

MAGDALENA ADAMOWICZ*

LEGAL ASPECTS OF SEAPORTS IN POLAND

INTRODUCTION

Seaports are economic bodies of the complex internal structures and diverse, multifunctional profiles of operation. As such, they play a central role for national, regional and municipal economy. Their fundamental function is a complex service of cargo and passengers, to say nothing of industrial, commercial, logistics and distribution roles¹. Ports provide places for work not only within their own enterprises, but also subsidiaries and cooperating entities. It is in the seaports that levies, duties and taxes charged make up substantial revenues for the State Treasury. Finally, seaports exhibit an immensely significant citygenic feature through their influence on the nature, architecture and urban sprawl. The proper functioning of the seaports promotes the national economic growth and, hence, it is indeed essential to create the optimal legal conditions for their operation.

* Magdalena Adamowicz PhD, Maritime Law Department, Faculty of Law and Administration, University of Gdańsk. She is specialized in some legal aspects of seaports and harbours, port services and maritime insurance.

¹ J. Dąbrowski, H. Klimek, *Dostępność transportowa a funkcja logistyczna polskich portów morskich*, [in:] *Transport morski w międzynarodowych procesach logistycznych*, (ed.) H. Salmonowicz, Szczecin 2012, p. 132 and A. Montwiłł, *Port morski jako kluczowy element systemu logistycznego łańcuchów dostaw*, [in:] *Systemy zarządzania logistycznego w transporcie morskim*, (ed.) H. Salmonowicz, Szczecin 2013, p. 151; and H. Salmonowicz, *Czynniki przemian współczesnych portów morskich*, Zeszyty Naukowe Politechniki Śląskiej 2012, seria Transport, Z. 75, p. 67.

1. EVOLUTION AND THE MAIN AIMS OF CHANGES

The largest Polish seaports in Gdynia, Gdańsk or Szczecin and Świnoujście were till 1990 state-owned monopoly-like enterprises, operating in two areas; they both managed port infrastructure and developed services². Such a management model differed from the solutions known in the countries of the well-developed market economy³. There, the port management function that consisted mainly in the port infrastructure maintenance and development, was not combined with the services. The services, which meant *inter alia* transshipments, harbour towage, storage services and the like, were rendered by competing enterprises, specifically the private ones that held port suprastructure⁴.

To adapt the management system of the major Polish seaports to the market economy conditions in 1991, the largest state-owned port enterprises were converted into single joint stock companies solely owned by the State Treasury⁵. It was then that: Gdańsk Port Authority SA, Gdynia Port Holding SA and Szczecin-Świnoujście Port Authority SA were established. It was an attempt to separate the service sector (transshipment-and-services activity) from the sphere of port infrastructure management and administration. Such a separation tendency was the primary objective of the preparation of draft laws on the seaport management⁶.

² K. Kruczalak, *Przekształcenia własnościowe w gospodarce morskiej – wprowadzenie*, [in:] *Przekształcenia własnościowe w gospodarce morskiej*, (ed.) K. Kruczalak, Sopot 1997, pp 18–20.

³ H. Kliemk, *Przekształcenia strukturalne w polskich portach morskich*, [in:] *Dylematy i perspektywy rozwoju współczesnych przedsiębiorstw*, (eds.) J. Fryca, D. Wach, PTE Gdańsk 2007, pp. 144–150.

⁴ A. S. Grzelakowski, M. Matczak, *Współczesne porty morskie, funkcjonowanie i rozwój*, Gdynia 2012, pp. 140–144, S. Szwankowski, *Funkcjonowanie i rozwój portów morskich*, Gdańsk 2000, pp. 133–136.

⁵ K. Sulima-Chlasczak, *Analiza porównawcza przekształceń strukturalno-własnościowych w polskich portach morskich*, [in:] *Strategia rozwoju transportu morskiego Polski*, “Studia i Materiały Instytutu Transportu i Handlu Morskiego UG”, Gdańsk 1998, p. 82 and others.

⁶ A. S. Grzelakowski, *Restrukturyzacja sektora portowego w Polsce – kierunki, formy i efekty*, [in:] *Polska gospodarka morska. Restrukturyzacja, konkurencyjność, funkcjonowanie, rozwój*, (ed.) H. Salmonowicz, Szczecin 2010, pp. 71–80; J. Dąbrowski, *Proces restrukturyzacji zarządzania portem morskim w Gdyni w latach 1989–2009*, [in:] *Polska gospodarka morska. Restrukturyzacja, konkurencyjność, funkcjonowanie, rozwój*, (ed.) H. Salmonowicz, Szczecin 2010, pp. 81–90; M. Pluciński, *Transformacja sfer eksploatacji i zarządzania portami morskimi w Polsce*, *Zeszyty Naukowe U. Sz., Problemy Transportu i Logistyki* No. 13, 2010, No. 628, pp. 324–335; H. Kliemk, *Przekształcenia strukturalne w polskich portach morskich, op. cit.*, p. 145.

2. PREMISES OF THE LEGISLATIVE ACT

It was the Act of 20 December 1996 on Seaports and Harbours⁷ (hereinafter referred to as the Port Act) that laid foundation for the separation of the port infrastructure exploitation from the management and administration functions. The legislative act sets forth the principles that govern the establishment of entities managing seaports and harbours, their organisation and functioning. Not only does it specifically determine the nature of the port companies, incorporation and organisation of the entities managing the ports of primary importance to national economy, but it also defines the objects of activity run by the managing entity⁸. The foregoing law specifies the sources of income of the entities managing the seaports and harbours. Worth noting is the fact that the legislative act places more emphasis on so called trading ports and does not pertain to the operation of naval ports which in turn are subject to the specifically devised regulation. Nor does it elaborate on the boundaries of the seaports and harbours or port areas which are governed by relevant legislation⁹. The underlying law briefly defines a managing entity as the entity that in pursuance of the said law has been set up to manage a seaport or harbour.

3. SEAPORTS OF PRIMARY SIGNIFICANCE TO NATIONAL ECONOMY

The Port Act has introduced a variety of discrete models of seaport management in reliance upon different categories of ports. It distinguished the following categories of seaports: ports of primary importance to national economy, other

⁷ Dz. U. 2010 nr 33 poz 179 [Journal of Laws 2010 No. 33 item 179]; H. Klimek, *Structural transformations in Polish seaports* [in:] *Development and functioning of enterprises in global and changing environment*, edited by J. Kujawa and O. Dębicka, Gdańsk 2010, p. 183; J. Dąbrowski, *Economic and legal aspects of the structural transformation of Polish seaports*, „Shipping & Navigation” Research Journal, Odessa National Maritime Academy, Issue 25, March 2015, pp. 58–68.

⁸ More on this topic: J. Młynarczyk, *Ze studiów nad prawnym modelem zarządzania polskimi portami morskimi*, Gdańskie Studia Prawnicze, Księga jubileuszowa dedykowana prof. W. Adamczakowi, Tom XXXII, Gdańsk 2014, pp. 287–296; M. Adamowicz, *Przyszłość regulacji problematyki portów morskich*, Prawo Morskie, t. XXVII, pp. 205–216;

⁹ Rozporządzenie Ministra Infrastruktury i Rozwoju z 7 maja 2015 r. w sprawie określenia akwenów portowych oraz ogólnodostępnych obiektów, urządzeń i instalacji wchodzących w skład infrastruktury portowej dla każdego portu o podstawowym znaczeniu dla gospodarki narodowej. Dz. U. 2015 poz. 732 [Journal of Laws 2015 item 732].

ports and harbours (of regional or local nature)¹⁰. The law does not provide the definition of ports of primary importance to national economy, but merely lays down under Article 2(2) an exhaustive list of ports that belong to such catalogue. Among the said ones are the ports in Gdynia, Gdańsk, Szczecin and Świnoujście. The catalogue of the seaports of primary significance to national economy is closed, since the law does not allow for the establishment of another port apart from the seaports named in the legislative act – ‘*numerus clausus*’ (closed number) principle is applicable here.

Seaports of primary significance to national economy are managed by joint stock companies set up by the State Treasury and municipalities, in the territory of which port areas are located. Thus, in accordance with the said law, new managing companies have been incorporated, and the single joint stock companies solely owned by the State Treasury formed in 1991 have not undergone any winding-up:

- Gdańsk Port Authority SA established by the State Treasury and Gdańsk municipality,
- Gdynia Port Authority SA established by the State Treasury and Gdynia municipality seated in Gdynia,
- Szczecin and Świnoujście Port Authority SA established by the State Treasury and Szczecin and Świnoujście municipalities seated in Szczecin.

In all of the foregoing companies that manage seaports of primary significance to national economy, the State Treasury was to retain at least 51% of votes serving the whole capital, while seaport municipalities – Gdańsk and Gdynia – were to acquire at least 34 % of shares, and – Szczecin and Świnoujście – at least 24,5% of shares each. The Treasury and the said municipalities hold the registered and preference shares in respect of pre-emption in the company property distribution in the event the company is wound up. Shareholding proportions envisaged by the legislator have never been achieved since the land where the port was situated in its vast majority belonged to the State Treasury, whereas the municipalities’ land stayed in minority. Moreover, municipalities did not have enough capital to buy out and take up additional shares.

The establishment of new companies in pursuance of the legislative act has given rise to some sort of duality in the management-and-administration area, as in each of the ports there were two entities in operation¹¹:

¹⁰ D. Pyć, Port morski, [in:] *Leksykon prawa morskiego 100 podstawowych pojęć*, (eds.) D. Pyć, I. Zużewicz-Wiewiórowska, Warszawa 2013, pp. 439–442.

¹¹ K. Dobrowolski, *Przekształcenia w systemie zarządzania głównymi polskimi portami morskimi i ich wpływ na funkcjonowanie portów w warunkach globalizacji*, [in:] *Zmiany konkurencyjności nowych krajów członkowskich Unii Europejskiej: osiągnięcia i wyzwania*, (ed.) A. Grynia, Wilno 2014, p. 223.

- in Gdańsk: already existent Gdańsk Port Authority SA and newly founded the Port of Gdansk Authority SA,
- in Gdynia: already existent Gdynia Port Holding SA and newly founded the Port of Gdynia Authority SA,
- in Szczecin and Świnoujście: already existent Szczecin-Świnoujście Port Authority SA and newly founded Szczecin-Świnoujście Seaports Authority SA.

The operation of two managing entities in the ports was far from facilitating the fulfilment of the principal premise of the legislative act that aimed at the separation of the port management sphere from that of services. Contrary to the EU port policy, no conditions were created to ensure neutrality of the port managing entities towards port infrastructure users, which constituted one of the fundamental principles of the said policy¹². The avenues to be taken to do away with the duality and to combine two entities were pointed out in the amendment to the Act (1999)¹³, where it was mandated that the old companies be acquired by the newly founded joint stock companies.

Combined companies, which within the meaning of the law were to be public utility enterprises, held their shares in the exploitation companies. The legislative act prescribed selling such shares till 31 December 2003 (later on till 31 December 2005) to fulfil the fundamental premise of the law which was the separation of management and services. With a view to finishing off the privatisation processes of the services companies, subsequent amendment to the Port Act (2004)¹⁴ laid down the detailed procedures for the sale of shares, title conveyance and letting the port property for use. Noteworthy is the fact that the privatisation procedure stipulated in Article 5 of the amendment firmly anchored the approach expressed in the doctrine of the separation of the port services from the function of a “landlord” managing port immovable¹⁵.

Since 1997, changes in the ownership relationships in the port authorities have been developing in the direction of the State Treasury prevalence in the ownership of majority of shares. Currently, the State Treasury holds the majority of shares in the port authorities: 95.07% in the Port of Gdansk Authority SA; 99.480% in the

¹² More on this topic: H. Klimek, J. Dąbrowski, *Europejska polityka portowa*, *Studia i Materiały IHiTM*, No. 8, 2011, pp. 11–33.

¹³ Ustawa z dnia 18 czerwca 1999 r. o zmianie ustawy o portach i przystaniach morskich, *Dz.U.* 1999 nr 62 poz. 685 [Journal of Laws 1999 No. 62 item 685].

¹⁴ Ustawa z dnia 16 grudnia 2004 r. o zmianie ustawy o portach i przystaniach morskich oraz o zmianie niektórych innych ustaw; *Dz. U.* 2004, No. 281, poz. 2782 [Journal of Laws 2004 No. 281, item 2782].

¹⁵ For details on the models of seaports management see J. Dąbrowski, *Systems and models of seaports management in the European Union*, [in:] *Морське право: історія, сучасність, перспективи, розвитку*, Одеська національна морська академія, Одеса 2013, pp. 174–186.

Port of Gdynia Authority SA; 86.89% in the Szczecin-Świnoujście Seaports Authority SA.

The representatives of municipalities have been granted places in the supervisory boards of the port authorities disproportionately to the ownership structure and the size of the share capital held. They have received between three and four places together with the function of the Supervisory Board Chairman despite holding an insignificant number of shares. Such a solution was meant to reinforce the role of the municipalities in the ports. Nonetheless, it fails to translate into real and substantial decisions, since it is the State Treasury that holds the majority of votes in the Supervisory Boards. It warrants mentioning here that every member of the Supervisory Board and the Supervisory Board itself as a corporate body enjoys competence to appeal against the resolutions adopted by the Shareholders Meeting. What it means is that the representatives of the municipalities may bring actions for the repeal or declaration of invalidity of such resolutions.

Preliminary premises of the legislative act, as H. Klimek noticed, stipulated that the largest Polish seaports were to be managed by the state-and-municipally owned companies¹⁶. However, as a result of all the capital-base transformations, the companies that manage seaports have been dominated by the State Treasury. Furthermore, the underlying law and the articles of association of the port companies have restricted competences of the said companies in respect of the port areas management and other decisions. Therefore, we may support K. Dobrowolski's conclusion that it is thanks to the transformations in Poland that the state model of seaports management has practically taken certain shape¹⁷.

4. BUSINESS ACTIVITY OF THE COMPANY MANAGING SEAPORTS OF PRIMARY IMPORTANCE TO NATIONAL ECONOMY

Activity of the authorities of seaports of primary importance to national economy as joint stock companies is not only governed by the Act on Seaports and Harbours but also by the Commercial Companies Code provisions. The majority of the provisions prescribing the operation of the said entities are of absolutely

¹⁶ H. Klimek, *Przekształcenia strukturalne w polskich portach morskich*, [in:] *Dylematy i perspektywy rozwoju współczesnych przedsiębiorstw*, (eds.) J. Fryca, D. Wach, PTE Gdańsk 2007, p. 148.

¹⁷ K. Dobrowolski, *Przekształcenia w systemie zarządzania głównymi polskimi portami morskimi i ich wpływ na funkcjonowanie portów w warunkach globalizacji*, [in:] *Zmiany konkurencyjności nowych krajów członkowskich Unii Europejskiej: osiągnięcia i wyzwania*, (ed.) A. Grynia, Wilno 2014, pp. 217–231.

mandatory nature – and the entities managing the ports of primary importance to national economy do not enjoy discretion in shaping their economic activity and business activity principles by virtue of numerous statutory limitations. The limitations concern, among others, the objects of business activity which embrace in particular: 1) management of properties and port infrastructure¹⁸; 2) forecasting, planning and programming of port development; 3) construction, development, maintenance and upgrading of port infrastructure; 4) acquisition of properties for port development needs; 5) rendering services linked with the use of port infrastructure; 6) ensuring access to port reception facilities for waste from vessels for its recycling or neutralization. Moreover, the law places some limitations on running the economic activity by the managing company, which *de facto* produces hindrances to earning possibilities.

5. PUBLIC UTILITY NATURE OF PORT ENTERPRISES

In accordance with the Article 6(2) of the Port Act, joint stock companies managing the ports of primary importance to national economy are of the public utility nature. Such a concept in Polish law denotes a remunerative but *non-profit* economic activity serving the needs of collective character based on public property. It is necessary to concur with J. Młynarczyk that it is difficult to admit that a seaport serves collective needs,¹⁹ however, by virtue of its special nature and a specific interest of the state, the legislators equipped the ports with this feature for the following reasons, *inter alia*: the state territorial frontier location, generally accessible nature of the infrastructure and port areas²⁰, economic and social meaning of the seaports.

Thanks to the public nature of port infrastructure and its general accessibility, the enterprises of port services may compete with one another on level playing field terms, which is a clear expression of port services liberalisation.

¹⁸ Similar view is shared by the fundamental objects of port authorities in other seaports in the world that rely on 'landlord' model, see. A. S. Grzelakowski, *Przedsiębiorstwa portowe i żeglowne jako podmioty morskiej przestrzeni transportowej i logistycznej*, Współczesna Gospodarka, No. 2, 2016, pp. 71–83; see: www.wspolczesnagospodarka.pl (access 26 August 2016).

¹⁹ J. Młynarczyk, *Ze studiów nad prawnym modelem zarządzania polskimi portami morskimi*, Gdańskie Studia Prawnicze, Księga jubileuszowa dedykowana prof. W. Adamczakowi, Tom XXXII, Gdańsk 2014, p. 291.

²⁰ Cz. Christowa i Maria Christowa-Dobrowolska, *Polskie porty morskie zachodniego Bałtyku w systemie transportowym UE. Stan i perspektywy rozwoju*, Logistyka No. 6/2010, pp. 1–19.

6. FINANCES OF PORT ENTERPRISES

Provisions of the Act on Seaports and Harbours that set forth types and indirectly level of enterprise revenues are an essential factor driving financial management of port authorities in Poland. Subject to Article 9, the revenue sources of the managing entities are as follows: 1) fees from use, usufruct, lease, tenancy or other agreement, by which the managing entity lets port land, facilities and installations for remunerative use; 2) port dues; 3) proceeds from services rendered by the managing entity; 4) inflows from other sources. The question of charging the port fees received an exceptionally detailed statutory regulation. Not only does the statute distinguish the types of fees, but it also points at the situations, objects and sums of payment that may be charged. Such regulation is another manifestation of restricting the autonomy of port managing entities in respect of shaping the pricing policy on port fees, thereby distorting the principle of free competition for market economy entities²¹.

7. SEAPORTS AND HARBOURS OF NO PRIMARY IMPORTANCE TO NATIONAL ECONOMY

From among 79 seaports and harbours operating along the Polish coast, only four, discussed hereinabove, have been included in a separate category of ports of primary importance to national economy, while remaining 75 ports and harbours, 29 of which are ports and 46 are harbours²², have formed a group of ports of no primary importance to national economy. However, the Port Act does not provide criteria that would enable distinguishing small seaports from harbours²³.

Statutory provisions provide for general questions on the management of seaports and harbours of no primary importance to national economy. The said

²¹ *“Diagnoza aktualnych wyników funkcjonowania, struktury zarządzania i potencjału rozwojowego polskich portów morskich o podstawowym znaczeniu dla gospodarki narodowej w świetle ich powiązań regionalnych”* opracowanie przygotowane na zlecenie Związku Miast i Gmin Morskich przez Actia Forum. Gdańsk 2010, p. 64.

²² Międzyresortowy Zespół do spraw Polityki Morskiej Rzeczypospolitej Polskiej; Uchwała nr 33/2015 Rady Ministrów z dnia 17 marca 2015 r. w sprawie polityki morskiej Rzeczypospolitej Polskiej do roku 2020 (z perspektywą do 2030 roku), zwany dalej Polityką morską RP, Warszawa 2015, p. 15.

²³ K. Luks, *Strategia aktywizacji nadbałtyckich regionów peryferyjnych wobec zjawiska marginalizacji małych portów w Polsce*, [in:] *Uwarunkowania realizacji strategii rozwoju polskich portów morskich*, Zeszyty naukowe U.S. No. 657, Zeszyty Morskie No. 1, (eds.) M. Grzybowski i M. Pluciński, Szczecin 2011, pp. 201–229.

regulations pertain to the option of selecting organisational and legal status of port managing entities and discuss situations of a failure to select such an entity. Moreover, they create common principles for the operation of all ports because certain solutions apply to both major and other ports.

The law awarded coastal municipalities freedom to select the form of seaport and harbour management, however, on condition that the area where the port or harbour is located constitutes municipal property (Article 23.1)²⁴. The introduction of the foregoing statutorily defined option does expressly display a Polish model of management of small ports and its drive towards their municipalisation. The underlying solution seems reasonable, justifiable and commonly applied in other ports of the Baltic and the North Sea region²⁵. The municipality and the port form a cohesive economic system and a uniform organism in the functional and spatial perspective with its economic, financial and social correlations. Unfortunately, the municipal model of seaport management fails to dominate in Poland, the main reason being that the municipalities have not had relevant measures to maintain port infrastructure; tools that the port managing entity established by the municipality would be accountable for.

Where the municipality has failed to select the organisational and legal status, the management role is performed by the maritime administration bodies – directors of competent maritime offices. Activities of the maritime administration bodies pertinent to ports are governed by the Port Act as well as by the Act on Maritime Areas of the Republic of Poland and the Maritime Administration²⁶. Both statutes enshrine the general guidelines on tasks and duties of the maritime administration bodies, more detailed competences being contained in the articles of maritime offices and their organisational rules and regulations²⁷.

The foregoing law divided functions and competences assigned to the entity managing small port or harbour between: the local maritime administration body – director of the competent maritime office – and municipality, thereby giving

²⁴ M. Pacuk, T. Michalski, *Problemy funkcjonowania małych portów morskich na przykładzie Ustki*, [in:] *Wybrane zagadnienia geografii transportu*, (ed.) J. Wendt, Szczecin US 2002, pp. 143–158.

²⁵ A.S. Grzelakowski, M. Matczak, *Formy aktywizacji rozwoju średnich i małych portów morskich polskiego wybrzeża, Modele zarządzania małymi portami – rekomendacje dla Polski*; ekspertyza przygotowana na zlecenie Biura Analiz i Dokumentacji Kancelarii Senatu w ramach serii: *Opinie i ekspertyzy OE-151*, listopad 2010, pp. 15–20.

²⁶ Ustawa z dnia 21 marca 1991 r. o obszarach morskich Rzeczypospolitej Polskiej i administracji morskiej, tekst jednolity: Dz. U. 2013 nr 934, z późn. zm. [Journal of Laws 2013 No. 934 as amended].

²⁷ *“Porty lokalne w strategiach aktywizacji peryferyjnych regionów nadmorskich”* praca zbiorowa pod redakcją naukową B. Szwankowskiej, IM Gdańsk 2010, pp. 13–15.

rise to a dualist model of small port management exercised by the state and local government²⁸.

There is a need to underline the fact that the early years (1997–2000) of the law being in force saw the absence of incentives on the part of the state to support potential investors in the commitment and contribution to the existent system of management of ports of no primary importance to national economy that were written into the competences of the local maritime administration bodies. For this reason, it was difficult to activate economic development of small ports and harbours and thereby initiate processes driving their economic growth which would benefit the local and regional enterprises²⁹. Therefore, local governments should exert more influence on the shape and development of small ports³⁰.

8. POLISH PORT POLICY

Several documents have been drawn up under the national maritime policy with a view to the enhancement of conditions for the development of ports. There appeared, among others, “*Strategia rozwoju portów morskich do 2015*” [“*Seaports development strategy till 2015*”]³¹ that recommended, *inter alia*, strengthening of the seaports role through infrastructure modernisation and development together with the implementation of the EU management and service standards; improvement of port infrastructure and access from the sea; application of measures facilitating customs procedures. Another document that pertains to ports is “*Porty 2020 Program rozwoju polskich portów morskich do roku 2020 (z perspektywą do 2030 roku)*” [“*Ports of 2020, Polish seaports development program till 2020 (with prospects till the year 2030)*”]³², which is of operational and implementary nature,

²⁸ A.S. Grzelakowski, M. Matczak, *Formy aktywizacji rozwoju średnich i małych portów morskich polskiego wybrzeża, Modele zarządzania małymi portami ...*, p. 18.

²⁹ P. Nowaczyk, *Warunki prowadzenia działalności gospodarczej w małych portach morskich w Polsce*, “Zarządzanie i Finanse”, 2013, No. 11, part 4, pp. 347–361 and P. Nowaczyk, *Znaczenie działalności rekreacyjno-sportowej w małych portach morskich w Polsce dla społeczno-gospodarczego rozwoju gmin nadmorskich*; *Rozprawy Naukowe AWF we Wrocławiu* 2015, No. 51 pp. 37–43.

³⁰ U. Kowalczyk, *Miejsce małych portów w regionalnym i ponad regionalnym systemie transportowym*, [in:] *Program UE – “Autostrady Morskie” szansą dla rozwoju potoków ładunkowych pomiędzy Morzem Bałtyckim a Północnym*, (eds.) K. Chwesiuk, Szczecin 2006, p. 143.

³¹ “*Strategia rozwoju portów morskich do 2015 r.*”, adopted by the Cabinet’s Resolution of 13 Nov. 2007.

³² *Program rozwoju polskich portów morskich do roku 2020 (z perspektywą do 2030 roku)* is a document of an operational and implementary nature prepared by the Ministry of Transport, Construction and Marine Economy, Warsaw July 2013, source: bip.transport.gov.pl/pl/bip/

servicing the purposes contained in the National Development Strategy 2020 (in particular, in Transport Development Strategy till 2020). The foregoing document embraces the latest diagnosis of the seaports in Poland and formulates the goals and directions of their development. The central aim is “the enhancement of Polish seaports competitiveness, growth in their contribution to the national socio-economic development and raising the rank of seaports in the international transport network”³³. Unfortunately, this document does not go to great lengths to identify the needs of small ports and harbours and their development directions³⁴.

The following document of certain significance is “*Polityka morska Rzeczypospolitej Polskiej do roku 2020 (z perspektywą do 2030 roku)*” [“*Maritime policy of the Republic of Poland till 2020 (with prospects till the year 2030)*”] which devotes the whole first chapter to the reinforcement of the Polish seaports position. The foregoing paper offers markedly more insightful view of the ports of primary importance to national economy. Among the objectives of operation for the reinforcement of the Polish seaports position, it lists, *inter alia*, supporting small ports as regional entrepreneurship centres. It fails, however, to put forward any particular instruments of such promotion.

CONCLUSIONS

For years, the Act on Seaports and Harbours has been the object of debates, discussions and criticisms, in the course of which there most often tend to arise frictions between divergent interests of numerous concerned parties. The attempts to seek compromise or projects of new statutory resolutions have never gone beyond the stage of a project, although certain groups of politicians expressed their interest and volition³⁵. The foregoing projects enshrined, among others, a proposal to increase the contribution of municipalities and regional governments to the management of major ports in equal proportions with the State Treasury, and

zamowienia_publiczne/ocena_program_porty_2020/px_program_rozwoju_portow_morskich____zalacznik_do_siwz.pdf+&cd=1&hl=pl&ct=clnk&gl=pl

³³ *Program rozwoju...*, p. 51.

³⁴ For details on ports development program see: H. Klimek, *Program rozwoju portów morskich w Polsce [in:] Współczesne problemy rozwoju lądowo-morskich systemów transportowych*, (eds.) J. Dąbrowski, T. Nowosielski, ITiHM InfoGlobMar 2013, Gdańsk 2013, pp. 159– 187.

³⁵ In the course of twenty years, there were ruling parties that showed interest in port development. However, it was either due to lack of political courage to introduce changes, or the decision-making process lasted so long that a change of government ensued and then the next ruling party started works on a new project.

to extend the role of the councils or committees of port stakeholders in the operation of seaports.

Although the law was adopted twenty years ago and amended several times, its application still engenders problems. One of the fundamental issues is the failure to perform the obligation to separate the sector of services from that of management, which was the central statutory objective (pertains only to the port in Gdańsk, however, the entire process was materially delayed in time). Another shortcoming is a proportionally weak position of port managing entities that cannot avail themselves of an independent decision-making, for instance, with regard to contracts of tenancy or lease, or even revision of the articles of association.

It seems paramount to seek resolutions that would encourage Polish ports development and competitiveness not only to attract potential investors, but also to create entity-friendly conditions for the entities that use broadly-understood port services. The activities of investors that affect the development of port infrastructure will undoubtedly improve access to ports and bring more clients. They will also remarkably reinforce the position of Polish ports.

As earlier underlined, worryingly, the port managing entities do not enjoy strong position. It is imperative that they become reinforced specifically in the seaports of primary importance to national economy through leaving decision-making at the discretion of the managing entities in respect of the conclusion of lease and tenancy agreements, letting the port areas for use for the term longer than 10 years by abolishing the obligation of receiving a consent of the competent Minister of Treasury, all of which will make it far easier to attract investors interested in port operation³⁶.

³⁶ It is necessary to concur with M. Pluciński, who presents actions of an organisational and legislative nature that were overlooked in “*Program rozwoju portów morskich do 2020 roku (z perspektywą do 2030 roku)*”, see: M. Pluciński, *Cele, priorytety i zadania rozwoju polskich portów morskich*, Zeszyty Naukowe U. Sz. Problemy Transportu i Logistyki No. 30, 2015 No. 871, p. 115.