- ii) a description of the logical model of the management accounting system, highlighting the methodologies used for allocating income statement and balance sheet items to each activity subject to accounting separation;
- iii) a description of the system environment and architecture used for the management of the activities;
- iv) a detailed description of the accounting methodologies adopted, the valuation criteria, the allocation criteria and the allocation drivers applied, in relation to each of the income statement and balance sheet items specified in the accounting templates;
- v) a detailed description of the methodologies adopted for the quantification of asset values and depreciation;
- vi) detailed information, including quantitative data, on the individual sources and corresponding uses of public funds;
- vii) a description of transactions relating to relationships with parent companies, subsidiaries and undertakings subject to common control, where applicable;
- viii) a statement confirming that the reconciliation is derived from the approved statutory financial statements prepared in accordance with the applicable accounting standards.

10.2 The regulatory accounting referred to above shall provide evidence of the allocation of any public contributions and incentives received, thereby enabling verification of compliance with the applicable provisions on financial transparency.

10.3 The eligibility of operating and capital costs for the purpose of determining charges for the use of essential facilities and for the provision of services not exposed to effective competition shall be subject to compliance by the concessionaires and service providers with the following general criteria:

- *relevance*: costs and other negative economic components are considered eligible if, and to the extent that, they are related to chargeable activities;
- *reasonableness*: costs and other negative economic components are considered eligible if, and to the extent that, their reasonableness in relation to the established objectives is verified. The reasonableness is assessed on a case-by-case basis having regard to the planned objectives, historical trends and the impact of multiannual commitments over the concession period;
- *accrual principle*: costs and other negative economic components are eligible if they are attributable to the relevant accounting period;
- *recognition in the income statement*: operating costs and other negative economic components are eligible if, and to the extent that, they are recognized in the income statement relating to the relevant accounting period;
- *separation*: the different elements included in each cost item shall be reported separately;
- *comparability of values*: the values in the regulatory accounting documents shall be comparable with the items included in the economic and financial plans and investment plans;
- *verifiability of data*: the costs indicated in the regulatory accounting documents shall be verifiable through reconciliation with the data resulting from the general ledger and the statutory financial statements.

10.4 Eligible operating costs shall include the following categories, net of any adjustment items:

- i. costs of raw materials, consumables and goods;
- ii. costs of services;
- iii. costs for the use of third-party assets;
- iv. personnel costs;
- v. other operating expenses.

10.5 Non-eligible costs shall include the following:

- i. extraordinary items;
- ii. financial charges;
- iii. tax charges;
- iv. provisions;
- v. impairments.

10.6 For the purposes of determining charges for the use of essential infrastructure and for the provision of services not exposed to effective competition, the following investments shall be eligible, where provided for in the operational and activity programmes, and entered in the balance sheet following their construction, acquisition for consideration or contribution in kind, net of any public contributions:

- investments in assets that are transferred free of charge to the awarding authority upon expiry of the concession, where such assets are strictly necessary for the performance of port activities;
- investments in assets that are transferred to the awarding authority subject to the payment of a step-in compensation taking into account the portion of the investment that has not yet been depreciated.

- 10.7 The regulatory net invested capital (NIC) consists of the fixed assets referred to in Measure 10.6 and of current assets net of trade payables, in accordance with the templates laid down in Annex 3.
- 10.8 Economic items that cannot be directly attributed to the individual activities concerned shall be allocated on the basis of specific allocation drivers, which shall be clearly set out in the explanatory report accompanying the regulatory accounting templates.

11. Port taxes and dues

- 11.1 Variations in port taxes and dues, as referred to in Measure 2.23, shall be determined by the PSAs in accordance with the applicable legislation and within the prescribed limits, with a view to ensuring equitable and non-discriminatory access to port infrastructure and services. Such variations shall be duly reasoned and shall not result in unequal treatment among the different users operating within the port.

12. Provision of information necessary for access to infrastructure

- 12.1 The Port System Authorities shall make available a minimum set of information on State-owned port areas and on the conditions governing access to the physical and intangible infrastructure used for port operations, as well as to the services provided to port users.
- 12.2 The minimum information package shall include at least:
- (a) a list of the areas granted or to be granted under concession, indicating their intended use in accordance with the applicable PMP and a brief description of the related infrastructure facilities;
 - (b) a list of the physical and intangible infrastructure available to users, including essential infrastructure;
 - (c) a list of the services provided to port users, including those referred to in Measure 9.2, together with the arrangements governing their provision and the applicable charges.
- 12.3 The minimum information package referred to above shall be published on the official website of the PSA.
- 12.4 In publishing the information referred to in this Measure, the PSAs shall strike an appropriate balance between transparency requirements and the need to protect the commercial confidentiality of the data provided by the economic operators concerned.
- 12.5 In ports with railway infrastructure, the competent PSA—acting within the limits of its remit and without prejudice to the distinct role of the infrastructure manager—shall also publish an Information Statement on the Port Railway Network (hereinafter: ISPN), drawing, where appropriate, on information provided by the managers of infrastructure and service facilities located within the port area. An indicative outline of the chapters of such Information Statement is set out in Annex 5.
- 12.6 The ISPN shall cover the infrastructure and services provided therein, including those related to intermodal interchange. For this purpose, it shall, *inter alia*, collect the service facility descriptions published by operators in the RNE format (or provide links thereto), in accordance with Article 5(1) of

Commission Implementing Regulation (EU) 2017/2177 and Measure 6 annexed to Decision No 130/2019. The ISPN shall include, *inter alia*, the following information:

- a list of port terminals operating under concession and served by railway infrastructure, including certified email (CEM) and telephone contact details for submitting requests for access to and use of railway services and port services in general;
- for railway infrastructure located outside concession areas, the contact details of the economic operator responsible for access and capacity management, together with the relevant service facility descriptions in the RNE format;
- the technological and performance characteristics of the railway infrastructure located within the port area.

13. Railway shunting

- 13.1 The ISPN referred to in Measure 12 shall set out information relating to the provision of railway shunting services, including, where applicable, information on the quality monitoring system, the applicable charges and the designation of a single service provider, in a manner consistent with the provisions laid down in Annex "A" to Decision No 130/2019.
- 13.2 Access to railway shunting services shall be ensured for requesting port users under equitable, non-discriminatory and transparent conditions, on the basis of a charging system designed to promote operational efficiency and to contain costs for users.
- 13.3 The provisions set out in Annex "A" to Decision No 95/2023 shall not apply to railway shunting services falling within the competences of the PSAs.
- 13.4 Single providers of railway shunting services shall be subject to the regulatory accounting obligations laid down in Measure 10 and shall apply the accounting templates referred to in Annex 3. In addition, the criteria for the determination of the unit charge for the service shall apply, based on the total cost of provision plus a reasonable profit, in accordance with the relevant template set out in Annex 6, which each PSA shall prepare, taking into account its specific characteristics, within the framework of the award report referred to in Measure 13.7.
- 13.5 Where the service is awarded through competitive procedures in accordance with the applicable public procurement rules, the above-mentioned criteria shall be applied for the purpose of determining the charge to be set as the tender base price.
- 13.6 The PSA may award the railway shunting service through a specific procedure covering (i) the entire territorial scope of competence of the PSA, identified as the set of areas for which the shunting service qualifies as a service of general interest pursuant to Article 6(4)(c) of Law No 84/1994, together with any additional areas forming part of the railway area identified pursuant to Measure 13 of Decision No 130/2019; or (ii) one or more ports falling within its territorial scope of competence; or (iii) one or more railway service areas. The PSA may establish an equalisation mechanism of the eligible unit costs of service provision, in accordance with the charging methodology set out in Annex 6. Such equalisation may be applied between individual ports and/or between individual railway service areas falling within the territorial scope of the award. In such cases, the PSA shall specify, in the award report

referred to in Measure 13.7, the minimum and maximum percentages of eligible costs that may be transferred.

- 13.7 In order to ensure an adequate level of transparency and to enable an assessment of the choices adopted, the PSA shall draw up an award report for the railway shunting service (hereinafter: AR). The AR shall be published on the official website of the PSA and transmitted to the Authority for oversight purposes, prior to the launch of the award procedure or, in the case of a direct award, prior to the adoption of the relevant decision. The AR shall describe the characteristics of the service to be awarded and shall include, at least, the duration of the award, the methodology used to calculate demand estimates and the key service quality indicators. The Authority may submit observations within 60 days of receipt of the AR, in particular regarding the methodology used to calculate the reasonable profit underlying the award.
- 13.8 Providers of railway shunting services shall annually submit to the PSA data relating to the following performance indicators:
- (a) efficiency of the railway shunting operational cycle within the port, measured as the average time required to complete a shunting service operational cycle, expressed in minutes per service provided;
 - (b) performance of the railway shunting service within the port, measured as the average number of staff employed in a single shunting service operational cycle, expressed as the number of Full-Time Equivalent (FTE) staff units used per service provided;
 - (c) percentage ratio between shunting operations subject to penalties and the total number of shunting operations carried out, as referred to in Measures 12.2 and 12.3 of Annex "A" to Decision No 130/2019, where applicable.

The PSA shall publish such information within the time limits laid down in Measure 12 and Annex 5, and shall transmit it to the Authority in accordance with the arrangements laid down in Measure 15.

14. Complaint-handling and sanctioning framework

- 14.1 Interested parties may submit a complaint to the Authority, indicating at least the following:
- (a) the identifying details of the complainant and of any representative;
 - (b) a description of the facts giving rise to the alleged infringement of the applicable regulatory measures;
 - (c) supporting documentation substantiating the complaint.
- 14.2 The Authority is entitled to request any information and documents relevant to the complaint from any person holding such information or documents, and to adopt decisions with binding effect.
- 14.3 In case of non-compliance with the measures set out in this regulatory act, the Authority may impose the administrative sanctions provided for in Article 37(3)(i) and (l) of Decree-Law No 201 of 6 December 2011, where applicable, and may also make the appropriate referrals to other competent public authorities.

15. Data collection and information gathering, and definition of sector benchmark

- 15.1 For the purposes of enabling the application of this regulatory act by the entities subject to regulation, as well as the related monitoring and supervisory activities, all documents, data, information and templates referred to in the preceding Measures shall be provided by those entities to the PSAs, which shall then make them available to the Authority.
- 15.2 For each concession in force referred to in Measure 3, the PSAs shall provide:
- (a) on a one-off basis, and in the event of any update:
 - i. general information on the concession (as listed in Annex 4);
 - ii. the methodology used to determine concession fees (in accordance with the template set out in Annex 2);
 - iii. the Economic and Financial Plan (EFP)
 - (b) by the 30th of June of each year, with reference to the previous year:
 - i. regulatory accounting data;
 - ii. performance data (as listed in Annex 4).
- 15.3 The PSAs shall also provide, by the 30th of June of each year and with reference to the previous year, the information referred to in Measure 13.8 for each railway shunting service provider. For the purposes of the initial application of this Measure, the PSAs shall transmit to the Authority the data referred to in Measure 15.2 (a) by the 31st of March 2026.
- 15.4 All data and documents referred to in this Measure shall be provided to the Authority in accordance with the formats and technical and operational arrangements defined by the Authority, using the online services made available for that purpose. Such services shall ensure the integrity, consistency and origin of the data, and their automatic registration and subsequent retention.
- 15.5 The collection of information and data shall also enable the Authority, where sufficient information of appropriate quality is available, to develop national sector benchmarks. Such benchmarks may be used as reference values by the PSAs in the performance of activities relating to the determination of concession fees, as well as for monitoring and supervisory purposes with regard to the achievement of the performance objectives set out in the concession acts and specified in the related Business Plans.

16. Transitional and final provisions

- 16.1 The measures laid down in this Decision shall enter into force on the 1st of March 2026.

Annexes

Annex 1 – Economic and Financial Plan (EFP) template for concessionaires.

Annex 2 – Methodological frameworks for the PSAs in relation to concessions.

Annex 3 – Regulatory accounting templates.

Annex 4 – Sector benchmarks.

Annex 5 – Reference outline of the chapters of the Information Statement on the Port Railway Network.

Annex 6 – Templates for the construction of railway shunting charges.