



# Interreg



EUROPEAN UNION

## Danube Transnational Programme

### DAPhNE

### 3.2.2 National legal report framework **ROMANIA**

Work Package 3

Activity 3.2 Improve & harmonize port legislation

PP Responsible: MPAC  
Prepared by: Atlas Research

Date: 05/05/2018

Version 2.1 (final)



## Document History

Version	Date	Authorised
Version 1.0	15/03/2018	Atlas Research / MPAC
Version 2.0	14/04/2018	Atlas Research / MPAC
Version 2.1	05/05/2018	Atlas Research / MPAC

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## 1 Scope of the document

The project is called DAPhNE – Danube Ports Network – and it is funded in the framework of the Danube Transnational Program (DTP). The overall aim of DAPhNE is to facilitate Danube ports to become key-elements of a more efficient and sustainable transport network in the Danube region. The project consists of different work packages dealing with various topics in line with the main objectives of DAPhNE.

The activities included in work package 3 of the DAPhNE project are linked to the regulatory framework of Danube ports. The legal conditions in force as well as the financing and funding possibilities available for Danube ports are investigated and measures are suggested to improve the current situation. An improved regulatory framework will help eliminate the quality gaps in terms of infra- and superstructure which exist between Upper and Middle & Lower Danube sections. One important objective of the work package is to provide inputs for a more harmonized approach in regards to legal port issues. When tackling the legal framework it is important to start from the national level and then move up to identify solutions applicable at regional level.

Six DAPhNE consortium members have overtaken the obligation to coordinate the elaboration of national reports covering the port legal aspects applicable in Austria, Hungary, Croatia, Slovakia, Bulgaria and Romania. The homogenous structure of these reports will allow an easier comparison between the Danube riparian countries and will facilitate the elaboration of a set of recommendations connected to port legislation (output 3.2).

The legal topics chosen to be investigated under the current report contribute to disclose information that will enable the Danube Ports to reach in the long run the following objectives:

- Untap the potential of Danube ports as centres for economic development that are desirable business locations
- Put in place high-quality infra- & super-structure in place all along the Danube ports
- Facilitate cost-effective and easy-to-use port services
- Ensure lowest possible eco-footprint in the construction and operation of Danube ports

Although the consortium members are aware of the variety of functions that ports have (passenger, military, fishing, leisure activities, etc.) the scope of the current report is to focus on those legal aspects that are relevant for transport, logistics and cargo-handling. The legal background for other types of businesses using ports as business locations will also be investigated.

### 1.1 General terms

For the purpose of the current report the definition of a port as included in the Commission Regulation (EU) 2017/1084 of 14 June 2017 shall be considered as starting point.

**“port”** means an area of land and water made up of such infrastructure and equipment, so as to permit the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods and the embarkation and disembarkation of

passengers, crew and other persons and any other infrastructure necessary for transport operators in the port;

**“maritime port”** means a port for, principally, the reception of sea-going vessels;

**“inland port”** means a port other than a maritime port, for the reception of inland waterway vessels.

## 1.2 Definitions according to the national legal framework

The main regulating act in Romania, for maritime and inland ports, is the Government Ordinance no. 22/1999 *concerning the ports and inland waterways administration, the use of waterborne transport infrastructure belonging to the public domain and the carrying out of the naval transport activities in ports and on the inland waterways*, republished, with further completions and modifications<sup>1</sup>.

Ports are clearly limited areas of the national territory, situated on the sheashore or on a waterway, builded and equipped for receiving and accommodation of ships, for carrying out of the naval transport activities and other regulated activities.

The port includes port infrastructure and suprastructure elements.

The following are regarded as port infrastructure elements: port land, hydrotechnical constructions for ship mooring and/or port-related hydro-technical constructions, port basins, access fairways to ports, railways, technological roads, installations and equipment within the port area meant for utilities supply, port waters including the port roadstead.

The following are regarded as port superstructure elements: installations and equipment for cargo handling, constructions destinanted to the storage and processing of cargo, other buildings and special constructions, port platforms, waste reception installations and equipment, including those generated by ships, traffic management systems in the port area and any other assets which, by their nature or purpose, serve any of the shipborne related or ancillary activities of shipping.

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<sup>1</sup> Ordinance no. 22 of January 29, 1999 on the administration of ports and services in ports, republished in Official Gazette no. 69 of 3/02/2003, with subsequent amendments and completions

## 2 Description of the current port governance model

### 2.1 Regulatory framework

The main regulating act in Romania, for maritime and inland ports, is the Government Ordinance no. 22/1999 *concerning the ports and inland waterways administration, the use of waterborne transport infrastructure belonging to the public domain and the carrying out of the naval transport activities in ports and on the inland waterways*, republished, with further completions and modifications

The provisions of the Government Ordinance no. 22/1999<sup>3</sup> shall apply in ports and inland waterways to all ships and to all shipping and related activities carried out in those areas.

Port regulations are drawn up in accordance with the provisions of Government Ordinance no. 22/1999<sup>3</sup> and the Annex to MTI Order no. 636/2010<sup>2</sup> for the approval of the Port Regulatory Framework. For Romanian ports the following port regulations are in force:

- Port regulation of the Romanian maritime ports under the administration of the National Company Maritime Ports Administration Co. Constanta, no. 31732 of 26/10/2012
- Port regulation of ports located on the Danube - Black Sea Canal and Poarta Alba-Midia-Navodari Channel, National Company Maritime Port Administration Co. Constanta, 2015
- Port regulation of the Romanian maritime and river ports under the administration of the National Company "Maritime Danube Port Administration" Co. Galati

The governance model is the corporate governance, defined and regulated by Government Emergency Ordinance no. 109/2011<sup>3</sup> on Corporate Governance of Public Enterprises, with further modifications and completions. The corporate governance of public companies consists of the set of rules governing the system of administration and control within a public undertaking, the relations between the governing body and the bodies of the public company, between the managerial board/supervisors, directors/management, shareholders and other interested persons.

EU Regulation no. 352/2017<sup>4</sup> establish a framework for the provision of port services and common rules on financial transparency for ports. The Commission notes that the attractiveness of maritime transport depends on the availability, efficiency and reliability of

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<sup>2</sup> Order no. 636/2010 for the approval of the Port Regulatory Framework, published in Official Gazette no. 590 of 19/08/2010

<sup>3</sup> Government Emergency Ordinance no. 109/2011 on corporate governance of public enterprises, published in Official Gazette no. 883 of 14/12/2011, with further modifications and completions

<sup>4</sup> EU Regulation no. 352/2017 establishing a framework for the provision of port services and common rules on financial transparency for ports

port services and on the need to address issues of transparency of public funding and port taxes as well as administrative simplification efforts in ports and to review restrictions on provision of services in ports.

The Government Ordinance no. 22/1999, modified in 2017, stipulates that a Supervisory Board in the Naval Transport Field is established and is organized and operates as a structure without legal personality within the Competition Council.

The Supervisory Board in the Naval Transport Field is independent in organizational, legal, decision-making terms and with respect to financial decisions regarding port administrations, shipborne transport infrastructure users and economic operators carrying out shipping activities.

Council Directive 92/106/EEC<sup>5</sup> on the establishment of common rules for certain types of combined transport of goods between Member States. This directive is the only legal instrument at European Union level that directly stimulates the shift from road freight transport to lower-emission modes of transport such as inland waterway transport, maritime transport and rail transport. The aim of the directive is to increase the cross-border intermodal (more exactly, "combined") transport competitiveness in comparison with road freight transport alone. The Directive was transposed in Romania by the Government Ordinance no. 88 of 30 August 1999 on the establishment of rules for the combined transport of goods, published in Official Gazette no. 423 of 31/08/1999, with further modification and completions. The methodological norms regarding the establishment of rules for the combined transport of goods for the application of Government Ordinance no. 88/1999 were approved by Government Decision no. 193/2000.

Resolution no. 16 of 12/02/2018<sup>6</sup> on the Proposal for a Directive<sup>7</sup> of the European Parliament and of the Council amending Directive 92/106 / EEC on the establishment of common rules for certain types of combined transport of goods between Member States.

The Romanian Parliament is the supreme representative body of the Romanian people and the sole legislator of the country. According to the Constitution of Romania, the Parliament, through organic laws, regulates the organization of the local public administration, the territory, as well as the general regime on local autonomy. In this context, Parliament adopts laws on the management of ports and waterways.

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<sup>5</sup> Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States

<sup>6</sup> Decision no. 16 of 12 February 2018 on the Proposal for a Directive of the European Parliament and of the Council amending Directive 92/106 / EEC, published in Official Gazette No. 154 of 19/02/2018

<sup>7</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 92/106 / EEC on the establishment of common rules for certain types of combined transport of goods between Member States - COM (2017) 648 final



The President of Romania issues decrees that are published in the Official Gazette of Romania.

The Government of Romania adopts decisions and ordinances. Decisions are issued for the organization of law enforcement and ordinances are issued under a special enabling law, within the limits and under the conditions set forth therein. The decisions and ordinances adopted by the Government shall be signed by the Prime Minister, countersigned by the ministers who have the obligation to enforce them and shall be published in the Official Gazette of Romania.

The Ministry of Transport establishes the transport policy at national level, develops the specific strategy and regulations for the development and harmonization of transport activities within the general policy of the Government and fulfills the role of state authority in the field of transport and transport infrastructure.

The Naval Transport Department participates in the development of the national policy in the field of ship transport and the shipping infrastructure in accordance with the transport policy adopted at the level of the European Union, the development of the elements of the national strategy for the development of the naval transport and the ship transport infrastructure, in accordance with with the national transport policy and the one adopted at EU level, as well as the elaboration of the development programs in the field of ship transport and the ship transport infrastructure in accordance with the national strategy.

The Ministry of Transport is the state authority in the field of ship transport **Fehler! Textmarke nicht definiert.**, which develops and coordinates the policy and programs for the development of the shipping system and, as a regulatory authority, develops and promotes normative acts and the specific rules regarding the safety of navigation, the management, use and concession of the shipping infrastructure, the carrying out of shipping activities in the Romanian ports and the navigable waters of Romania and ensures the fulfillment of the state obligations in the international agreements and conventions to which Romania is a party. The Ministry carries out its tasks directly or through the Naval Transport Department or, by delegation of competence, as appropriate, through public institutions, autonomous agencies and national companies or companies under its supervision or under its authority.

The Naval Transport Department is the functional department in the organizational structure of the Ministry of Transport which ensures the fulfillment of its functions in the maritime and inland waterway transport as well as in the ship transport infrastructure, within the limits of the competences granted. The Directorate coordinates public institutions, national companies, autonomous agencies and shipping companies and controls port and / or inland waterway administrations as regards the application of the legal provisions in the field.

The port administration is the institution designated by the Ministry of Transport to fulfil the function of port authority and has as its main object the application of the port policy developed by the Ministry, the coordination of activities taking place in ports and the implementation of port infrastructure development programs. Port and/or inland waterway administrations provide the management of inland ports and inland waterways, monitor or ensure the provision

of safety services in ports and inland waterways such as: pilotage of seagoing and inland waterway vessels at the entrance into, and exits out of ports between berths of the same port and inland waterways and maneuver towage of seagoing and river vessels in ports, and provides for the carrying out of activities ancillary to the shipping activities, comprising: maintenance and repair of the shipping infrastructure, coastal and floating signalling for navigation, maintenance dredging for providing deep water in ports and inland waterways, assisting ships to operate dangerous goods, collecting waste and sewage from ships, picking up garbage and household waste from ships **Fehler! Textmarke nicht definiert..**

The Prefect represents the Government of Romania on a local level who is in charge of the deconcentrated public services of the ministries and other central public administration bodies in the administrative-territorial units.

The Romanian Naval Authority is the specialized central authority in the field of maritime safety and navigation, subordinated to the Ministry of Transport<sup>8</sup>. The Romanian Naval Authority, through its harbor master's offices, allow access to and operation of ships only in ports or operation places open to public access, established and approved by order of the Minister of Transport.

## 2.2 Port owner

The Romanian ports are organized on a "landlord port" model. The port infrastructure is owned by the state and administrated by a port administration (has also the function of port authority) while port operations are carried out by private companies, which provide and maintain their own superstructure, including buildings and cargo-handling equipment at the terminals.

The Romanian state concessioned the port administration of Constanta, Managalia and Midia ports to National Company "Maritime Ports Administration" Co. Constanta, which is a joint stock company (80% of shares belong to Romanian state, 20% to *Proprietatea* Fund) subordinated to the Ministry of Transport. The National Company Maritime Port Administration Co. Constanta (CN APM SA Constanta) was established by Government Decision no. 517/1998<sup>9</sup>, with subsequent amendments and completions, by reorganizing the former Autonomous Agency of Constanta Port Administration. CN APM SA Constanta is a joint stock company, designated by the Ministry of Transport to carry out activities of national public interest, as a port administration. The company fulfills the position of port authority in the Romanian seaports of Constanta, Midia and Mangalia and in the "Tomis" marina.

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<sup>8</sup> Government Decision no. 1133 / 2002 on the organization and functioning of the Romanian Naval Authority, with further modification and completions

<sup>9</sup> Decision no. 517/1998 on the establishment of the National Company "Constanta Maritime Ports Administration" - Co., published in Official Gazette no. 331 of 02/09/1998

The ports of Galati, Braila, Tulcea, Harsova, Isaccea, Mahmudia and the secondary branches of Macin, Chilia and Sf. Gheorghe are public property of the state and are administrated by the Maritime Danube Port Administration Co. Galati.

The Danube Maritime Ports Administration Co. Galati (CN ADPM SA) founded in 1991, reorganized into a national company by Government Decision no. 518/1998<sup>10</sup>, with subsequent amendments and completions, operates as a joint stock company and carries out activities of national public interest. The company manages the entire port infrastructure located on the Danube, from Mm 12.5 to km 17.5 and km 251 to km 255, including the ports of Galati, Braila, Tulcea, Harsova, Isaccea, Mahmudia and the secondary branches of Macin, Chilia and St. Gheorghe<sup>11</sup>. The port infrastructure managed by CN APDM SA Galati is part of the public domain of national interest. The National Company "Administration of the Danube Maritime Ports Galati" Co. operates under the authority of the Ministry of Transport managing the ports infrastructure belonging to the public domain of the state, concessioned by the ministry on the basis of concession contract no. LO/3447 of 12/09/2008.

"The Lower Danube River Administration" Galati fulfills the position of waterway authority on the Romanian Danube sector.

The Danube-Black Sea Channel and the Poarta Alba-Midia-Năvodari Canal are national waters of Romania and are under the sole sovereignty and jurisdiction of the Romanian State<sup>12</sup>.

The navigable channels are directly assigned, through a concession contract, to the National Company "Administration of Navigable Channels" - Co Constanta, for their management and exploitation. The Administration of Navigable Channels was established by the Government Decision no. 519 of 24/08/1998<sup>13</sup> and performs activities of national public interest stipulated in the company's statute. The Administration of Navigable Channels Constanta is a national company under the authority of the Ministry of Transport.

## 2.3 Types of ports

According to the provisions of Government Ordinance no. 22/1999, republished, with further completions and moodifications, in terms of form of harbor land ownership, ports are classified as follows:

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<sup>10</sup> Decision no. 518 of 24/08/1998 on the establishment of the National Company "Maritime Danube Port Administration" -Co. Galati, published in Official Gazette no. 332 of 3/09/1998

<sup>11</sup> [www.romanian-ports.ro](http://www.romanian-ports.ro)

<sup>12</sup> Government Ordinance no. 79 of 24 August 2000 on the navigation regime on the Danube-Black Sea Channel and the Poarta Albă-Midia-Năvodari Channel, published in Official Gazette no. 413 of 30/08/2000

<sup>13</sup> Decision no. 519 of 24 August 1998 on the establishment of the National Company of Navigation Channels Administration - Co. Constanta, published in Official Gazette no. 332 of 3/09/1998

1. Ports where the land belongs to the public domain of the state. In ports where the port infrastructure belongs to the public or private domain of the state, port administrations are established by government decision as enterprises subordinated or under the authority of the Ministry of Transport.
2. Ports where the land belongs to the public domain of the administrative-territorial units. In ports where the port infrastructure belongs to the public or private domain of the administrative-territorial units, port authorities are established by decisions of the deliberative local public administration authorities and are subordinated to, or under the authority of the pertaining local public administration authorities.
3. Ports where the land is private property. In ports where the port infrastructure belongs to the private domain other than the above, the port administration is a legal entity designated by the port infrastructure owner.

Ensuring the functionality of ports and the shipping infrastructure, their management, monitoring or the provision of safety services and ensuring that ancillary activities are carried out by port and/or inland waterway administrations.

Naval transport activities taking place in ports and inland waterways include:

a) activities for the carriage of goods and/or persons by vessels:

1. public transport of persons and or goods carried out by legal or ~~natural~~ persons authorized under the law;
2. transport of persons and/or goods for own use, performed by the legal or ~~natural~~ persons authorized under the law, whereas the goods transported are their property or the result of their activity, and the persons transported are their employees;
3. transport of goods and/or persons in personal interest, on inland waterways, performed by natural persons for the satisfaction of their own requirements for water transport, for sport or recreation;

b) activities related to the naval transport activities:

1. safety services in ports and on inland waterways, hereinafter referred to as safety services, such as: pilotage of seagoing and inland waterway vessels at the entrance into, and exits out of ports between berths of the same port and inland waterways and maneuver towage of seagoing and river vessels in ports;
2. ship operations such as embarkation/disembarkation of persons, loading/unloading of ships, storing, stowage, mooring, sorting, marking, palletising, packing, containerization, bagging and other cargo pertaining operations, agency, cleaning ship cargo holds, bunkering, cleaning and degassing of ship tanks, mooring seagoing and river and sea vessels;

c) activities auxiliary to naval transport activities:

1. activities relating to the maintenance and repair of naval transport infrastructure, coastal and floating signaling for navigation, maintenance dredging to ensure depths in ports and inland waterways, assistance to ships in the operation of dangerous goods,

- collecting of waste and sewage from ships, picking up garbage and household waste from ships;
2. other activities, such as: the execution of hydrotechnical constructions specific to naval transport, diving works in national inland waterways and in ports, unmanned vessels supervision, services for pleasure vessels and tourism, extraction dredging, water, electricity and heat supply, ship assistance, rescue and refloating, ship repairs, ship supply.

Administrations act as port and/or inland waterway authorities and, where appropriate, as free zone administrator.

## 3 Investing in ports, construction and permitting

The goal of this chapter is to clarify which legal entity has responsibilities for developing ports and carrying out port investments. In this respect it is also important to find out which permits are required for the construction of new ports as well as for the amendment of existing ports.

In line with Commission Regulation (EU) 2017/1084 of 14 June 2017, the consortium will consider the following definitions as starting points:

**“port infrastructure”** means infrastructure and facilities for the provision of transport related port services, for example berths used for the mooring of ships, quay walls, jetties and floating pontoon ramps in tidal areas, internal basins, backfills and land reclamation, alternative fuel infrastructure and infrastructure for the collection of ship-generated waste and cargo residues;

**“port superstructure”** means surface arrangements (such as for storage), fixed equipment (such as warehouses and terminal buildings) as well as mobile equipment (such as cranes) located in a port for the provision of transport related port services;

**“dredging”** means the removal of sediments from the bottom of the waterway access to a port, or in a port.

Concerning the dredging in general, a difference exists between “capital dredging” and “maintenance dredging”. “Capital dredging” is the activity of creating new civil engineering works by means of dredging, such as harbour basins, canals, etc., and the deepening of existing waterways, approach channels. “Maintenance dredging” is the activity of keeping existing watercourses, harbour basins, etc., at the required nautical and / or hydrological depth by removing siltation.

### 3.1 Port infrastructure in line with the national legal framework in force

In Romania, Government Ordinance no. 22/1999, republished with further modification and completions, describes the naval transport infrastructure as consisting of the Romanian national waterways, the inland waterway infrastructure and the port infrastructure irrespective of the form of ownership. In the port description, the port infrastructure components are specified as follows:

- the harbor lands are the land on which ports, dikes, quays, embankments and other hydro-technical constructions are located in order to accommodate and/or moor ships. The boundaries of the port land are set by the Ministry of Transport<sup>1</sup>.
- hydro-technical constructions intended for mooring vessels and/or pertaining to ports
- port basins in ports
- access fairways into ports
- railways
- technological roads are roads within ports, the land of which belongs to the public domain of the state or of the administrative-territorial units. The traffic on these roads is carried out in accordance with the provisions of the operation regulation of the

respective port, of Government Ordinance no. 195/2002<sup>14</sup> on the traffic on public roads, as republished, with the subsequent amendments and completions, as well as the other legal provisions.

- facilities and equipment in the port area which are intended for the supply of utilities
- port water areas are made up of all water surfaces within port boundaries.

The list of ports and places of operation open to public access, as well as their limits, are established and approved by order of the Minister of Transport. The Romanian Naval Authority, under whose jurisdiction the port or the operating site is situated, through its harbor master's offices, does not allow the access and operation of ships in the ports or places of operation which are not included in the list.

In this context, a place of operation represents an area situated on the seashore or on inland waterway, outside of ports, which has permanent facilities for the safe mooring of ships for the purpose of carrying out cargo loading/unloading operations and/or embarkation/disembarkation of persons.

An isolated point of operation is that area situated on the seafront or inland waterway, outside ports and operating areas, where a temporary arrangement has been set for carrying out the safe mooring of vessels and temporary cargo loading/unloading operations in limited quantities and/or embarkation/disembarkation of persons.

### **3.1.1 Responsibilities for infrastructure investments in ports**

Government Ordinance no. 22/1999 refers to the plans for the construction of new ports and places of operation, as well as plans for the development or total or partial change of the destination of the existing ones.

The development of ports belonging to the public domain of the state or of the administrative-territorial units is carried out in accordance with the development policy and programs developed by the ministry or by the territorial-administrative units, as applicable, with the prior consultation of port and/or inland waterways authorities and of representative and legally constituted employers' and professional associations.

The Ministry of Transport is the competent authority that will approve or authorize new investments, infrastructure changes and modernization works and any other intervention works related to the naval transport infrastructure of ports according to the nature of the land ownership as follows:

- for ports whose land belongs to the public domain of the state - it is approved by the ministry,
- for ports whose land belongs to the public domain of the administrative-territorial units - it is approved by the councils of the territorial-administrative units, only after the approval from the Ministry;

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<sup>14</sup> Emergency Ordinance no. 195/2002 on the circulation on public roads, published in Official Gazette no. 958 of 28/12/2002, as subsequently amended and supplemented

- in the case of ports whose land is private property, it is approved by the owner of the land, only after obtaining the Ministry's approval.

The Ministry approves new investment projects, infrastructure changes and modernization works and any other intervention works related to the inland waterway infrastructure irrespective of the form of ownership. Likewise, the construction plans of new ports and places of operation as well as plans for development or total or partial change of the destination of the existing ones are approved/authorized by the ministry, regardless of the nature of the land ownership.

Port and inland waterway administrations have the obligation to maintain, repair, upgrade and make available to ship users the naval transport infrastructure. For this purpose, the naval transport infrastructure belonging to the public domain may be concessioned, subcontracted, leased or administered under the law.

Port Administrations have the obligation to:

- make port infrastructure available to all users in a free and non-discriminatory manner;
- maintain, repair, upgrade, develop and keep the minimum technical characteristics of the port infrastructure as set out in the design plans or technical records related to each of the infrastructure elements or groups of elements representing a functional unit under their management or property;
- maintain, repair, upgrade, develop and keep the minimum technical characteristics of any existing utilities networks on the port territories under their management or property;
- permanently provide the minimum depths in port basins and berths as set out in the design plans for these infrastructure elements;
- permanently provide the depths on fairways necessary for ship entrance into/exit from the port;
- permanently ensure signaling on fairways and in ports;
- provide, where appropriate, deep-sea signaling, an activity for which they can charge tariffs;

Inland waterway administrations have the obligation to:

- make inland waterway infrastructure available to all users in a free and non-discriminatory manner,
- maintain, repair, upgrade, develop and keep the minimum technical characteristics of the inland waterway transport infrastructure as set out in the design plans or technical records related to each infrastructure element or groups of elements constituting a functional unit under their management or ownership;
- ensure the minimum navigation gauges established in accordance with the applicable national and international provisions;
- ensure the necessary coastal and floating signaling required;

Installation and maintenance of signs and signals of navigation



In the maritime safety area or in inland waterway safety zones, administrations install navigation day and night marks and signals at the necessary points for navigation safety. To this end, administrations may require, in accordance with the legal provisions, land clearing which is necessary to maintain the visibility of navigational marks and signals. Owners or, where appropriate, administrators of land in the maritime safety area or in inland waterway safety areas have the obligation to permit the installation of navigational marks and signals, to prevent them from being obstructed and to allow access of persons conducting operations of verification and repair thereof, as well as of the consolidation and protection of inland waterways along with the equipment used in these operations. The costs of installing and maintaining navigational marks and signals are borne by the respective administrations.

Works in port water areas or in inland waterways beds and channels

Works in port water areas or in inland waterways beds and channels, extraction dredging and other works may be carried out under the law with the approval of the Romanian Naval Authority and of the respective administrations, as well as with the authorization of the ministry. During the carrying out of these works, the contractor has the obligation, in accordance with the requirements imposed by the Romanian Naval Authority and the respective administrations, to ensure the signaling of the area and keep it in operation at his expense.

Technological roads

Technological roads as a component of the port infrastructure are maintained and repaired by the administrations or economic operators to which they have been entrusted by a contract, as applicable, according to the legal provisions in force.

Bridge construction or pipelaying

Bridge construction or pipelaying or cablelaying over or under inland waterways or in ports is carried out under the provisions of the law and with the authorization of the ministry. The owners or administrators of these installations and constructions have the obligation to mark and signal them in accordance with the rules on navigation signaling, to ensure the visibility of the respective signals and marks and to maintain them at their own expense.

The construction, maintenance and repair of the port superstructure is regulated by port and inland waterways administrations by means of Port Regulations. ACN organizes and carries out through specialized economic operators the construction, maintenance and repair of the port infrastructure under its management or ownership in accordance with the development and maintenance plans of the Danube-Black Sea Channel and the Poarta Alba-Midia, Navodari Canal. If the owner of the port superstructure waives or loses their right of use, in accordance with the law, he is bound to free the infrastructure and bring it to the initial state in which it was taken over or give up the assets or the right to use them according to the forms stipulated by the law to the person who will assume the right to use the port infrastructure.

### **3.2 Port superstructure in line with the national legal framework in force**

The Government Ordinance No. 22/1999, republished with further modification and completions details the elements of the port superstructure as follows:

- cargo handling facilities and equipment
- constructions for cargo storage and processing, other buildings and special constructions
- port platforms
- waste reception facilities and equipment, including waste generated by ships
- traffic management systems in the port area
- any other goods which by their nature or purpose serve any of the naval transport activities.

### 3.2.1 Responsibilities for superstructure investments in ports

Port superstructure investments in terms of immovable property, as defined in Law no. 287/2009<sup>15</sup> approving the Civil Code, as republished, with subsequent modifications, which result in a change in the port systematization or which have the effect of increasing the port's operational capacity or may influence the technical condition of the infrastructure, can be achieved only with the Ministry's approval, irrespective of the form of land ownership.

The responsibilities for investments in the superstructure are borne both by the economic operator and by the port administration.

The stages to achieve the superstructure investments include the elaboration of several supporting documents and obtaining of permits: the Financing Authorization, the city planning documents at the Technical and Economical Board (site plan, forwardin a justifying memorandum indicating the necessity of the investment), the city planning certificate on the basis of the regulations of the city planning documentation, in compliance with the provisions of Law no. 50/1991<sup>19</sup> regarding the authorization of construction works, as republished, with subsequent modifications and completions. The documentation is submitted to the City Hall which within 30 days should reply with respect to the permit ~~is to be received~~. Other signed permits and approvals are to be obtained from:

- Population Health authority
- Railway authorization, comprising two components: Regional Railway Directorate and a fiscal approval
- Army General Staff, which includes a plan and a memorandum submitted to the Ministry of Transport.
- approval of the Design Institute for Road, Naval and Air Transport
- approval of the Inspectorate for Emergency Situations
- The Environment Authorization comprises 3 stages:
  - a) The first stage is the Initial Ranking (with a 30-day deadline). If a Classification is not granted, then the Environmental Agreement is resorted to.
  - b) Staging step and related environment reports; public consultaion on environment issues
  - c) Severso Procedure (lasting more than 12 months), includes execution details on the entire project. This report is only for dangerous goods
- The Neighborhood Permit

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<sup>15</sup> Law no. 287/2009 regarding Civil Code, republished in Official Gazette no. 505, 15<sup>th</sup> July 2011, with further modification and completions

- Building permit issued by customs in the free zone, according to Regulation (EU) no. 952/2013. It also includes the City Planning Certificate
- Port administration permit in the execution stage of the ready-made project. Consent must be obtained from water, electricity, heritage, etc utility providers.
- Approval of the Ministry of Transport: could be an approval of the Naval Transport Directorate or an approval of the Technical – Economic Council of the Ministry of Transport. The Technical – Economic Council of the Ministry of Transport approval is necessary if the investment is a permanent construction on the infrastructure which belong to the public state domain

The procedure involves sending the documents to the port administration in the first stage, after which port administration sends applications to the Ministry of Transport for approval.

Following the communication of the Ministry of Transport, the application is submitted to the City Hall. The City Hall grants a building approval within 30 days.

Reception is performed at the end of the works. The final reception is physical and documentary.

The construction, maintenance and repair of the port superstructure is regulated by port and waterways administrations by Port Regulations.

The regulations of ports located on the Danube - Black Sea Canal and the Poarta Alba - Midia Navodari Channel, developed by the National Company "Navigable Channels Administration Co. Constanta", 2015, specify the responsibility area for the port superstructure construction, maintenance and repair. Any modification to the existing port superstructure or existing harbor capacities and their destination as a result of new construction, extension, upgrading or maintenance and repair works, irrespective of the owner, will be done only with the permit of the Navigable Channels Administration requesting, if applicable, the approval of the state authority in the field of ship transport.

The Administration of Navigable Channels organizes and carries out through specialized economic operators the construction, maintenance and repair of the port superstructure under its administration or ownership in accordance with the plans for the development and maintenance of the ports on the Danube - Black Sea Canal and the Poarta Alba - Midia, Năvodari in order to ensure the necessary conditions for the normal carrying out of port activities. Prior to the commencement of the works, the contractor is bound to obtain all necessary permits, according to the law. Tenants who have obtained the right to perform such works have the obligation to comply with the ANC authorization provisions.

### **3.3 Port dredging in line with the national legal framework in force**

#### **3.3.1 Responsibilities for dredging**

Ordinance no. 22/1999 specifies that the works performed in the port water areas or the inland waterways, the extraction dredging and others may be carried out in compliance with the law. The Romanian Naval Authority and the respective port administrations in accordance with the ministry's authorization issue a permit. During the works, the contractor has the obligation, in

accordance with the requirements imposed by the Romanian Naval Authority and the respective administrations, to ensure the signaling of the area and to maintain it at his expense.

Port authorities have attributes in ensuring minimum depths in port basins and berths and signaling on fairways and in ports.

### **Maritime Ports Administration**

Port regulations of the Romanian maritime ports under the administration of the National Company Maritime Ports Administration Co. Constanta contain provisions regarding the dredging and maintenance of the port water areas. The Administration organizes and carries out dredging by specialized economic operators in accordance with the plans for seaports development and maintenance in order to ensure the necessary conditions for the normal operation of the port activities. Works in seaports water areas, including dredging, may only be carried out after they have been authorized by the port administration in accordance with maritime port maintenance and development plans.

Drainage materials are deposited as filler material in specially designed areas established by the port administration. In ports located in the activity area, the port administration organizes and carries out all of the hydrographic measurements required by ships in order to use the port water areas.

The port administration has the obligation to inform the harbor master's office and the port economic operators specializing in pilotage about depths and any change of depth due to the execution of the dredging works.

In berths where solid bulk goods are handled, port operators have an obligation to take measures to avoid cargo drops in the port basin.

The payment of the dredging services made as a result of the depth changes in the area managed by the port operator will be made by said operator in all situations that are imputable to them.

The port administration provides the interested economic operators, at their request and at their expenses, with contracted depth plans in the requested area.

Dredging activity in seaports is carried out by specialized companies based on public procurement procedure and signing of a contract with the port administration. To this end, the port administration organizes auctions. The Port Authority draws up the specifications necessary to achieve the objectives of its port maintenance programs. The auction winning economic operator is obliged to observe the provisions of the tender specifications and of the submitted offer and to carry out the work under the qualitative conditions and within the terms stipulated in the contract.

Dredging activities in berths and port basins that may affect vessel activity are made on the basis of dredging plans drawn up by the port administration and the respective dredger in agreement with the port operators who carry out activities in the affected areas.

The dredger's contractor must comply with the provisions of these charts, inform the port administration and the port authority daily about the works they will execute and obtain the necessary approvals.

The contractor is bound to duly signal his activity in the area, in accordance with the national and international regulations in force.

### **Maritime Danube Ports Administration**

According to the Port Regulations of the Romanian maritime and river ports, administrated by the National Company "Maritime Danube Ports Administration" Co. Galati works in the port water areas, dredging, refloating of ships are executed only under the conditions of the law. During the execution of the works, the contractor has the obligation to ensure the signaling according to the requirements imposed by the National Company Maritime Danube Ports Administration - Co. Galati. The National Company "Maritime Danube Ports Administration" - Co. Galati has the right to request in writing the operator to move the ship or inform him that they will move the vessel to another berth within a reasonable time if this is considered essential in terms of safety, order or environmental protection. If the written request is not observed, the National Company Maritime Danube Ports Administration - Co. Galati has the right to move the ship to another berth at the risk and expense of the operator. In case of emergency or if the operator is not known, no reasonable time should be observed.

The National Company Maritime Danube Ports Administration - Co. Galati organizes and carries out the dredging activity through specialized economic operators according to the maritime ports development and maintenance plans in order to ensure the necessary conditions for the normal carrying out of port activities.

Drainage materials are deposited as filling material in specially designed areas, established by AFDJ Galati. In the ports of the respective activity area The National Company "Maritime Danube Ports Administration - Co." Galati organizes and carries out the entire activity of hydrographic measurements required by ships in order to use the port water areas.

The National Company Maritime Danube Ports Administration Co. Galati has the obligation to inform the harbor master's office and the economic operators specialized in piloting depths and any changes in the depth due to the execution of the dredging works.

In the area where solid bulk cargoes are handled, port operators are required to take measures to avoid cargo drops in the port basin.

The payment of the dredging services made as a result of the depth changes in the area managed by the port operator will be made by said operator in all situations that are imputable to them.

The National Company Maritime Danube Ports Administration Co. Galati administration provides the interested economic operators, at their request and at their expenses, with contracted depth plans in the requested area.

Dredging activity in ports situated on the Danube river and its branches is carried out by specialized port operators based on a contract with the port administration. To this end, the port administration organizes auctions. The Port Authority draws up the specifications necessary to achieve the objectives of its port maintenance programs. The auction winning economic operator is obliged to observe the provisions of the tender specifications and of the submitted offer and to carry out the work under the qualitative conditions and within the terms stipulated in the contract.

Dredging activities in berths and port basins that may affect vessel activity are made on the basis of dredging plans drawn up by the port administration and the respective dredger in agreement with the port operators who carry out activities in the affected areas.

The dredger's contractor must comply with the provisions of these charts, inform the National Company Maritime Danube Ports Administration Co. Galati and the harbor master's office daily about the works they will execute and obtain the necessary approvals.

The contractor is bound to duly signal his activity in the area, in accordance with the national and international regulations in force.

For the ports administrated by the National Company Danube River Ports Administration Co. Giurgiu the procedure is the same as APDM Galați.

### **The Navigable Channels Administration**

The regulations of ports located on the Danube - Black Sea Canal and the Poarta Alba - Midia Navodari Channel, developed by the National Company "Navigable Channels Administration Co. Constanta", 2015, contain the following provisions related to dredging operations.

The Administration organizes and carries out dredging by specialized economic operators in accordance with the plans for development and maintenance of ports on the Danube - Black Sea Canal and the Poarta Alba - Midia, Năvodari Canal in order to ensure the necessary conditions for the normal operation of the port activities.

Works in ports water areas on the Danube - Black Sea Canal and Poarta Alba - Midia, Năvodari, including dredging, may only be carried out after they have been authorized by the navigable channels administration in accordance with maintenance and development plans of ports on the Danube - Black Sea Canal and the Poarta Alba - Midia, Năvodari Channel.

The Navigable Channels Administration has the obligation to inform the harbor master's office and the port economic operators specializing in pilotage about depths and any change of depth due to the execution of the dredging works.

Dredging activity in ports on the Danube - Black Sea Canal and the Poarta Alba - Midia, Năvodari Canal is carried out by specialized economic operators based on a tender procedure and signing of a contract with the Navigable Channels Administration.

## **3.4 Construction and Permitting of Ports**

According to Government Ordinance no. 22/1999, republished with further modification and completions the plans for the construction of new ports and places of operation, as well as plans for the development or total or partial change of the destination of the existing ones, are approved / authorized, as the case may be, by the ministry, irrespective of the nature of the land ownership.

The Ministry of Transport, through the Naval Transport Department, fulfills tasks pertaining to constructions and prerequisites for the construction and/or upgrade of the port infrastructure, as it follows from the Regulation of organization and functioning of the Ministry of Transport<sup>16</sup>.

Thus, one of the specific objectives of the Naval Transport Directorate is to maintain, upgrade and permanently develop maritime transport infrastructure as well as inland waterway transport infrastructure to ensure safer maritime and inland waterway transport, security and pollution prevention. For this purpose, the Naval Transport Directorate:

- endorses, in terms of opportunity, with a view to further approval by the ministry's management, the documentation regarding to the investment objectives, the modification and modernization of the naval transport infrastructure existing in ports, the infrastructure of which belongs to the public domain of the state;
- participates in the preparation of documentation for the promotion of investment objectives, financed by the state budget, European funds or other external financing sources, for the modernization and development of the naval transport infrastructure existing in ports and on inland waterways belonging to the state public domain;
- endorses, in terms of opportunity, the documentation on the investment objectives, the modification and modernization of the shipping infrastructure existing in ports, the infrastructure of which belongs to the territorial administrative units;
- endorses, in terms of opportunity, the documentation on investment objectives, modifications and modernization of the naval transport infrastructure existing in ports, the infrastructure of which is private-owned;
- endorses, for approval by the ministry's management, as appropriate, the plans to build new ports open to public access, as well as plans for the development or total or partial changes of existing ones, the installation of port facilities and equipment, irrespective of the type of infrastructure ownership;
- endorses, in terms of opportunity, documentation related to investments, constructions or fitting-out or installations in the maritime safety area or in the area of inland waterway safety, irrespective of the type of land ownership;
- participates in the work of the commissions for the reception of public investment objectives, committees established by order of the Minister of Transport;
- authorizes the execution of works in port water areas or in inland waterways beds, extraction dredging and the like;
- authorizes bridge construction or pipelaying or cablelaying operations over or under inland waterways or in ports.

The Ministry of Transport, through the Directorate for Investments, Technical Regulations and Construction Authorizations, is responsible for the following areas:

- Provides the secretariat of the Technical and Economic Council of the Ministry of Transport, coordinates the process of endorsement of the technical and economic

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<sup>16</sup> Regulation of organization and operation of the Ministry of Transport



documentation related to the investment objectives and aims at the achievement of construction programs and projects within the scope of its activity;

- Analyzes feasibility studies for works in its field of competence under the approval of the Government and presents them to the Interministerial Council for endorsement of public works of national interest and housing, supporting their necessity, opportunity and economic efficiency;
- Participates in the promotion of normative acts for the approval of technical and economic indicators for technical and economic documentation approved according to the law.

The Secretariat of the Technical and Economic Council of the Ministry of Transport:

- receives from the developers - units subordinated to and under the authority of the Ministry of Transport, the technical and economic documents, the drafts of the approval documents and other documentation for endorsement or approval in the Technical and Economic Council of the Ministry (CTE-MT), for all fields of activity;
- verifies the documentation proposed for endorsement with regard to their classification in the CTE - MT endorsement competencies, the wording and the contents of the documentation in compliance with the framework content of the "Approval Document" presented in MT Order no. 174/2003 on the promotion of investments with subsequent amendments and completions;
- draws up endorsements of the analyzed documents in the CTE - MT meetings and ensures their dissemination;
- coordinates and pursues with the specialized departments the process of issuance of normative acts (government orders, government decisions for the approval of technical indicators in the case of technical and economic documentation approved according to the legal provisions.
- ensures liaison with the Secretariat of the Interministerial Council for Endorsement of National Public Interest Works and Housing from the MDRAP structure (for investments more than 30 million lei – about 6.5 million Euro),
- receives the technical and economic documents from the units under MT authority and, after prior checking, forwards them to the Secretariat of the Interministerial Council for inclusion on the agenda of the meetings of this council;
- informs said units about the remarks of the Interministerial Council, monitors the review of the documentation according to these remarks and pursues the process of endorsement;
- ensures the endorsement of the documentation falling within MT's competence - as a specialized body, receives, checks and analyzes the framework content and technical and economic indicators for the documentation falling within the competence of the direction of the direction, with a view to issuing the endorsement;
- ensures the issuance of MT agreements regarding the location of third-party investment objectives in the transport communications area by analyzing the documentation received, requesting the views of the involved transport sectors, drafting, drawing up the agreements and transmitting them to the applicants;



The application for the issuance of the construction/dismantling authorization, supplemented with all the necessary elements for describing the works for which the authorization is requested, shall be elaborated in accordance with the Law no. 50/1991<sup>17</sup> regarding the authorization of the execution of construction works, with further modification and completions.

The procedure for authorizing the execution of construction works includes the following steps:

- a. issuing the city planning certificate;
- b. issuing the point of view of the environmental protection competent authority for investments that are not subject to environmental impact assessment procedures;
- c. the notification by the applicant of the competent public administration authority with respect to the maintenance of the claim to obtain, as a final act, the building permit for investments where the environmental protection authority has determined the need for an environmental impact assessment and has issued guiding lines for the environmental impact assessment of certain public and private projects;
- d. issuing approvals and agreements, as well as the administrative act of the environmental protection authority competent for the investments assessed in terms of the environmental impact;
- e. drawing up of the necessary technical documentation for the authorization of construction works, hereinafter referred to as technical documentation - TD;
- f. filing the documentation for the authorization of the execution of the construction works with the competent public administration authority;
- g. issuing the building permit.

According to the legislation in force, the execution of the construction works is allowed only on the base of a building or dismantling permit, issued in accordance with the law, on the basis of approved land and city planning documentation, upon the request of the holder of a real right over a real estate - land and/or building - identified by cadastral number, unless the law otherwise provides.

According to the Romanian legislation in force Government Ordinance no. 22/1999, republished with further modification and completions, there are ports whose land belongs to the public domain of the state, to the public domain of the administrative-territorial units, and to the ports whose land is private property. At this time, the responsibility for building a new port or extending an existing port is borne by the port administration.

In Romania there are special legal provisions for the military ports and naval ships. Military ships, military ports, or areas where military activities are exclusively conducted are not subject to the applicable normative acts governing the administration of ports and waterways, as well as maritime transport and inland waterways navigation.

Port and inland waterways administrations organize and carry out, through specialized economic operators, the construction, maintenance and repair of port infrastructure and of the port superstructure under its administration or ownership in accordance with seaport

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<sup>17</sup> Law no. 50/1991 regarding the authorization of the execution of the construction works, with subsequent amendments and completions

development and maintenance plans in order to ensure the necessary conditions for the normal carrying out of port activities, according to the law.

Prior to the commencement of the works, the contractor is required to obtain all approvals and permits on the construction, maintenance and repair of the port infrastructure and superstructure, in accordance with the law. Port economic operators who have obtained the right to carry out such works have the obligation to comply with the terms of the management's approval.

For the execution of works in the navigable channel area, The National Company "Administration of Navigable Channels" Co. Constanta issues:

Permit for the execution of works in the navigable channel area.

In accordance with Government Ordinance no. 79 / 24.08.2000 - art.8, as amended, completed and approved by Law no.55 / 16.01.2002, natural or legal persons may carry out works (building/dismantling) in the protection area of the Danube - Black Sea Canal and The Poarta Alba Gate - Midia - Navodari Canal, only with the approval of The National Company "Administration of Navigable Channels" Co. Constanta and with approval by the Ministry of Transports.

According to Government Ordinance no. 79 / 24.08.2000 - art.7, as amended, completed and approved by Law no.55 / 16.01.2002, "the waterway protection zone comprises the 90 m wide strip of land, located at the outer boundary of the safety zone on both sides of the channel, regardless of the form of ownership. "

According to Government Ordinance no. 79 / 24.08.2000 - art.6, as amended, completed and approved by Law no.55 / 16.01.2002, "the safety area of the waterways comprises the 10 m wide strip of land, located on one side and of the channel groove, measured from the top edge of the slope, respectively 1m wide from the outer edge of the drainage ditch in the dam areas." No works are permitted in this area.

In order to obtain the approval for the execution of works in the navigable channels area from the National Company Administration of Navigable Channels Co. Constanta, legal persons holding a City Planning Certificate shall send along with the forwarding address the following documents:

- Technical report (justification);
- Technical project and specification of the objective envisaged to build upon/dismantle
- The city planning certificate issued by the city hall on whose administrative territory the execution of works is intended and for which a permit is applied for from National Company "Administration of Navigable Channels Co." Constanta;
- Documents proving the ownership of the land by the holder of the City Planning Certificate applied for approval from National Company "Administration of Navigable Channels Co." Constanta;
- the coordinate points inventory in STEREO 70 system of the contouring points of the contour line on which construction / dismantling works are to be executed;
- a permit issued by I.P.T.A.N.A. Bucharest, according to Law no. 10 of January 18, 1995, - if applicable;

- Water management permit issued by the Water Directorate "Dobrogea - Litoral" Constanta;
- Geotechnical Study and Environmental Impact Study;
- Other permits and approvals required through the City Planning Certificate.
- a location sketch for the target area for which the permit is requested;
- Situation sketch for the objective for which the permit is applied for, specifying the distance from the land boundary to the navigable channel aperture;
- Longitudinal and cross-sectional sections, as well as execution details;
- Situation sketch - water supply and sanitation;
- Situation sketch - pluvial drainage;
- Characteristic sections - Mechanical-hydraulic installations: grease separator and mud decanter (for domestic sewage) - if provided by the project;
- Characteristic sections - mechanical-hydraulic installations: septic tank (for sewage) - if provided by the project;
- Characteristic sections - Mechanical-hydraulic installations: sludge decanter and oil products (for pluvial drainage) - if provided by the project.

In order to obtain the approval of the National Company "Administration of Navigable Channels Co." Constanta for the documentation regarding the general city planning sketch, the detailed city planning sketch and the zone city planning sketch, the city hall on whose administrative territory the Danube - Black Sea Canal and The Poarta Alba Gate - Midia - Navodari Canal are located shall send along with the forwarding address the following documents:

- Technical report (justification);
- The city planning certificate;
- Documents proving the ownership of the land by the holder of the City Planning Certificate applied for approval from National Company "Administration of Navigable Channels Co." Constanta;
- the coordinate points inventory in STEREO 70 system of the contouring points of the contour line of the land pertaining to the general city planning sketch, the detailed city planning sketch and the zone city planning sketch forwarded in order to be endorsed;
- a location sketch for the target area for which the permit is requested
- Sketch - existing situation;
- Sketch - Regulations;
- Sketch - Public use objectives;
- Sketch - city regulations.

In order to obtain the approval for the execution of works in the navigable channels area from the National Company Administration of Navigable Channels Co. Constanta, natural persons shall send along with the forwarding address the following documents:

- Technical report (justification);
- Technical project and specification of the objective envisaged to build upon/dismantle
- The city planning certificate issued by the city hall on whose administrative territory the execution of works is intended and for which a permit is applied for from National Company "Administration of Navigable Channels Co." Constanta;

- Documents proving the ownership of the land by the holder of the City Planning Certificate applied for approval from National Company "Administration of Navigable Channels Co." Constanta;
- the coordinate points inventory in STEREO 70 system of the contouring points of the contour line on which construction / dismantling works are to be executed;
- a permit issued by I.P.T.A.N.A. Bucharest, according to Law no. 10 of January 18, 1995, - if applicable;
- Water management permit issued by the Water Directorate "Dobrogea - Litoral" Constanta;
- Geotechnical Study and Environmental Impact Study;
- Other permits and approvals required through the City Planning Certificate.
- A location sketch for the target area for which the permit is requested;
- Situation sketch for the objective for which the permit is applied for, specifying the distance from the land boundary to the navigable channel aperture;
- Longitudinal and cross-sectional sections, as well as execution details;
- Situation sketch - water supply and sanitation;
- Situation sketch - pluvial drainage;
- Characteristic sections - Mechanical-hydraulic installations: grease separator and mud decanter (for domestic sewage) - if provided by the project;
- Characteristic sections - mechanical-hydraulic installations: septic tank (for sewage) - if provided by the project;
- Characteristic sections - Mechanical-hydraulic installations: sludge decanter and oil products (for pluvial drainage) - if provided by the project.

Additional documentation requested:

- environment authorization
- water management permit
- sketches on water supply, collection, transport, treatment and disposal of waste water
- household waste collection contracts
- environmental impact studies, where appropriate.
- a report presenting the works to be carried out, outlining the impact on navigable channels
- data on waste produced, storage, transport, type of waste, including the impact on navigable channels.
- Public Health Directorate permit.

All documentation, drawn up to obtain the approval of the National Company "Administration of Navigable Channels Co." Constanta, will take into account the above-mentioned stipulations, the provisions of Government Ordinance no. 79/24.08.2000, as amended, supplemented and approved by Law no. 55/16.01.2002, the "Delimitation Protocols" and the "Neighborhood Protocols" concluded by the National Company "Administration of Navigable Channels Co." Constanta with the city halls issuing the City Planning Certificate, as well as Law no. 50 / 29.07. 1991<sup>19</sup> - with the amendments and completions in force regarding the drawing up of the documentation for the execution of the construction/dismantling works.

Technical documentation will be submitted for approval to the National Company "Administration of Navigable Channels Co." Constanta, in duplicate, in 2 (two) copies. In the case that the National Company "Administration of Navigable Channels Co." Constanta issues the endorsement, the applicant will pay in cash the endorsement fee.

The licenses and work permits required to carry out activities in the ports of Constanta, Midia, Mangalia, Basarabi and the Tomis marina are issued in accordance with the Regulation<sup>18</sup> issued by the National Company "Maritime Ports Administration Co.", Constanta.

The Regulation defines the terms of the license and work permit and also explains the procedure to obtain them.

- working permit - document proving the approval of the National Company "Maritime Ports Administration Co.", Constanta granted to an operator to carry out activities within the area of the ports of Midia, Mangalia, Basarabi and the Tomis marina within a certain period of time;
- working license - document proving the approval of the National Company "Maritime Ports Administration Co.", Constanta granted to an operator to carry out activities within the Free Zone of Constanta and Basarabi area within a certain period of time;
- Operator - legal or natural person (authorized natural persons, individual enterprises, family enterprises etc.), Romanian or foreign, carrying out activities in the ports of Constanta, Midia, Mangalia, Basarabi and the Tomis marina.

In the Ports of Midia, Mangalia, Basarabi and the Tomis marina, economic activities can be provided by operators on the basis of Work Permits issued by the National Company "Maritime Ports Administration Co.", Constanta on the grounds of Government Decision no. 517/1998, with the subsequent modifications and completions. The Work Permit Model is presented in Annex no. 1 of the Regulation.

In the Port of Constanta (Free Zone Constanta) and in the Basarabi Free Zone, economic activities can be carried out by operators only on the basis of the work licenses issued by the National Company "Maritime Ports Administration Co.", Constanta in accordance with the provisions of Law no. 84/1992 regarding the regime of the free zones, with the subsequent modifications and completions. The model of the work license is presented in Annex no. 2 of the Regulation. The carrying out of activities without holding a work licenses is subject to sanctions provided by the normative acts in force.

The preliminary procedures for the issue of work permits and work licenses consist of the following steps:

- The applicant shall submit, at the main office of the National Company "Maritime Ports Administration Co.", an application according to the models in Annex 3 or Annex 4 of this Regulation, as the case may be, accompanied by all the documents provided in

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<sup>18</sup> Regulation on the issuing of licenses and/or work permits necessary for carrying out activities in the ports of Constanța, Midia, Mangalia, Basarabi and the Tomis marina - the National Company "Maritime Ports Administration Co.", Constanța

- Annexes 5 and 6 to this Regulation. The applications will be submitted by the applicants to the by the National Company "Maritime Ports Administration Co." Registry.
- Upon request of the operators, the employees of the Dept. of Permits and Approvals of the National Company "Maritime Ports Administration Co." provide information on the conditions and procedures that must be met and observed, if applicable, for the issue of the work permit and/or the work license and provide standardized application forms. The operators' requests are brought to the attention of the Commission for the issue of work permits and/or work permits. The Commission and the working method are established by the decision of the General Manager of the National Company "Maritime Ports Administration Co."
  - The Department of Permits and Approvals verifies the application and the submitted documents, with the right not to receive them if they do not comply with the provisions of this Regulation. The Department of Permits and Approvals may also receive incomplete files, provided the applicant is informed of the required documents.
  - The other departments within of the National Company "Maritime Ports Administration Co." provide all the information and documents requested by the Department of Permits and Approvals in order to clarify or complete the file submitted by the operator.

Work permits and/or work permits may be valid for 1 month, 3 months, 6 months or 12 months as of the date of issue. Work permits and work licenses are not transferable and can not be shared by multiple operators.

For the issue of working permits and/or work licenses, the applicants have the obligation to pay the fees approved by the Board of Directors of the National Company "Maritime Ports Administration Co."

Fees for work licenses will be set in accordance with the fees for their 1-month, 3-month, 6-month or 12-month periods of validity.

Pricing of work permits will be performed pro rata temporis, for entire months, grounded on the annual release rate based on the annual cost.

The equivalent cost of the work permits and work licenses issued shall not be refunded if their beneficiaries cease their activity, waive the authorized activity or if the National Company "Maritime Ports Administration Co." suspends or withdraws the work license and/or the work permit, if applicable.

For the granting of work permits or work licenses, operators must meet the following conditions:

- to submit, at the main office of the National Company "Maritime Ports Administration Co.", a file containing the documents specified in Annex no. 5 or Annex no. 6 of the Regulation;
- and not have any outstanding financial or contractual obligations to the National Company "Maritime Ports Administration Co.";

The the National Company "Maritime Ports Administration Co." has the right to refuse to issue the work permit and/or the work license if the operator has not proved the fulfillment of these conditions or has not paid the pertaining fees.

Holders of work permits and/or work licenses are bound to comply with the issue conditions for their entire period of validity as well as the provisions of the Convention on Environmental Protection, Safety and Health at Work and Emergency Situations concluded with the National Company "Maritime Ports Administration Co."

Following the granting of work permits and/or work permits, the National Company "Maritime Ports Administration Co." has the right to check how their holders comply with the conditions for permit granting. The verifications will be carried out by the designated employees of the National Company "Maritime Ports Administration Co.", with control duties.

In case that, after the issue of licenses and or work permits, their holders no longer meet the conditions for granting, the National Company "Maritime Ports Administration Co." may decide upon their suspension or withdrawal, without refunding their cost, irrespective of the remaining duration.

In the event that the National Company "Maritime Ports Administration Co." suspends or withdraws the license and/or the work permit, the Department of Permits and Approvals of the National Company "Maritime Ports Administration Co." will notify in writing the permit holder about the measure taken.

Suspension or withdrawal takes effect from the date of receipt of the notification by the holder. The date of receipt is the date of the post stamp, the date entered on the fax transmission confirmation, the date of personal receipt of the notification by the representative of the holder or the date of receipt from a bailiff.

The issue of other work permits or work licenses shall be made by resuming the procedure provided by this Regulation (including the payment of the fees charged by the National Company "Maritime Ports Administration Co.").

If the holder of licenses and/or work permits ceases one or more activities, he has the obligation to notify his intention in writing to the National Company "Maritime Ports Administration Co." at least 15 working days prior to the renunciation of the activity. In this case, the licenses and / or work permits will be withdrawn by the National Company "Maritime Ports Administration Co.", with no cost refund.

If within 5 (five) working days from the date of obtaining the license and/or work permit their holder does not request the issue of port workers' cards for the activities carried out, as appropriate, then the Commission may propose suspension or withdrawal of the license and/or work permit.

In order to carry out diving operations in ports and in the national navigable waterways of Romania, the Ministry of Transport issued pertaining Rules<sup>19</sup>. Diving operations refer to:

- diver works on ship underwater hull;
- diver work in the event of a ship accident;
- divers' intervention for ship / wreck refloating;

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<sup>19</sup> Rules from 10<sup>th</sup> October 2008 regarding the underwater operations in ports and Romanian national navigable waters



- construction of hydro-technical constructions, repairs to diversified hydro-technical constructions by divers;
- underwater survey by divers on hyrotechnical constructions, water areas and vessels;
- cleaning of port basins, the recovery of submerged objects in port basins or on waterways.

Diving activities in Romanian ports and inland waterways are carried out only by economic operators authorized by the Romanian Naval Authority under the law.

Works are only allowed to commence after the diving activity operator has obtained a work permit.

The work permit shall be issued by the harbor master's office in whose jurisdiction the diving operations are to be carried out. In order to obtain the work permit, the economic operator will present the following:

- authorization to carry out ancillary activities to ship transport activities - Diving works (LS);
- work area sketch and work program approved by the manager of the area where the activity is to be carried out;
- the specific conditions under which the activity is carried out,
- the means and equipment used;
- the manner and means of signaling the area where divers are involved.
- the person responsible for the coordination of the diving activities;
- the communication means used for the permanent connection with the harbor master's office as well as with the vessels in the area.

After the work permit is issued, but no later than 24 hours before the actual commencement of diving activities, the harbor master's office shall issue a "Notice to seafarers" covering at least the area where these activities are carried out, their duration, work, signaling mode and communication means.

During diving activities, the economic operator has the obligation to:

- comply with the rules on safety of navigation;
- signal the work area according to the legal provisions;
- comply with the rules on occupational safety and health;
- observe the work schedule entered in the work permit.

Throughout the duration of diving activities, the harbor master's office shall supervise and control the manner how the economic operator complies with the legal provisions on safer navigation and the working conditions specified in the work permit.

In emergency cases, economic operators conducting diving works shall only intervene upon directions from the harbor master's office.

The harbor master's office may order the diving activities to be stopped if it is found that the conditions laid down in the work permit are not being met, other ships or port facilities are endangered or the rules on safety of navigation are being breached.



Upon completion of diving works, the economic operator shall submit to the harbor master's office a detailed report on the progress and results of the works.

**The transposition of the EIA Directive<sup>20</sup> in Romania was made by Government Decision no. 445/2009<sup>21</sup> on the environmental impact assessment** of certain public and private projects and by Order 135/2010<sup>22</sup> on the approval of the Methodology for the implementation of the environmental impact assessment for public and private projects.

The Environmental Impact Assessment (EIA) is carried out during the preparation of the documentation that substantiates the feasibility of the project. Consequently, according to the national legislation, the integrated environmental agreement is issued in the feasibility study stage, alongside other endorsements and approvals.

The Environmental Impact Assessment procedure is carried out in stages, as follows:

- the stage of project classification in the environmental impact assessment procedure;
- the stage of defining the scope of the assessment and of the implementation of the environmental impact report;
- the quality review stage of the environmental impact report.

The procedure is preceded by an initial assessment of the project carried out by the public authorities for environmental protection in which the location of the project is identified in relation to the protected natural areas of Community interest. The environmental impact assessment procedure is conducted by central or regional public environmental authorities with the participation of central or local public authorities, as appropriate, with specific attributes and responsibilities in the field of environmental protection.

The end of the EIA procedure is materialized by a positive or negative decision to issue the integrated environmental approval/agreement.

The environmental agreement is valid throughout the project implementation but loses its validity if the investment works for which it was issued do not commence within 2 years from the date of issue, except for projects with external financing.

Projects likely to have significant effects on the environment due, among other things, to their nature, size or location, are subject to a development approval and an environmental impact assessment application prior to the granting of this approval.

According to Government Decision 445/2009<sup>22</sup>, the following project categories are identified in Romania in terms of the necessity to obtain the environmental approval:

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<sup>20</sup> Directive 2011/92/EU, Environmental Impact Assessment – EIA Directive

<sup>21</sup> Decision nr. 445/2009 on the environmental impact assessment of certain public and private projects, published in Official Gazette no. 481 of 13/07/2009

<sup>22</sup> Order 135/2010 on the approval of the Methodology for the implementation of the environmental impact assessment for public and private projects

### **Projects subject to environmental impact assessment**

To this category belong projects related to the port infrastructure or that can be built on the port domain, as follows:

- Inland waterways and river ports that provide traffic and operate vessels of over 1,350 tons.
- Merchant ports, loading and unloading quays linked to land and external ports (excluding ferry boat terminals) allowing ships of at least 1,350 tons to operate.
- Hazardous waste storage facilities or equipment for hazardous waste disposal by incineration or chemical treatment
- Equipment with a capacity exceeding 100 tons / day for non-hazardous waste disposal by incineration or chemical treatment
- Dams and other installations designed to permanently retain or permanently store water with a new or additional capacity of retained or stored water of minimum 10 million cubic meters.
- Pipelines for the transport of gases, petroleum or chemical products with a diameter of more than 800 mm and a length of at least 40 km.
- Crude oil refineries (except for those producing only crude oil lubricants) and gasification and liquefaction installations of at least 500 tons of coal or bituminous shale per day.
- Thermal power stations and other combustion plants with a thermal output of minimum 300 megawatts. Nuclear power stations and other nuclear reactors, including decommissioning or disassembly of these plants or reactors (except for research facilities for the production and conversion of fissionable and fertile materials whose maximum power does not exceed one kilowatt of continuous thermal power).
- Any modification or extension of the aforementioned projects, if said modification or extension meets the set threshold values.

### **Projects for which the necessity to carry out an environmental impact assessment is to be ascertained**

To this category belong projects related to the port infrastructure or that can be built on the port domain, as follows:

- fisheries for intensive fish farming;
- land recovery from the sea;
- in extractive industry: extraction of minerals by river or marine dredging; deep drilling, with the exception of soil stability investigation drilling;
- construction of roads, harbors and port facilities, including fishing ports other than those provided for in the first category;
- construction of inland waterways, other than those provided for in the first category, sewage works and flood prevention works;
- dams and other facilities designed for long-term retention or storage of water, other than those provided for in the first category;
- waste disposal equipment other than that referred to in the first category;
- gas and oil pipelines other than those referred to in the first category;

- works to combat coastal erosion and maritime works that may alter the coastline by constructing, for example, dikes, quays, pontoons, docks or other marine defense works, except for the maintenance and reconstruction of marinas.

**Projects to which the provisions of Government Decision no. 445/2009<sup>22</sup> on environmental impact assessment apply.** This category includes:

- projects that serve national defense purposes if the central public authority for national defense together with the central public authority for environmental protection establish, by means of a case-related analysis, that the environmental impact assessment would have a negative effect on those purposes;
- projects the details of which are adopted by a special normative act, when the objectives of the present decision, including the provision of information, are fulfilled by the respective legislative process.

In order to carry out public or private projects that may have significant environmental impacts, it is necessary to assess the impact on the environment. Environmental impact assessment is the process designed to identify, describe and establish, on a case-related basis and in accordance with the current legislation, the direct and indirect, synergetic, cumulative, primary and secondary effects of a project on human health and the environment.

The environmental impact assessment includes the impact of a project on the following factors:

- human beings, fauna and flora;
- soil, water, air, climate and landscape;
- material goods and cultural heritage;
- the interaction between the above factors.

Government Decision no. 445/2009<sup>22</sup> defines the following terms:

- The Environmental Agreement is the administrative act issued by the competent authority for environmental protection setting out the conditions and, where appropriate, the environmental protection measures to be followed when a project is carried out.
- Development approval is the decision of the competent authority or authorities, which entitles the project owner to complete the project.
- The Environmental Impact Report is the document containing the information provided by the project owner.

The Environmental Impact Report is prepared by natural or legal persons who have this right, according to the law. The Environmental Impact Report is submitted to the environmental protection public authority. It is subject to comments by the interested public, whose proposals / recommendations are taken into account in the quality review stage. The Public Environmental Protection Authority, together with the authorities participating in the Technical Analysis Committee, analyzes the quality of the Environmental Impact Report and decides to accept or return it for further preparation.

The competent authorities for issuing the development approval shall inform the public at the earliest opportunity and at the latest as soon as the information can be reasonably provided, by public announcement or by display on the website.

If a project to be carried out on the territory of Romania can have a significant effect on the environment of another state or when another state likely to be affected significantly requests information about the project, the central public authority for environmental protection shall pass on to the central public authority for environmental protection of that state project information. This must provide at least a description of the project together with the available information on its possible transboundary impact and information on the type of decision that may be taken.

The results of the consultations and the information are taken into account in the issuance of the environmental agreement and the development approval, respectively in the rejection of the application for the environmental agreement and of the development approval for the public or private projects in question.

The environmental authority, in consultation with the Technical Analysis Committee, issues the environmental agreement or decides to reject the application for the agreement on the basis of an analysis of the environmental impact report, the proposals / recommendations made by the public concerned and other relevant information, as appropriate.

The Environmental Agreement is attached to the development approval and forms an integral part thereof.

The competent public authorities for the implementation of the provisions of Government Decision 445/2009<sup>22</sup> and for the management of the environmental impact assessment procedures are: the National Environmental Protection Agency, the Local Environmental Protection Agencies and the Danube Delta Biosphere Reserve Administration.

In Romania, the legislation provides for the elaboration of environmental reports for the Zonal City Planning Sketch, in accordance with the requirements of GD no. 1076/08.07.2004<sup>23</sup> on establishing the procedure for carrying out the environmental assessment for sketches, plans and programs.

Port operators carrying out activities with an impact on the air environment factor have their activity regulated by the Environmental Authorization and have the obligation to monitor by regular measurements the quality of the affected environmental factors.

The Constanta Environmental Protection Agency is reorganized and operates in accordance with the provisions of Government Decision no.1000/2012<sup>24</sup> on the reorganization and functioning of the National Environmental Protection Agency and of the public institutions under

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<sup>23</sup> Government Decision no. 1076/2004 on establishing the procedure for carrying out the environmental assessment for sketches, plans and programs, published in Official Gazette no. 707 of 5/08/2004

<sup>24</sup> Government Decision no. 1000/2012 on the reorganization and functioning of the National Environmental Protection Agency and of the public institutions under its subordination

its subordination, of Government Decision no.44/2013<sup>25</sup> on the organization and the operation of the Ministry of Environment and Forests, as well as other normative acts.

In accordance with the Regulation for the organization and functioning of the Environment Protection Agency<sup>26</sup>, Constanta and the Framework Regulation for the Organization and Functioning of the County Environmental Protection Agencies, approved by Decision no. 620/05.11.2012 of the National Environmental Protection Agency Chairman, modified by Decision no. 920/24.10.2016 of the Chairman of National Environmental Protection Agency Chairman, the agency ensures, through the specialized offices and departments, the carrying out of the environmental protection activities at the level of Constanta County.

The Constanta Environmental Protection Agency collaborates, upon request of the Ministry of Environment and Forests, with the implementation of the authorization/integrated authorization procedure for activities with a potential cross-border impact, as well as for projects falling under the EIA Directive<sup>21</sup>. The agency has specific attributions in the field of impact assessment. To this end, the agency:

- performs regulatory procedures and issues approvals/agreements/permits/ integrated environmental authorizations in accordance with the legal provisions in force;
- cooperates with the National Environmental Guard in the process of issuing authorization documents and enforcing environmental legislation;
- analyzes the quality of EIA environmental impact assessment reports and /or the environmental report prepared by certified natural/legal persons and makes recommendations on request for their certification and retesting, or proposes the certification withdrawal;
- provides assistance upon request of the Ministry of Environment and Forests, the National Environmental Protection Agency and/or the Romanian Environment Agency in the evaluation of the environmental reports for the plans and programs drawn up by other authorities and in the decision making regarding the issuance / rejection of the environmental approval.

The Environmental Authorizations issued by the Environmental Protection Agency of Constanta require compliance programs for the atmosphere and soil protection.

*Law no. 98/2016<sup>27</sup> on Public Procurement* regulates the way public procurement is carried out, the procedures for the award of public procurement contracts and the organization of the contests, the specific instruments and techniques that can be used for the award of public

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<sup>25</sup> Decision no. 48/2013 on the organization and the operation of the Ministry of Environment and Forests, as well as on the amendments of other normative acts on the environment and climate changes

<sup>26</sup> Regulation for the organization and functioning of the Environment Protection Agency, Constanta, issued by the Environmental Protection Agency of Constanta, annex to Decision 58 of 26/06/2017

<sup>27</sup> Law no. 98/2016 on public procurement, published in Official Gazette no. 390 of 23/05/2016

procurement contracts, as well as certain specific aspects in connection with the execution of public procurement contracts.

This law specifies that for trans-European transport infrastructure projects located on the Central (core) and Global (Comprehensive) transport network (TEN-T) as defined in Regulation (EU) 1315/2013<sup>28</sup> of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and abrogation of Decision No. 661/2010/EU, as well as connecting roads and bypass variants of urban areas are subject to different provisions. For this purpose, the manner of certifying the economic and financial situation, as well as the technical and professional capacity of economic operators participating in the public procurement procedures, shall be regulated by a Government decision, at the initiative of the Ministry of Transport. The term is 90 days from the entry into force of this law.

To determine the most economically advantageous tender in accordance with Law no. 98/2016<sup>28</sup>, the contracting authority is entitled to apply one of the following award criteria:

- the lowest price;
- the lowest cost;
- the best quality-price ratio;
- the best quality-cost ratio

According to the provisions of Ordinance 107/2017<sup>29</sup>, the contracting authority shall not use the lowest cost/lowest price as a award criterion in certain cases, including public procurement/framework design and execution agreements or services agreements that are related to trans-European transport infrastructure projects, as defined in this law, as well as to county roads.

A Master Plan<sup>30</sup> for Strategic Planning of the Port of Constanta has been developed for the short, medium and long term (2020, 2021-2030, 2031-2040). The Master Plan includes conducting a global cost-benefit analysis and identifies the characteristic features of economic development. Subsequent developments are subject to comparative analysis in relation to master plan specifications.

The Port of Galati has also drawn up a Strategic Plan<sup>31</sup> for the development of the Port of Galati in relation to which further developments will be analyzed. For the other smaller Danube ports, no strategic development instruments have been identified, but an economic analysis will certainly be made before carrying out port developments.

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<sup>28</sup> EU Regulation no. 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network

<sup>29</sup> Emergency Ordinance no. 107/2017 of 20 December 2017 for the amendment and completion of some normative acts with impact in the field of public procurements, published in Official Gazette no. 1022 of 22/12/2017

<sup>30</sup> Master Plan of the Port of Constanta

<sup>31</sup> Strategic Plan for the Development of the Port of Galati, 2015, the National Company of the Maritime Danube Ports Co. Galati

For the development economic analysis, the planning instruments available in the Master Plan of Transport of Romania<sup>32</sup> are used. For the shipping sector, the Master Plan specifies strategies for the development/upgrade of sea and river port infrastructure for capacity increase, and for improving navigation conditions on the Danube and navigable channels.

The analysis conducted for this study did not identify strict requirements related to the responsibilities of an organization to achieve every time an economic needs test.

In Romania, Law no. 255<sup>33</sup> of December 14, 2010 on the expropriation for a public utility cause necessary for the achievement of objectives of national, county and local interest sets the legal framework for taking the measures necessary for the execution of the construction, rehabilitation and modernization works triggering said expropriation. Among the works specified in the law are the following:

- naval transport infrastructure development works
- hydrotechnical constructions and ancillary works, permanent and non-permanent water accumulations, exploitation cantons
- improvement, regulation or consolidation works of river beds, canals and hydrotechnical derivations
- construction, rehabilitation, modernization, development and ecologisation of the Black Sea coast

In the context of this law, the expropriator is the Romanian state for the national interest objectives, the counties for the objectives of the county interest, and the municipalities, the towns and the rural districts for the local interest objectives.

For the aforementioned works the expropriator is represented by:

- the Ministry of Transport through port and/or inland waterway administrations, as well as the public institutions from the naval transport domain, for the construction, rehabilitation and extension of the naval transport infrastructure, as well as for the works related to railway and road port network.
- the Ministry of Regional Development and Tourism, for all construction, rehabilitation, modernization and development works of national interest tourist resorts, for the construction, rehabilitation, modernization, development and ecologisation of the Black Sea coastal area.

The stages of the expropriation procedure consist of:

- approval of the technical and economic indicators of works of national, county or local interest;

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<sup>32</sup> Master Plan of Transport of Romania, approved by the Government Decision no. 666/2016

<sup>33</sup> Law no. 255<sup>33</sup> of December 14, 2010 on the expropriation for a public utility cause necessary for the achievement of objectives of national, county and local interest published in Official Gazette no. 853/2010



- recording the respective individual amount representing the compensation payment for the buildings that are part of the expropriation corridor and displaying the list of the real estate owners;
- transfer of ownership;
- completing the formalities pertaining to the expropriation procedure.

In order to achieve the ecological and rehabilitation objectives of the Black Sea coastal area, approval of the technical and economic indicators is not necessary. In this case, the expropriation for a public utility cause is based on topo-cadastral planning and spatial planning documents initiated by the local public administration authorities or by the central public administration authorities, as appropriate, and drawn up in the National Design System Stereographic 1970. Exceptionally, for the maximum 300 m wide land strip, measured horizontally from the longest line of the sea towards dry land or up to the limit of the slopes that are in contact with the sea or with the public ownership of the state, respectively up to 10 m behind the cliff ridge, the expropriation for a cause of public utility is done according to the expropriation corridor established on the basis of the topocadastral documentation drawn up in the National Stereographic Projection System 1970, which also contains the list of the buildings to be expropriated, approved by Government decision.

The modernization and development of the Black Sea coastal zone is carried out based on the technical and economic indicators approved in accordance with the present legal provisions.

Law no. 255/2010<sup>31</sup> on expropriation stipulates that after the approval of the technical and economic indicators, of the topographical and city planning documentation or topo-cadastral documentation, as appropriate, the expropriator has the obligation to record the individual amounts representing the payment of the indemnity to the owners of buildings, individualized according to the list of owners. The possibility of public-private partnerships for investment projects in contextual expropriation is not specified.

The expropriation decision is a writ of execution for the delivery of immovable property, both against the expropriated owners and against those claiming a right related to the expropriated immovable property, up until the final and irrevocable settlement of the disputes relating to the property of the expropriated immovable property. The appeal against the expropriation decision does not suspend the transfer of ownership of the immovable property concerned.

The transfer of the ownership right over the immovable property from the private property of natural or legal persons into the public property of the state or of the territorial administrative units and in the management of the expropriator evolves legally upon the issuance of the administrative expropriation act by the expropriator after the amounts corresponding to the indemnity have been recorded.

Administrations may associate with economic operators for the joint use of shipping infrastructure by concluding association agreements, under the terms of the law.

In analyses conducted for the study, no cases were identified in which a port or part of it was demolished or dismantled.

However, any demolition or partial dismantling works must be performed in accordance with legal procedures. Thus, all documents drawn up in order to obtain the approval for the execution of the works shall be made in accordance with the provisions of Law no. 50/29.07.1991<sup>19</sup>, with the modifications and completions in force regarding the elaboration of the documentation for execution of construction/demolition works.



### 3.5 Port financing: Rules & Practices

This section shall deal with the financial sources available for developing port infrastructure and superstructure as well as maintenance needed in the Danube ports. In this respect financing is used as a general term which includes both public and private sources, while the term funding refers to government subsidies or other public funds available via national or European programs.

Port Administrations have the obligation to maintain, repair, upgrade, develop and keep the minimum technical characteristics of the port infrastructure and of any existing utilities network in the port or under their administration or ownership. They must also ensure the minimum depths in port and berths and the access fairways necessary for ship entrance into/exit from port.

It is also the responsibility of port administrations to maintain existing access roads on the port territories. In exceptional cases, with the approval of the ministry and local authorities, port administrations may participate in the maintenance of connecting routes between port territories and national roads or highways.

Inland waterway administrations have the obligation to maintain, repair, upgrade, develop and keep the minimum technical characteristics of the inland waterway transport infrastructure, to ensure the minimum navigation capacity established in accordance with the applicable national and international provisions.

The naval transport infrastructure that is part of the public domain may be concessioned, sub-concessioned, leased or administered, if the case, under the law. The naval transport infrastructure can be:

- administrated, under the law, by central or local public administration authorities or by port and or inland waterway administrations, organized as public institutions or autonomous agencies;
- concessioned to port and/or inland waterway administrations, organized as trading companies or national companies subordinated to or under the authority of the ministry, respectively of the local public administration authorities, as applicable, under the law.

The concession of the naval transport infrastructure is made on the basis of a concession contract concluded between the ministry, i.e. the local public administration authorities respectively as lessors, and the respective administrations as lessees. Administrations have no right to transfer all or part of these contracts.

Port administrations for the land belonging to the public domain of the administrative-territorial unit can put it at the users' disposal by means of lease agreements, according to the law.

Port administrations may associate with economic operators for the joint use of naval transport infrastructure by concluding association agreements. Lease of the naval transport infrastructure is done in accordance with the regulations approved by order of the minister of

transport<sup>34</sup>, respectively by decision of the local public administration authority, as the case may be. The regulation provides the categories of infrastructure that can be leased and how to assign them.

Contracts for the rental of naval transport infrastructure shall be concluded for a period that shall not exceed the concession period. If the lessee's obligation to undertake investment programs whose depreciation period exceeds the limitation period of the concession contract between the Ministry of Transport and the port administration, the entitled successor of the administration is bound to conclude with the tenant a lease under the same conditions, over a period equal to the remaining period up to the full depreciation of the investments made.

Amounts obtained from rents, royalties and service charges are the revenue of the administrations and are used in accordance with the legislation in force. By way of exemption from Government Ordinance no. 64/2001<sup>35</sup> *on the distribution of profits to national companies, national companies and trading companies with full or majority state capital, as well as to autonomous agencies*, up to 25% of the accounting profit after deduction of the profit tax shall be paid to the state or local budget, in the case of autonomous agencies, or dividends, in the case of national companies, trading companies and companies with full or majority state ownership.

In case that revenues from the administration and operation of the naval transport infrastructure are not sufficient for the maintenance, repair, modernization and development of the respective infrastructure, the central/local public authority allocates funds from the state budget/local public administration budget to cover the expenses.

According to Government Ordinance no. 22/1999, for the purpose of carrying out activities aimed at fulfilling the obligations of the state deriving from the international agreements and conventions to which Romania is a party, the administrations receive funds from the state budget, through the ministry budget or through the local budgets of the administrative units - territorials, as appropriate.

Concession contracts must always include at least:

- the obligations of the port and waterway administrations stipulated by Government Decision no. 22/1999, as well as the sanctions applicable in the event of their non-fulfillment;
- the obligation of administrations to use over 50% of the total revenue obtained from the administration and operation of the naval transport infrastructure that is the object of the concession for the infrastructure maintenance, repair, upgrading and development;

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<sup>34</sup> Order of the Minister of Transport no. 1286/2012 for approving the Regulation concerning the lease of naval transport infrastructure belonging to the state public domain and conceded to the port administration and /or inland waterways administrations, with further modification and completions

<sup>35</sup> Government Ordinance no. 64/2001 on the distribution of profits to national companies, national companies and limited liability companies with full or majority state capital, as well as autonomous agencies

- the obligation to keep accounting records;
- the royalties calculated on the basis of the revenues obtained by making available to users the infrastructure granted by concession.

### **3.5.1 Rules and procedures for public funding of port investments**

The Law no. 500/2002 concerning the public finance, with further modifications and completions, establish the principles, general framework and procedures concerning the setup of budget, its administration, use of public funds as well as the responsibilities of public institutions involved in the budgetary processes. Section no. 3 of this law deals only with public investment issues.

A public investment is included in the budget only if the investment is approved:

- By the port / inland waterway administration, for the investments less than 5 million RON (1 MEUR), with the prior agreement of the minister of transport on the necessity and opportunity related to the investment;
- By the minister of transport, for investments between 5 – 30 million RON (1 – 6.5 MEUR);
- By the Government, for investments more than 30 million RON (6.5 MEUR).

For the approval, the investment has to be mature, to have a pre-feasibility study, feasibility study and the environmental permit obtained, as well as other approvals and permits. The Government Decision no. 907/2016<sup>36</sup> establish the steps for the preparation of a public investment as well as the compulsory content of the studies which prepare a public investment.

An investment is financed from public funds only if investment is related to naval transport infrastructure or equipment (ex. specialized ships, traffic management systems for the safety of navigation) necessary to the port and/or waterway administration for the fulfilment of their obligation in providing a public obligation.

In Romania port infrastructure investment can be financed from state budget solely, from European financing programmes (ex. Connecting Europe Facility, Large Infrastructure Operational Programme 2014 – 2020) or reimbursable funds (ex. loans from European Bank of Investment).

Since Romania became an EU member state in 2007, there were used more and more the European financing programmes, so non-reimbursable funds, for the development of the port infrastructure.

In Romania, Government Ordinance no. 40/2015 states that for projects fully or partially taken over from the 2014-2020 programming period, beneficiaries are authorized to enter in the budget the commitment appropriations and the respective budgetary appropriations, broken down by years.

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<sup>36</sup> Government Decision no. 907/2016 on the phases of elaboration and the framework content of the technical and economic documentation related to the public-financed investment objectives / projects, with further modification and completions

Throughout the budget year, the balance of the amounts from the privatization proceeds to the main credit officers acting as managing authority through the Certifying Authority determined as the difference between the total amounts allocated and the total amount refunded to the Ministry of Public Finances cannot exceed the maximum limit of RON 5 billion or the equivalent, and includes payments pertaining to eligible expenditures funded by European funds over the 2014-2020 period.

Having regard to the provisions of Regulation (EU) No. 1303/2013<sup>37</sup> of the European Parliament and of the Council establishing common provisions on European funds and taking into account Commission Regulation (EC) No. 1084/2017<sup>38</sup> amending Regulation (EU) No. 651/2014 on aids for port and airport infrastructure, the Minister for Transport issued an order approving the State aid scheme.

Order no. 1532/2017<sup>39</sup> regarding the approval of the State aid scheme for investments in the port infrastructure and the intermodal/multimodal local infrastructure related to the Large Infrastructure Operational Program (POIM 2014-2020). The state aid scheme is applicable for two priority axes of the Large Infrastructure Operational Program 2014-2020 as follows:

- Priority axis 1, Specific objective 1.3 - Increased degree of use of waterways and ports on the Central TEN-T network, and
- Priority axis 2 - Developing a multimodal, quality, sustainable and efficient transport system, specific objective 2.4 - Increasing the volume of goods transiting via intermodal terminals and ports

The objective of this scheme is to provide state aids for investment in maritime and inland ports as well as at intermodal/multimodal terminals located in locations other than ports in order to achieve the objectives undertaken by Romania under Priority Axes 1 and 2 of under the Large Infrastructure Operational Program 2014-2020.

This scheme refers to:

- port infrastructure modernization and development in the Romanian maritime and inland (river) ports,
- access infrastructure modernization / development in the Romanian maritime and inland (river) ports,
- dredging activities in the Romanian maritime and inland (river) ports,

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<sup>37</sup> Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund

<sup>38</sup> Commission Regulation (EEC) No 1084 / 2017 of 14 June 2017 amending (EU) Regulation 651/2014 on aids for port and airport infrastructure, notification thresholds for aids for cultural and heritage conservation, aids for sport infrastructure and multifunctional leisure facilities

<sup>39</sup> Order no. 1532/2017 regarding the approval of the State aid scheme for investments in the port infrastructure and the intermodal/multimodal local infrastructure

- the construction/ modernization of intermodal and multimodal terminals in the Priority Locations of the General Master Plan of Transport.

Potential beneficiaries of state aid for investments in port infrastructure are:

- national companies managing maritime and river port infrastructure,
- local authorities managing port infrastructure located in ports prioritized by the Romanian Master Plan of Transport.

Potential beneficiaries of state aid for investments in intermodal/multimodal local infrastructure are: local authorities managing intermodal/multimodal terminals located in locations prioritized by the Transport Master Plan of Romania.

The estimated total budget of the scheme allotted for port infrastructure investments is 647,360,001 EUR (equivalent in RON) and represents European non-reimbursable funds provided through the Cohesion Fund (288,000,000 euros) and the European Regional Development Fund (120,000,000 euros) and public co-financing funds provided from the state budget/local budget (239,360,001 euros).

Year	Breakdown by year (euro)
2017	4,426,372
2018	10,101,997
2019	11,115,330
2020	14,356,301
Total	40,000,000

The maximum eligible costs of a project for investment in ports may not exceed:

- for aids to maritime ports: eligible costs of EUR 130 million per project or EUR 150 million per project in a sea port included in the central network corridor (TEN-T Core) activity plan as per Article 47 of Regulation (EU) No. 1315/2013 of the European Parliament and of the Council;
- for aid for inland (river) ports: eligible costs of EUR 40 million per project or EUR 50 million per project in an inner port included in the central network corridor work plan in accordance with Regulation (EU) No. 1315/2013 of the European Parliament and of the Council.

Regarding the use of port infrastructure and local intermodal/multimodal infrastructure, the Order stipulates that any concession or other type of entrustment contract to a third party for the construction, upgrading, operation or rental of the port infrastructure and the intermodal/multimodal infrastructure receiving said aid is attributed in a transparent, non-

discriminatory manner, taking due account of the applicable public procurement rules at the time of entrustment.

The duration of concession or other types of entrustment to a third party for the lease or operation of the aided port and intermodal/multimodal infrastructure may not exceed the period needed by the third party, according to reasonable estimates, in order to recover the investments made for the operation of the infrastructure and obtain a return on the invested capital, taking into account the investments necessary to achieve the specific contractual objectives.

The infrastructure benefiting from state aid must be made available to interested users in an open, transparent and non-discriminatory manner.

Application Form for request of financing from Large Infrastructure Operational Programme 2014 – 2020 and all the related documentation are submitted electronically through MySMIS system. The evaluation is done by the Programme Management Authority Intermediate Body, through external expertise. Projects having an eligible cost more than 75 MEUR are evaluated by the European Commission services (DG REGIO). The Application Form for financing should be submitted after the investment is approved, but for saving time, in practice these processes can go in parallel. A public investment is financed through Large Infrastructure Operational Programme 2014 – 2020 if it included in the General Master Plan for Transport.

When the evaluation of project is finalized the beneficiary (port administration and/or inland waterway administration) conclude with the Management Authority the contract for financing. For contracting the works and related services, port administrations / inland waterway administrations are organizing tenders.

## 4 Port Authority/Administration

Government Ordinance no. 22/1999<sup>1</sup>, defines port administration as a legal entity authorized to ensure the functionality of ports and public port services. It specifies that ensuring the functionality of ports and shipping infrastructure, managing them, monitoring or securing the provision of safety services and assuring the carrying out of ancillary activities is done by port and/or inland waterway administrations, referred to as "administrations".

Administrations perform the role of "port authorities" and/or inland waterways and, where appropriate, as free zone administrator.

Administrations carry out their activity according to the Romanian legal regulations in force and to their statute. Port and waterway administrations perform the role of port authority in ports whose infrastructure has been concessioned by the Ministry of Transport.

### 4.1 Port administrations & responsibilities

Administrations operate under the authority of the Ministry of Transport and carry out activities of national public interest, as port administration, according to the legal regulations in force and the statute.

On port territory belonging to the public domain on which the free zone regime was established, port administrations are also free zone administrations.

The port administrations are set up according to the form of ownership of the port infrastructure that can belong either to the public or the private domain of the state, the public or private domain of the administrative-territorial units or the private domain.

By order of the Minister of Transport, the list of ports and places of operation open to public access shall be approved and their established limits shall be expressly specified as well as their administrations/administrators.

#### **The National Company "Maritime Danube Port Administration" Co. - Galati**

The National Company "Maritime Danube Ports Administration" Co. Galati is a Romanian legal entity, organized as a joint stock company, with the registered office in Galati, postal code 800025, Portului Street, 34, registered at The Office of the Commerce Registry under no. J17 / 905/1998, Sole Registration Code 11776466, Fiscal Identification Code RO 11776466.

The National Company "Maritime Danube Ports Administration" Co. Galati fulfills the role of port authority in the ports situated on the Danube between Sulina and Hârșova, except for the port of Sulina and has as main attributes:

- coordinates the activity in the ports of: Galați, Brăila, Tulcea, Isaccea, Măcin, Chilia Veche, Mahmudia, Smârdan, Hârșova, in operation places (Gura Arman, Turcoaia);
- port infrastructure maintenance and repair;
- provides safety services in ports;
- makes port facilities available to users;
- terrestrial and floating signaling in the ports under its administration;



- maintenance dredging in ports;
- collects waste and sewage from ships,
- keeps record of port workers.

### **The National Company Maritime Ports Administration Constanța Co.**

The National Company Maritime Ports Administration Co. Constanta serves as port authority in the seaports of Constanta, Mangalia, Midia and the Tomis marina. The Company's main activity is to carry out related activities and auxiliary activities to the shipping activities, according to the law. In order to fulfill the role of port authority and in its capacity of port administration, the company performs the following activities:

- implementation of port policies developed by the Ministry of Transport;
- drawing up seaport development plans in line with the development policy and programs drawn up by the Ministry of Transport and the Regulation on Marine Port Operation;
- coordination of activities taking place in seaports;
- implementation of port infrastructure development programs;
- issues endorsements for the authorization of the economic agents who are to carry out maritime transport activities within the perimeter of maritime ports;
- approval of activities in ports, other than those subject to authorization by the Ministry of Transport and issue of work permits;
- monitoring and taking the necessary measures to ensure that cargo traffic in seaports and the manner how cargo is stored do not affect the port infrastructure security and ship operations;
- controls the ship loading or unloading operations and interdicts or stops said operations in the cases provided by the regulations in force;
- ensures the functionality, administration, maintenance, repair and upkeep of the minimum technical characteristics of the shipping infrastructure in the ports of Constanta, Midia, Mangalia and in the Tomis marina, as well as of its own patrimony and makes them available to users in a non-discriminatory manner, in accordance with the regulations in force;
- establishes the order of entrance of ships into seaports, the allocation of berths and the issue of mooring permits;
- provides services, operations and works, by delegation of competence, in order to fulfill the obligations of the Romanian State in the international agreements and conventions to which Romania is a party, such as the search for and rescue of human lives at sea and the intervention in case of pollution;
- representation of the Ministry of Transport in the relations with the concessionaires of the naval transport infrastructure or of the safety services.

### **The National Company "Danube River Ports Administration" Co. - Giurgiu**

The National Company "Danube River Ports Administration" Co. Giurgiu fulfills the role of port authority in almost all the ports situated on the Danube River between Baziaș and Cernavodă and has as main attributes:

- coordinates the activity in the ports and operation places of: Cernavodă, Călărași, Oltenița, Giurgiu, Corabia, Bechet, Calafat, Drobeta-Turnu Severin, Orșova, Moldova Veche, Chiciu, Ostrov, Rast, Cetate, Gruia, Tișovița, Dubova, Șvinița, Drencova, Baziaș;
- port infrastructure maintenance and repair;
- provides safety services in ports;
- makes port facilities available to users;
- terrestrial and floating signaling in the ports under its administration;
- maintenance dredging in ports;
- collects waste and sewage from ships,
- keeps record of port workers.

### **The National Company Navigable Channels Administration Co.**

The National Company Navigable Channels Administration Co. fulfills the role of inland and inland waterway authority on the Danube - Black Sea and the Poarta Albă - Midia - Năvodari Canal and in the ports located on these two channels and has as its main attributes:

- operation, maintenance, modernization of waterways, locks (Cernavoda, Agigea, Ovidiu, Navodari) and ports (Medgidia, Basarabi, Ovidiu and Luminița);
- monitoring and directing traffic on channels and in ports;
- making port infrastructure available to operators;
- pilotage on the two channels (pilotage is not compulsory);
- provides safety services in ports: pilotage, maneuvering towage, mooring/unmooring of ships;
- makes port facilities available to users;
- water quality sampling and analysis;
- operation and maintenance of pumping stations.

Port administrations may be public institutions, autonomous agencies, national companies or trading companies.

The administration of inland waterways is done by inland waterway administrations.

By delegating competence, under the terms of the law, administrations may also fulfill certain obligations incumbent on the State in the international agreements and conventions to which Romania is a party. For the activities they carry out for the purpose of accomplishing the duties delegated to them, the respective administrations fulfill the function of port and/or inland waterway authority.

The competences of port and/or inland waterway administrations are:

- to ensure the management of ports and inland waterways,
- to maintain the characteristics of naval transport infrastructure and to develop it;
- to monitor or to provide security services
- to ensure that ancillary activities are carried out.

## 4.2 Services provided by the port administrations

The services provided by the port administration, as it appears from the port regulations of the National Company Maritime Ports Administration Co. Constanta and the National Company Maritime Danube Ports Administration Galati Co., are:

### **Collection of household waste and garbage**

The port administration organizes the periodic collection of household waste and garbage from ships from port economic operators.

Household waste and garbage collection is carried out by economic operators specialized in this activity in seaports that have concluded contracts with the port administration for this service.

### **Fire fighting and fire prevention**

Vessels and natural and legal persons who carry out activities in maritime ports or use services thereof are bound to comply under all circumstances with technical regulations and fire protection provisions and, by their actions, not to jeopardize their lives, property and the environment.

Vessels and natural and legal persons who carry out activities in maritime ports or use services thereof are responsible, according to the law, for setting down and applying fire-fighting and fire prevention measures and for the consequences of fires.

For land-based objectives in seaports, port economic operators have the obligation to provide operative intervention for firefighting, rescue, first aid, and protection of persons in the sectors/areas they administer/use, either by setting up under the law their own private emergency service, or by concluding a contract with another emergency service capable of effectively act in firefighting.

The port administration bears the obligation to ensure the operative intervention for fire fighting, rescue, first aid protection of persons on terrestrial objectives in sectors/areas that are not in the administration/use of any port economic operator. Operative fire-fighting intervention on ships in port is to be ensured by all ships and crews in port or near in vicinity, by the port administration, as well as by any port economic operator which has forces and means of intervention under coordination of the harbor master's office on whose area of competence the incident has occurred, in accordance with the provisions of national legislation and the agreements of the international conventions.

### **Prevention, pollution control, sanitation and decontamination of water area on the port territory**

In sea ports, the Romanian Naval Authority is responsible for the control and prevention of water pollution caused by ships. The sanitation activity of decontamination of the water area on the port territory is performed by the port administration.

The port administration draws up the waste collection and management plan approved by the competent public authority for environmental protection.

Port economic operators are required to comply with national and international environmental protection rules applicable to their port activities. All the contracts concluded by the administration with port economic operators shall contain their obligations regarding the environmental protection, established according to the legislation in force, referring to:

- collecting, treating, storage and recycling of waste resulting from their own activity;
- evacuation of sewage water into the port sewage network;
- sanitation of the territory where they operate.

The collection of bilge waters and hydrocarbon residues from ships is carried out by the port administration upon written request of the ship's agent. The operation of supply of bilge waters or hydrocarbon residues by ships shall be certified by the port authority by issuing the MARPOL certificate.

Discharge and take-up of the ballast containing hydrocarbons and/or washing waters of oil tanks is mandatory and is done only in the oil terminal with specialized installations or in the specially designed areas.

### **Electric power and heat supply**

Electric power and heat supply in seaports is made through the network owned by the administration or through the networks of other authorized power and heat suppliers.

Economic operators using electricity or heat are bound to conclude contracts with the suppliers for the provision of said services or for occasional use, to issue orders to be approved by the respective supplier.

### **Water distribution, collection of domestic water and rainwater, port sewage**

The distribution of drinking water and the collection of domestic water and rainwater from seaports is done through networks in the patrimony of the administration.

Ships using seaports have the obligation to declare the quantities of drinking or technical water on board upon entering and leaving the port.

Economic operators using the water and sewage networks of the administration are obliged to conclude contracts for the provision of sewage distribution services with the port administration or its authorized distributors or, in case of occasional use, to issue orders that shall be approved by the port administration.

The water supply to ships can be achieved either by connecting them to the quay facilities or by distributing it via barge. The service is performed based on an order issued by the vessel or its agent and is charged on the basis of the voucher confirmed by the ship or the agent on the grounds of the charges in force at the date of supply.

### **Ship mooring and unmooring services**

Seagoing ship mooring and unmooring is performed only by authorized companies and only in the area provided for in the authorization. The following categories of ships are exempted: survey vessels, technical vessels, coastal shipping vessels, leisure craft, government vessels, military ships, sports boats and platform supply vessels. For these categories of vessels, mooring and unmooring can be done by the specialized crew members onboard said vessels.

Ship mooring is only allowed in port facilities that have this destination.

Mooring teams carry out the orders received from the ship master responsible for the safe mooring of the ship. Mooring teams shall leave the mooring berth only after the ship has been safely moored and only with the ship master's approval.

### **Ship agency services**

Agency services are carried out only by a ship's agent, a Romanian legal person who carries out their activity in accordance with the legislation in force and who has an authorization to provide these services.

The ship's agent is the authorized legal person representing the interests of the ship, the ship master, the ship owner or the ship operator before the public authorities, the administration, all economic operators providing services to the ship, the crew, the shipowner or operator. Such representation is rendered within the limits of the power of attorney granted by the shipowner or operator of the ship concerned.

The agent assists the ship and her master in all his actions, from the arrival at, up to the departure from the port. For agent services rendered, the agent charges fees established by direct negotiation with the shipowner or ship operator.

### **Ship supply**

Ship supply is performed by specialized trading companies authorized by means of work permits or licenses to carry out this activity in seaports based on the order received from the ship's agent or directly from the ship master.

Product loading and packaging unloading is done only under the terms set by the port operator through the security plan of the port facility where the ship is operated.

### **Ship repair and maintenance**

Ship repair and maintenance outside shipyards or specialized workshops is performed only subject to the approval of the harbor master's office.

Repair and maintenance works shall be done on the basis of written requests submitted to the harbor master's office before the start of the works, indicating the vessel, the nature of the works, their estimated duration and the environmental pollution prevention measures to be taken during the execution of the works. Works shall only start after obtaining the approval of the harbor master's office.

### **Ship bunkering**

In seaports, bunkering is only carried out with authorization of, and under supervision of the harbor master's office by specialized economic operators.

Bunkering is carried out based on a plan that states all the elements necessary for the correct bunkering operation, the persons responsible for the supervision and control of the operation, the safety measures to avoid environmental pollution and occupational accidents in a toxic environment, communications and signals needed during bunkering.

### **Telecommunication services**

The port administration provides economic operators with the telephone network and their own telephone operator service on a contractual basis.

In maritime ports, telecommunication services may be provided by specialized economic operators who have obtained a port authorization or a work permit.

Telecommunication or radiocommunication services are carried out on the basis of contracts concluded between specialized economic operators and interested port operators.

Specialized economic operators providing telecommunication services in seaports are bound to provide services according to the standards stipulated in the contract.

### **Safety services**

Security services are under state control through the ministry. The following are considered to be security services pilotage of seagoing ships when entering and leaving ports, between berths of the same port and on inland waterways, and maneuvering towage of seagoing vessels in ports. The Ministry establishes the ports, inland waterways, areas or portions of these areas and the categories of vessels for which pilotage is mandatory.

Security services are provided to all users who use them on a permanent, non-discriminatory, uniform and continuous basis, on equal conditions in terms of quality, time and price.

In order to provide the ship transport infrastructure and services, the port authority levies fees established in accordance with the legislation in force.

Fees for services provided to vessels in ports in the area of activity of the administration are approved by the Managerial Board. They are expressed in RON or EURO and apply to ships regardless of their flag.

The payment for these services is the responsibility of the shipowner or ship operator and is paid by the ship's agent or directly by the ship, if the ship does not have her own agent.

### **4.3 Finance of services**

The use of seaports, berths, port facilities, inland waterways and locks by ships is done on the basis of a contract /service contract concluded between the administrations and shipowners/ ship operators or agents. For the provision of these services as well as for other activities and services provided by them, administrations set fees in a non-discriminatory manner.

For the passage of ships over navigable channels, for the provision of ship transport infrastructure and for the provision of port facilities to the administrator, the National Company "Navigable Channels Administration" - Co. Constanța levies fees established according to the legal regulations in force.

In order to provide users with the ship transport infrastructure and services, the administrations charge fees established in accordance with the legislation in force. Administrations have the obligation to make said fees public along with the payment facilities of these fees.

The payment of the fees for the services rendered to vessels is made in foreign currency for the vessels under a foreign flag and in RON for the vessels under the Romanian flag, at the official exchange rates of the date of invoice, communicated by the National Bank of Romania, according to the legal regulations in force.

Payment for the services rendered to vessels is compulsory and the amounts resulting from the application of the fees for the services performed are due before the ship leaves the port.

The ship's agent is bound to guarantee the approved amounts and to pay the sums relating to the services before the ship leaves the port or thereafter in accordance with the clauses provided for in the contracts concluded with the administration and the port economic operators who have provided the services.

Failure to pay the sums due may result in the detention of the ship or other ships of the same ship owner or ship operator.

The VAT is added to the amounts resulting from the application of the fees, as appropriate, according to the legal norms in force.

The monetary units as well as the other units of measurement shall be rounded up, as appropriate, to 5 as follows: values less than or equal to 5, the divisions or multiples of 10 shall be rounded to the previous value and the higher values to the next value.



## 4.4 Port fees

According to the Port Regulation of the Romanian maritime ports under the administration of the National Company of Maritime Ports Co. Constanta<sup>40</sup>, for merchant ships the basic port fees are:

- Port access tariff - applies to the GT of the ship recorded in her certificates for each port entry, depending on the type of vessel differentiated by GT. In ships with no registered GT, this shall be calculated, rounded to units according to the provisions of art. 19, following Rule 3 of the International Convention on Tonnage Measurement of Ships; (TONNAGE 1969) as follows:  
$$GT = (0,2 + 0,02 \times \log_{10} V) \times V$$
where:  $V = L \times B \times D \times 0.9$  where: volume of the hull (m<sup>3</sup>); L=length (m); D = draft (m),
- Quay fee - applies to the length overall (LOA) on the number of days of port call, depending on the type of ship, the GT group and the type of cargo operated;
- Basin fee - applies to ship's length overall (LOA) and number of days of port call, depending on the type of ship, the GT group;
- Fees of public authorities, for services performed in seaports - are established by regulations of local central public authorities, according to the law.

Basic port fees apply to all ships, whether they are alongside the quay, on double, triple berth etc., in the port water area, anchored or anchored to a buoy, according to the fees and fee terms applied by the port administration made known in leaflets published whenever necessary or through the administration website. Basic port fees are applied in a non-discriminatory manner.

Liners, such as coastal vessels or other types of vessels may benefit from facilities under the fee conditions established by the administration.

Documents accepted as the basis for the application of port fees are the International Tonnage Certificate ITC 1969, the Certificate of Ship Nationality. The documents must be valid and submitted to the administration.

Prices for safety services are mandatory. The administration publishes the fees and the conditions of their application and establishes the payment method.

Fees for special services apply as follows:

- The safety and security fee for ships during operation applies according to the GT of the ship in seagoing cargo or passenger ships and in terms of the maximum load capacity expressed in tonnes in inland waterway vessels;

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<sup>40</sup> Port regulation of the Romanian maritime ports under the administration of the National Company "Maritime Ports Administration Co." Constanta, no. 31732 of 26/10/2012

- The buoy-operation fee applies according to the overall length of the ship (LOA) and the number of days moored on buoys, in accordance with the type of ship operated (freighter or bulk carrier)

Tariffs for the provision of port facilities apply as follows:

- The water supply fee is applied differently depending on how water is supplied: directly from the land or from the water transport barges; the minimum amount of water supplied by a water transport barge is 30 m<sup>3</sup>
- The electricity supply fee is applied to the amount of electricity consumed, measured in kWh;
- The waste and garbage collection fee applies according to number of calendar days stayed in port; the provision of these services is done in accordance with this Regulation;
- The fee for the use of the anti-pollution dam is applied according to the length overall of the ship (LOA), for as long as the ship is moored at berth. This service is mandatory for all ships carrying dangerous goods in seaports during loading/unloading operations;
- The fee for the services rendered to the ships and the port equipment is applied in accordance with the provisions of the Regulation, its annexes to the orders, conventions or contracts in force between the parties at the performance date;
- The fee for collecting liquid ship-generated waste is applied to the total quantity taken from the vessel, measured in m<sup>3</sup>;

Liquid sludge collection from ships (petroleum residues, bilge water, domestic water) are free of charge with the exception of:

- the services rendered to ships in the outer roadstead, at shipyard berths and to those who apply for delivery of petroleum products from cargo tanks before entering shipyards;
- the services rendered for the takeover of other liquid waste from ships if said service has been accepted;
- the services rendered for the takeover of petroleum residues, bilge water, dirty ballast at Oil Terminal berths.

The fees for the use of port infrastructure by ships apply non-discriminatory to all ships and all economic agents;

The provision of port facilities additional to those granted and communicated by the Port Authority shall be requested in writing by the shipowner (of river or seagoing vessels) directly or through the ship's agent or his representative in the port of operation or stationing to the Port Administration and shall be approved within the limits granted by the Managerial Board.

Fees are established on the basis of substantiation rules drawn up by administrations on the basis of the data in the bookkeeping records of that administration, following prior consultation of economic operators. Any change in these fees is only made in the last quarter of the current year for the following year.

The Supervisory Board in the Naval Transport Field acts in the field of shipping, without prejudice to the Competences of the Competition Council to apply the provisions of the Competition Law no. 21/1996<sup>41</sup>. The Board has the following attributes:

- monitors the extent to which administrations respect the obligation to make port infrastructure available to all users in a free and non-discriminatory manner;
- endorses the rules for the substantiation of fees, rent and royalties for renting and concession / subconcession of port land belonging to the public domain of the State or administrative-territorial units, charged by the administrations, as well as the structure based on their expenditures and their application in a non-discriminatory manner;
- endorses the rules for substantiating tariffs charged for the performance of security services and the structure of expenditures for such fees and verifies their proportionality to the cost of the service provided and their application in a non-discriminatory manner;

The fee conditions and the level of the fees for services other than those provided by the administration or other authorities and the security fees are established by the economic operators in compliance with the legal regulations in force.

The National Company "Maritime Port Administration" Constanta offers citizens or legally established organizations a series of methods of filing a petition.

Government Ordinance no. 27/2002<sup>42</sup> *on the regulation of the petition settlement activity* defines the term "petition" as the request, complaint, petition or proposal made in writing or by electronic mail, which a citizen or a legally established organization can address to the central public authorities and institutions and local, decentralized public services of ministries and other central bodies, national companies and trading companies, county or local trading companies, and autonomous agencies, hereinafter referred to as public authorities and institutions.

Petitions may be submitted to the National Company "Maritime Port Administration" Co. Constanta in one of the following ways:

- by filling in the E-petition form
- by sending it by mail on the following address: National Company "Maritime Port Administration" Constanta, Incinta Port, Gara Maritima, Constanta, postal code 900900
- by e-mail to e-petitie@constantza-port.ro
- by fax to 0241 619 512

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<sup>41</sup> Competition law no. 21/1996, republished, as subsequently amended and supplemented

<sup>42</sup> Government Ordinance no. 27/2002 regarding the regulation of the activity of solving petitions, published in Official Gazette no. 84 of 1/02/2002, with further modification and completions

- by filing it at the Registry of the National Company Registry "Maritime Port Administration" Constanta, Incinta Port, Gara Maritima, Constanta

The National Company "Maritime Port Administration" Constanta has the obligation to communicate the resolution to the petitioner, within 30 days from the date of filing the petition, regardless of whether the solution is favorable or unfavorable. In case that the issues in the petition require more detailed research, the head of the public authority or institution may extend the term by up to 15 days.

The resolution is signed by the head of the public authority or institution or by the person authorized by them, as well as by the head of the department that solved the petition. The response will necessarily indicate the legal basis of the solution adopted.

## 4.5 Port bylaws

For the scope of the current document, bylaws shall refer to the rules or laws established by an organization or community to regulate itself, as allowed or provided for by some higher authority.

*Port bylaws* lay down rules in respect of order, safety and environment in the port and its surroundings and the quality of the services in the port. Port bylaws can also be described as port regulations.

Port regulations are drawn up in accordance with the provisions of Government Ordinance no. 22/1999<sup>3</sup> and the Annex to MTI Order no. 636/2010<sup>43</sup> for the approval of the Port Regulatory Framework. For Romanian ports the following port regulations are in force:

- Port regulation of the Romanian maritime ports under the administration of the National Company Maritime Ports Administration Co. Constanta, no. 31732 of 26/10/2012
- Port regulation of ports located on the Danube - Black Sea Canal and Poarta Alba-Midia-Navodari Channel, National Company Maritime Port Administration Co. Constanta, 2015
- Port regulation of the Romanian maritime and river ports under the administration of the National Company "Maritime Danube Port Administration" Co. Galati

### 4.5.1 Entity issuing the port bylaws

According to the Government Ordinance no. 22/1999, the port administrations have the obligation to elaborate port regulations (port bylaws).

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<sup>43</sup> Order no. 636/2010 for the approval of the Port Regulatory Framework, published in Official Gazette no. 590 of 19/08/2010

The Ministry of Transport elaborates and publishes the port regulation – framework. It contains the following chapters<sup>44</sup>:

Part A – General rules for port exploitation

Chapter 1 – General information

Section 1 – Field of application – it applies in the port of ...

Section 2 – Legal provisions

Section 3 – General presentation of the port administration in charge for ensuring the port functionality

Section 4 – General presentation of port (name of the port, classification, port limits)

Section 5 – Description of services available in ports

Chapter II - Navigation in port basins and roads

Section 1 – General rules related to the navigation in the port of ..... – Presentation of legislation in force

Section 2 – Rules for entrance / exit of ships in/from port of ...

Section 3 – Rules for berthing, manoeuvring and ship berth leaving in/from port of ...

Section 4 – Rules for ships laying at berth in port of ...

Section 5 – Specific rules in port of ...

Chapter III – Ships operation in port of ...

Section 1 – General rules regarding operation of ships

Section 2 – Rules regarding loading and unloading of ships

Section 3 – Special rules regarding dangerous, polluting and project cargo

Chapter IV – Pricing of port services

Section 1 – General principles

Section 2 – Basic port tariffs

Section 3 – Pricing of naval transport related services

Section 4 – Special (specific) tariffs

Chapter V – Safety services provided in ports

Section 1 – Pilotage

Section 2 – Towage

Chapter VI – Other services provided by port administration (collection of waste and garbage, prevention and pollution control, sanitation and depollution of the port waters and territory,

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<sup>44</sup> Order no. 636/2010 for the approval of the Port Regulatory Framework, published in Official Gazette no. 590 of 19/08/2010

shipping agency, ship supply, distribution of electric and thermal energy, telecommunications services, ship bunkers, etc.)

Chapter VII – Acces and movement in port ...

Section 1 – General rules

Section 2 – Identification, access and control of persons, vehicles and goods in port

Part B – Final provisions

In the process of elaborating port bylaw, the port administration must have a consultation with central public institutions, professional organizations and unions legally established. Port bylaws must be approved by the Romanian Naval Authority for the provisions related to the safety of navigation.

#### **4.5.2 Area of application of bylaws**

The provisions of port regulations apply to all natural and legal persons operating in ports in the area of activity of the Administration, except for those areas where military, public order and national security activities are conducted exclusively.

Compliance with the international regulations, agreements and conventions to which Romania is a party regarding the activities of their ports and roadsteads is mandatory for all ships and for all economic operators operating in ports in the Administration activity area.

Compliance with the provisions of port regulations is mandatory for all legal and physical persons operating in ports as well as for all users of services provided in ports in the Administration activity area.

#### **4.5.3 Environmental requirements included in the port bylaws**

The port authority or a port operator may refuse access, receipt, storage, handling, loading or unloading of dangerous goods from their own initiative or upon the request of any natural or legal person when they find that there are elements not in compliance with the application submitted or that, because of changes in the status of the merchandise during transport, this could endanger life, property and the environment.

The port operator is bound to present to the public authorities involved and to the administration an action plan with measures, responsibilities and procedures for intervention in case of events that could jeopardize port infrastructure and superstructure, the environment and life.

Natural and legal persons as well as ships operating in or using services of military ports are required to comply in all circumstances with technical regulations and fire protection regulations

and not to jeopardize, through their decisions and actions, the life and property and the environment.

Ships and port operators operating dangerous goods and petroleum products must comply with the special rules governing their operation so as not to cause environmental pollution.

Port economic operators are required to comply with national and international environmental laws applicable to the activity they carry out in ports.

#### **4.6 Rules and procedures regarding the Harbormaster**

According to the Government Decision no. 1133/2002<sup>45</sup>, the Romanian Naval Authority is the specialized central authority in the field of navigation safety and ship security, subordinated to the Ministry of Transport. The Rules of Organization and Operation of the Romanian Naval Authority detail the following specific attributes:

- fulfillment of the obligations of the state in the international agreements and conventions to which Romania is a party, regarding the field of activity of the Romanian Naval Authority;
- inspection, control and surveillance of navigation;
- Flag State Control and Port State Control
- drafting, approving and, as applicable, submitting to the Ministry of Transport the draft of the normative acts and the mandatory norms;
- coordination of assistance, search and rescue activities in inland waterways and of actions in the event of natural disasters and ship distress;
- waterways protection against pollution by ships;
- sanctioning offenses, investigating events and accidents of navigation;
- the registration and recordkeeping of ships under Romanian flag;
- the registration, endorsement and certification of seafarers;
- technical supervision, classification and certification of ships;
- represents the Romanian state in international bodies in the field of ship transport, on the basis of mandate granted under the law;
- fulfills any specific attributions established by order of the Minister of Transport.

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<sup>45</sup> Government Decision no. 1133/2002 regarding the organization and operation of the Romanian Naval Authority, with further modification and completions



## 5 Rules and regulations to become a port operator

The Government Ordinance no. 22/1999 stipulates that the naval transport activities that can be performed only by authorized economic agents and the authorization criteria are set up by a Minister of transport order

Government Ordinance no. 22/1999, defines the port operator as any economic agent authorized to carry out port services.

Port Administrations have the responsibility to issue authorizations to authorize operators to carry out shipping activities within the maritime ports.

Maintenance and repair of shipping infrastructure, coastal and floating signaling for navigation, maintenance dredging to ensure depths in ports and inland waterways, assistance to ships in the operation of dangerous goods, collection of waste and sewage from ships, waste collection and household waste from ships shall be provided by administrations, directly or through economic operators, in accordance with the legislation in force and under the control of said administrations.

The port administrations in the ports whose lands belong to the public domain of the state and in the ports whose lands belong to the public domain of the administrative-territorial units shall not carry out activities of:

- shipboard operations such as ship loading/unloading, storage, stowage, mooring, sorting, marking, palletizing, packing, containerisation, sacking and other cargo operations, agency, cleaning of ship holdings, bunkering, cleaning and degassing of ship tanks, linkage between seagoing and river vessels;
- extraction dredging;
- ship repair, except for their own ships;
- ship supply, except for their own vessels.

The shipping activities which can only be performed by authorized economic operators and the manner and criteria for authorization are established by order of the Minister of Transports. The Romanian Naval Authority and the economic operators carrying out those activities for their own benefit and / or for personal interest are not subject to authorization

The Law on Public Procurement does not specify special rules for port operators. In the procurement process, the principles underlying the award of public procurement contracts and the organization of solutions contests are: non-discrimination, equal treatment, mutual recognition, transparency, proportionality and assumption of responsibility.

In order to obtain the authorizations to carry out the activities, economic agents must fulfill a set of general criteria:

- fill in a formal application and attach a copy of the constitutive document with the conclusion of the legalization from the court, including the activity according to the CAEN (Classification of Activities in the National Economy) code, Registration certificate with the Commerce Register, containing the Sole Registration Code, Certificate from the Chamber of Commerce, stating that he/she is not bankrupt;
- forward a power of attorney (appointment) to the manager of the activity;
- the manager of the activity can demonstrate his/ her honesty by a criminal record certificate of no criminal convictions for crimes committed in relation to the safety of navigation, environmental protection or crimes against heritage, provided by the Title III of the special part of the Criminal Code of Romania, and for which no rehabilitation has occurred;
- the manager can demonstrate his/ her professional competence either through certificates attesting to the knowledge in the field of activity for which authorization is requested or by a copy of the employment record showing a relevant practical experience of at least 3 years in a company that has actually carried out the business for which authorization is sought;
- certificate of bank credit / bank letter issued by Romanian banks, authorized by the National Bank of Romania, in order to demonstrate the financial capacity to carry out the activity, to certify that the legal person holds open accounts and trades the revenues and payments through the respective bank bank, as well as the creditworthiness of the legal person.

Depending on the category of activities related to the shipping activities for which authorization is requested, the economic agents must fulfill a specific set.

In order to obtain authorization to carry out activities related to vessel operations: ship loading / unloading (IDN), cargo stowage (AM), securing of cargo (AM), cargo storage (DM), cargo hold cleaning (CHMN) ship tank degassing (CDTN), and activities ancillary to ship transport activities such as ship repair outside shipyards (RN), economic agents must:

- prove that they have the permission of the port and /or waterway administration to carry out the activity for which they have applied for authorization (administration approval);
- prove that they have port superstructure elements, such as: adequate storage facilities and technology facilities, owned or leased for at least one year;
- provide evidence that they have the technical endowment needed to carry out such activity, such as: cranes, forklifts, tractors, tools, machinery and facilities for cargo handling;
- for securing the cargo an authorization shall be issued only if there is at least a contract with a port operator for the purpose of rendering services related to the securing of cargo;
- employee list;
- to only use execution personnel, employed in legal conditions, who fulfill the necessary conditions for the confirmation of professional competence and registration with the competent authorities, if the law so provides. Evidence of the fulfillment of this criterion is not to be submitted along with the request of the authorization, but the economic

agent has the obligation to present said documents on the request of the inspection bodies.

- certification of technical capability to produce products, services and equipment in the naval field issued by the Territorial Technical Inspectorate.

In order to obtain the authorization to carry out the activity related to the shipping activities by the Ship Agency (AN), the economic agents must:

- be Romanian legal persons;
- prove that they have the permission of the port and/or waterway administration to carry out the activity for which they have applied for the authorization (administration approval);
- provide evidence that they have the right space for carrying out that activity;
- to prove that they are a specialized economic agent;
- provide an employee list.

In order to obtain the authorization to carry out activities related to the shipping activities such as ship bunkering (BN) and activities ancillary to the shipping activities, extraction dredging (DE), assistance, rescue and refloating (ASRN), diving operations (LS), legal entities must submit the following documents:

- list of vessels (or tank trucks, depending on the means by which they will perform the activity)
- prove that they have the minimum technical equipment necessary for carrying out the activity and certification in accordance with the regulations in force on the safety of navigation, environmental protection, ensuring working and living conditions and other conditions stipulated by law;
- proof that they have the right to use the ships and equipment they are fitted with either by presenting evidence that they are the owners thereof or by submitting a lease contract which entitles them to use said ships and equipment for a period of at least one year; the contract must be recorded in the registers of the competent authority;
- employee list - minimum 5 certified divers. A copy of the diver's books and open-end employment contracts shall be filed;
- to only use execution personnel, employed in legal conditions, who fulfill the necessary conditions for the confirmation of professional competence and registration with the competent authorities, if the law so provides. Evidence of the fulfillment of this criterion is not to be submitted along with the request of the authorization, but the economic agent has the obligation to present said documents on the request of the inspection bodies.
- prove that they have the permission of the port and/ or waterway administration to carry out the activity for which they have applied for the authorization (administration approval);
- provide evidence that they have the appropriate space to carry out their activity;
- ship and crew insurance - Optional.

In order to obtain authorization to carry out security services such as: pilotage of seagoing ships in and out of ports and between berths of the same port, navigation of waterways on seaports, berthing/ unberthing of seagoing ships, towing of seagoing ship in ports, which, having been declared as mandatory, became public services of national interest and until the time of concession can be executed under competitive conditions, legal persons must submit the following documents:

- list of vessels to demonstrate that they have the minimum technical equipment appropriate for the activity, that it has the necessary characteristics and required certificates to confirm acceptability from the point of view of safer navigation, environmental protection and working and living conditions for hired personnel and other conditions provided by law and is registered with the competent authorities. At least one of the basic machinery, such as pilot boat, motor boat or tug boat, must be the property of the economic operator requesting authorization or be in a lease with a mandatory purchase clause;
- proof that they have the right to use the ships and equipment they are fitted with either by presenting evidence that they are the owners thereof or by submitting a lease contract which entitles them to use said ships and equipment for a period of at least one year; the contract must be recorded in the registers of the competent authority;
- employee list -
- to only use execution personnel, employed in legal conditions, who fulfill the necessary conditions for the confirmation of professional competence and registration with the competent authorities, if the law so provides. Demonstrate that the number of execution personnel is high enough to carry out the service on a permanent basis and that it is employed on an individual employment contract. Evidence of the fulfillment of this criterion is not to be submitted along with the request of the authorization, but the economic agent has the obligation to present said documents on the request of the inspection bodies.
- prove that they have the permission of the port and/ or waterway administration to carry out the activity for which they have applied for the authorization (administration approval);
- provide evidence that they have the appropriate space to carry out their activity;
- the specific criteria provided are supplemented by the provisions on restrictions imposed by art. 48 of Government Ordinance no. 42/1997, approved with amendments and completions by Law no. 412/2002, regarding the use, for certain activities, only of vessels under Romanian flag;
- ship and crew insurance - Optional.

In order to obtain authorization to carry out shipping activities in ports and waterways, natural persons authorized to carry out economic activities independently must:

- be a Romanian citizen or a foreign citizen with the right of residence and the right to carry out in Romania the economic activities which they apply for authorization;
- hold the authorization for the carrying out of economic activities independently by natural persons, issued by the mayors of cities, towns, municipalities, respectively of the sectors of Bucharest Municipality, in whose territorial jurisdiction the person resides;

Demonstration of the fulfillment of this criterion may be made after the authorization has been issued but in this case the validity of the authorization issued is conditional upon holding the authorization for carrying out economic activities, issued to the natural person according to Law no. 507/2002 on the organization and carrying out of economic activities by natural persons;

- be registered with the Commerce Registry and the territorial tax authorities;
- be able to demonstrate their honesty by a criminal record certificate of no criminal convictions for crimes committed in relation to the safety of navigation, environmental protection or crimes against heritage, provided by the Title III of the special part of the Criminal Code of Romania, and for which no rehabilitation has occurred;
- be able to demonstrate their professional competence either through certificates attesting to the knowledge in the field of activity for which they are seeking authorization or through relevant practical experience of at least three years in a company that has actually carried out the activity for which they are seeking authorization;
- the list of vessels and/or the minimum technical equipment necessary for the activity and that it has the necessary characteristics, the certificates provided for by the applicable regulations and is, where appropriate, registered with the competent authorities - certified by the ship's legal status;
- hold, where appropriate, licences or certificates attesting to their competence in the steering of ship transport means used in the conduct of their activity;
- prove that they have the approval of the port and/or inland waterway administration to carry out the activity for which it has requested authorization (administration agreement);
- provide evidence that they have the appropriate space to carry out their activity;
- ship and crew insurance.

All contracts concluded by the Administration with port economic operators need to contain their environmental protection obligations, established in accordance with the legislation in force, regarding:

- collecting, treating, storage and recycling of waste resulting from their own activity;
- evacuation of sewage water into the port sewage network;
- sanitation of the territory where they operate.

According to the provisions of Government Ordinance no. 22/1999 in Romania there may be ports whose land is private property. Private harbors may exist as long as they are authorized by the ministry, but in Romania there are no private ports.

## **6 Rules and regulations for using port locations for economic activities other than port services**

Romanian legislation for ports and waterborne transport does not contain any special provisions regarding the conduct of economic activities in ports other than port services. Consequently, for the carrying out of economic activities in the port area, all the legislative requirements in force will be respected without the specific criteria for economic activities in ports at present.

In addition to the conditions provided by the Romanian legislation for the conduct of economic activities, any natural or legal person must prove that they have the acceptance of the port and / or waterway administration to carry out the activity for which they have applied for the authorization (administration agreement).

In Romania, Law 98/2016 on public procurement does not contain specific provisions for the port area.

There are no specific provisions restricting or limiting economic operators to engage in economic activities other than port services in the port area.

There are no specific provisions restricting or limiting the carrying out of certain economic activities other than port services in the port area, provided that it does not contradict the legal provisions in force.

## **7 Incentives for the reduction of the port eco-footprint**

Although international legislation on reducing pollutant emissions is considered, there is no legal framework in Romania to encourage port operators or other port businesses to reduce polluting emissions.

### **7.1 Incentives for port users & port operators**

In Romania there is no legal framework or specific procedures for granting incentives to users of the port infrastructure or port superstructure and to port operators.

### **7.2 Incentives for investors in ports**

In Romania there is no legal framework or specific procedures for granting incentives to investors using port locations.



## 8 Recommendations

On 28<sup>th</sup> March 2018, a national workshop on improving and harmonizing port legislation was organized in Constanta.

The event was attended by representatives of all interested parties, including partners from the DAPhNE project as well as institutions, port operators, universities, etc.

The presentations delivered by the participants included the presentation of the DAPhNE project, highlighting the objectives of package 3, examples of best practices at European level on port regulations, experiences regarding the authorization of activities and the development of investments in Romanian ports and the initial draft of this report.

Later on, debates were held on the presentations, including the report on improving and harmonizing port legislation. The following are recommendations and proposals for changes to legislation resulting from workshop debates and feedback from participants or other stakeholders:

### *1. Regulating the handling and storage of dangerous goods in ports*

Although strict and detailed rules for the transport of dangerous goods for each mode of transport (river, sea, rail and road) to which Romania is a party are in place, regarding the operation and storage of goods in the Danube ports are applicable only provisions of port regulations (where they are adopted), which are very brief.

It is true that there are container ship operators with their own procedures for the operation and storage of dangerous goods including sometime full implementation of the IMDG code, but detailed rules are required to define clear conditions for all operators who receive dangerous goods.

The importance of this regulatory need is given by the high risks to human life and the environment related to potential incidents involving dangerous goods.

### *2. Legal framework in Romania to encourage port operators or other port businesses to reduce polluting emissions*

Port operators are in a position to operate in a competitive environment, which requires them to make large-scale investments and a significant reduction in the profit margin. Therefore, it is difficult for them to choose equipment and technologies that have a lower impact on the environment at the time of developing new projects.

As was presented in Chapter 7, there is no legal framework in Romania to encourage port operators to reduce pollution. The development of such regulations could stimulate economic actors to take steps to protect the environment.

### *3. Simplify administrative procedures for authorizing superstructure development projects*

Lately, significant steps have been taken to simplify administrative procedures for the approval of port development superstructure projects. It is worth mentioning in this respect

the municipalities and the port administrations.

However, port operators consider that there are still steps within administrative procedures that should be removed to facilitate obtaining approvals for development projects.

#### *4. State aid schemes for the development of the port superstructure*

In Subchapter 3.5.1 we have shown that Order no. 1532/2017 concerning the approval of the State aid scheme for investments in the port infrastructure and the intermodal / multimodal local infrastructure related to the Large Infrastructure Operational Program (POIM 2014-2020).

Port operators consider that the possibilities to develop a regulation defining the granting of state aid and investments in the port superstructure should be considered.

#### *5. Development of private-public partnerships in port*

Public-Private Partnership as a form of public-private collaboration can be a viable way to fund infrastructure projects at regional or national level. The size of investments in PPP projects can have important consequences for the economic and social development of the countries in which such partnerships are taking place.

The essence of the public-private partnership is that by using the skills, know-how and private sector management and sharing the risks among partners, the principles of efficiency, effectiveness and economy in the use of public funds are respected.

Law no. 233/2016 regulates the public-private partnership in Romania and the methodological norms for application are to be elaborated by the Ministry of Public Finance.

## References

1. Ordinance no. 22 of January 29, 1999 on the administration of ports and services in ports, republished in Official Gazette no. 69 of 3/02/2003
2. Ordinance no. 42/1997 on sea and inland waterway transport, republished, published in Official Gazette no. 221 of 29/08/1997, with subsequent amendments and completions
3. Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and cancellation of (EC) Council Regulation No. 1083/2006
4. Government Decision no. 398/2015 establishing the institutional framework for the coordination and management of European structural and investment funds and ensuring the continuity of the institutional framework for the coordination and management of structural instruments 2007-2013
5. Government Decision no. 399/2015 on eligibility rules for expenditure under operations financed by the European Regional Development Fund, the European Social Fund and the Cohesion Fund 2014-2020
6. Government Emergency Ordinance no. 40/2015 regarding the financial management of the European funds for the programming period 2014-2020, published in Official Gazette no. 746 of 6/10/2015
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- Port Administration" - Co. Constanta, published in Official Gazette no. 642 of 16/07/2004
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  16. Ordinance no. 19/1997 regarding the transport, text published in Official Gazette no. 200 of 20/08/1997, with subsequent amendments and completions
  17. Law no. 197 of 04.11.1998 for the approval of Government Ordinance no. 19/1997 regarding the transport, published in Official Gazette no. 425 of 11/11/1998
  18. Law no. 412 from 26.06.2002 for the approval of the Government Ordinance no. 42/1997 on civil navigation, published in Official Gazette no. 500 of 11/07/2002
  19. Government Decision no. 245/2003 for the approval of the Regulation for application of GO no. 42/1997 on the maritime transport, published in Official Gazette no. 185 of 25.03.2003
  20. Government Decision no. 76 of 11.02.2009 on the organization and functioning of the Ministry of Transport and Infrastructure, published in Official Gazette no. 89 of 13/02/2009
  21. Law no. 103/2013 regarding the approval of Government Ordinance no. 19/2012 for amending and supplementing Government Ordinance no. 42/1997 on maritime and inland waterways, published in Official Gazette no. 211 of 15/04/2013
  22. Government Decision no. 21/2015 on the organization and functioning of the Ministry of Transport, published in Official Gazette no 50 of 21/01/2015, with subsequent amendments and completions
  23. Law no. 477/2004 on the Code of Conduct for Contract Staff of Public Authorities and Institutions, published in Official Gazette no. 1105 of 26/11/2004
  24. Order of the Minister of Transport no. 948/2013 for the application of the Minimum Safety Creation Principles adopted by the Assembly of the International Maritime Organization through Resolution A.1047 (27) of 30/11/2011
  25. Order of the Minister of Transport no. 39/2014 regarding the establishment of the minimum safety crew for ships under Romanian flag, published in Official Gazette no. 87 of 04/02/2014
  26. Ordinance no. 131 of 31 August 2000 on the establishment of measures to facilitate port exploitation, published in Official Gazette no. 434 of 3/11/2000
  27. Government Decision no. 876/2007 for establishing and sanctioning contraventions to the ship transport regime from 01/08/2007 published in Official Gazette no. 557 of 15/08/2007
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- the carrying out of the shipping activities in ports and waterways, published in Official Gazette no. 638 of 18/09/2007
30. Order no. 37/2014 on the authorization of economic operators for the activity of public transport of passengers and/or goods by inland waterways, published in Official Gazette no. 90 of 05/02/2014
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  43. Law no. 337 of 17.07.2006 for the approval of the Government Emergency Ordinance no. 34/2006 on the awarding of public procurement contracts, public works concession

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60. Government Ordinance no. 88 of 30/08/1999 regarding the establishment of rules for the combined transport of goods, published in Official Gazette no. 423 of 31/08/1999
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62. Proposal for a Directive of the European Parliament and of the Council amending Directive 92/106 / EEC on the establishment of common rules for certain types of combined transport of goods between Member States - COM (2017) 648 final
63. Decision no. 16 of 12 February 2018 on the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States - COM (2017) 648 final, published in Official Gazette no. 154 of 19/02/2018
64. Law no. 176 of July 18, 2017, regarding the transfer of some buildings related to the public infrastructure of the state and the administration of the Ministry of Transport, concession of the National Company of the Danube Maritime Ports Administration Co. Galati in the public domain of Tulcea County
65. Decree no. 641 of July 17, 2017 for the promulgation of the Law on the transmission of some buildings related to the public infrastructure of the state and the administration of the Ministry of Transport under the concession of the National Company Danube Maritime Ports Administration Co. Galati in the public domain of Tulcea County
66. Government Decision no. 1133 / 2002 on the organization and functioning of the Romanian Naval Authority, published in Official Gazette no. 784 of 29/10/2002, , with subsequent amendments and completions
67. National Plan for Preparedness, Response and Cooperation in case of Marine Pollution with Hydrocarbons and Other Harmful Substances, approved by the Government Decision no. 1593/2002, published in Official Gazette no. 94 of 14/02/2003
68. Order no. 636/2010 for the approval of the Port Framework Regulation, published in Official Gazette no. 590 of 19/08/2010

69. Port regulation of the Romanian maritime ports under the administration of the National Company "Maritime Ports Administration Co." Constanta, no. 31732 of 26/10/2012
70. Harbor regulation of ports located on the Danube - Black Sea Canal and the Poarta Alba - Midia, Navodari Canal, National Company Navigable Channels Administration, Constanta, 2015
71. Port regulations of the Romanian maritime and river ports under the administration of the National Company "Maritime Danube Ports Administration" Co. Galati
72. Regulation of organization and functioning of the Autonomous Administration "Lower Danube River Administration" Galati from 18.04.2003
73. Rules of organization and operation of the National Company "Danube Maritime Ports Administration" Co. Galati of 19.10.2017
74. Organization and Functioning Regulation of the Ministry of Transport of 2017
75. Regulations on the issuing of licenses and / or work permits necessary for the activity in the ports of Constanta, Midia, Mangalia, Basarabi and the Tomis marina, National Company Maritime Ports Administration Co. Constanta
76. Master Plan of the Port of Constanta, National Company Maritime Ports Administration Co. Constanta, 2014
77. Decision no. 518 of 24/08/1998 regarding the establishment of the National Company "Maritime Danube Ports Administration" Co. Galati, published in Official Gazette no. 332 of 3/09/1998
78. Decision no. 492/2003 regarding the organization and functioning of the Autonomous Agency of the Lower Danube Galați, published in Official Gazette no. 315 of 12/05/2003
79. Decision Nr. 519 of 24 August 1998 on the establishment of the National Company "Navigable Channels Administration" Co. Constanta, published in Official Gazette no.332 of 3/09/1998
80. Ordinance no. 79 of 24 August 2000 on the regime of navigation on the Danube-Black Sea Channel and the Poarta Albă-Midia-Năvodari Channel, published in Official Gazette no. 413 of 30/08/2000
81. Law 287/2009 on the Civil Code, republished in Official Gazette no. 505 of 15/07/2011
82. Law no. 50/1991 regarding the authorization of the execution of construction works, published in Official Gazette no. 163 of 07/08/1991 with subsequent amendments and completions
83. Directive 2011/92/EU, Environmental Impact Assessment - EIA Directive
84. Decision no. 445/2009 on the assessment of the impact of certain public and private projects on the environment, published in Official Gazette no. 481 of 13/07/2009
85. Order 135/2010 approving the Methodology for the application of environmental impact assessment for public and private projects
86. Decision no. 1076/2004 on establishing the procedure for carrying out the environmental assessment for plans and programs, published in Official Gazette no. 707 of 5/08/2004
87. Government Decision no. 1000/2012 on the reorganization and functioning of the National Environmental Protection Agency and the public institutions under its control



88. Decision no. 48/2013 on the organization and functioning of the Ministry of Environment and Climate Change and on the amendment of certain normative acts in the field of environment and climate change
89. Regulations on the organization and operation of the Environmental Protection Agency, Constanta, issued by the Environmental Protection Agency Constanta, Annex to Decision 58 of 26/06/2017
90. Law no. 98/2016 on public procurement, published in Official Gazette no. 390 of 23/05/2016
91. EU Regulation no. 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network
92. Emergency Ordinance no. 107/2017 of 20 December 2017 for the amendment and completion of some normative acts with impact in the field of public procurements, published in Official Gazette no. 1022 of 22/12/2017
93. Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund
94. Commission Regulation (EEC) No 1084 / 2017 of 14 June 2017 amending (EU) Regulation 651/2014 on aids for port and airport infrastructure, notification thresholds for aids for cultural and heritage conservation, aids for sport infrastructure and multifunctional leisure facilities
95. Order no. 1532/2017 regarding the approval of the State aid scheme for investments in the port infrastructure and in the intermodal/multimodal local infrastructure
96. Government Ordinance no. 27/2002 on the regulation of claims settlement activity, published in Official Gazette no. 84 of 1/02/2002, updated 2016
97. <http://www.portofconstantza.com>
98. <http://www.afdj.ro/ro>
99. <https://www.acn.ro/>
100. <http://www.romanian-ports.ro/>
101. <http://www.constitutiaromaniei.ro>

## 9 Annex 1 List of all Romanian Danube ports

*Order no. 709 of 10.09.2010 regarding the approval of the List of ports and operating sites open to public access and their limits, whose shipping infrastructure belongs to the public domain of the state, as well as the List containing the limits of the harbor councils and the anchorages includes the following:*

1. Ports where the infrastructure belongs to the public domain of the state and is concessioned to NC Maritime Ports Administration Co. Constanța
  - Constanța
  - Basarabi Zone
  - Midia
  - Mangalia
  - Peninsula V6
  - Tomis
2. Ports where the infrastructure belongs to the public domain of the state and is concessioned to NC Administration of the Navigable Canals Co. Constanța:
  - Basarabi
  - Medgidia
  - Ovidiu
  - Luminița
3. Ports where the infrastructure belongs to the public domain of the state and is concessioned to NC Maritime Danube Ports Administration Co. Galați:
  - Mahmudia
  - Tulcea
  - Chilia Veche
  - Isaccea
  - Galați
  - Brăila
  - Smârdan
  - Măcin
  - Gura Arman – work station
  - Turcoaia – work station
  - Hârșova
4. Ports where the infrastructure belongs to the public domain of the state and is concessioned to NC River Danube Ports Administration Co. Giurgiu:
  - Cernavodă
  - Călărași
  - Chiciu – work station
  - Ostrov – Regie – work station
  - Oltenița
  - Giurgiu
  - Corabia
  - Bechet

- Rast – work station
- Calafat
- Cetate
- Gruia
- Drobeta-Turnu Severin
- Orşova
- Dubova
- Tişoviţa
- Şviniţa
- Drencova
- Moldova Veche
- Baziaş

## 10 Annex 2 List of fees applicable in all Romanian Danube ports

### A. Fees applied by NC Maritime Ports Administration Co. Constanța

1. Basic port tariffs
  - a) Port access tariff
  - b) Quay tariff
  - c) Basin Tariff
2. Unique tariff rates for the Utilisation of Port Infrastructure by certain types of vessels
  - a) Tariff rates for technical vessels
  - b) Tariff rates for inland navigation vessels
  - c) Tariff rate for fishing vessels
  - d) Tariff rate for vessels in conservation/abandoned
  - e) Tariff rate for riding at mooring buoy in Midia port
  - f) Tariff rate for the LPG vessels which perform operations in the MARI-GAZ terminal of the Midia port
  - g) Tariff rate for the LPG vessels which perform operations in the CALLATIS GAS terminal of the Mangalia port
  - h) Tariff rates for vessels under repair by the dock
3. Special Tariffs
  - a) Tariff rates for supervision, security and control of loading/discharging operations of maritime and river vessels
  - b) Tariff rates for operation at TTS sea-buoys
  - c) Tariff rate for utilization the Passengers Terminal by the passengers from the vessel
  - d) Tariff rate for temporary usage of container scanner
4. Tariffs for Specific Port Utilities and Services
  - a) Tariff for water supply
  - b) Tariff for power supply
5. Other tariffs
  - a) Tariffs applied by the Administration for access and use of rail lines
  - b) Tariffs for work permit in Midia and Mangalia Harbors, newsletters and pilotage
  - c) Tariffs for work licenses
  - d) Tariff for issuance of identification and port access cards
  - e) Tariffs for issuing workbooks for port workers

The values of the tariffs applied for each situation are established periodically and are published on the company's website: [www.portofconstantza.com](http://www.portofconstantza.com)

### B. Fees applied by NC Administration of the Navigable Canals Co. Constanța

1. Tarife pentru punerea la dispozitie a infrastructurii de transport naval pentru nave și convoaie
  - a) Canal transit tariffs for barges in convoy and river vessels charged with (level - headed, depending of the distance covered)
  - b) Canal transit tariffs (level – headed depending of the distance covered)
  - c) Tariff for new shipsbulding (depending on vessel type)

2. Tariffs for the use of port and naval transport infrastructure
  - a) Use of port infrastructure by vessels not intended for the carriage of goods
  - b) Use of port infrastructure by inland waterway vessels
  - c) Use of port infrastructure by river-sea vessels
  - d) Tariff for power supply
3. Tariffs for permits to access the ports (for vehicles)

The values of the tariffs applied for each situation are established periodically and are published on the company's website: [www.acn.ro](http://www.acn.ro)

### **C. Fees applied by NC Maritime Danube Ports Administration Co. Galati**

1. Port tariffs - use of naval transport infrastructure
  - a) Quay tariff
  - b) Port infrastructure access
2. Port tariffs - environmental services
  - a) Tariff the sewage collection from ships and treatment service
  - b) Tariff for assistance for transfer / bunker oil and petrochemical products
  - c) Tariff for the collection of household waste from ships
  - d) Tariff for the capture of hydrocarbon residues from ships
  - e) Tariff for collection, packaging, transport and disposal of hazardous waste from ships
3. Port tariffs – other services
  - a) Tariff for water supply
  - b) Tariff for power supply
  - c) Tariff for issuing workbooks for port workers
  - d) Tariff for ISPS
  - e) Tariff for issuing of accept and visa (for performing activities)
  - f) Tariff for pilotage service
4. Tariffs for hydrographic measurement services
  - a) hydrographic measurements
  - b) Measurement processing
5. Tariffs for provision of services with own property
  - a) Tariff for boat use
  - b) Tariff tug use
  - c) Tariff for use of multifunctional ship
  - d) Tariff for motorboat use
  - e) Tariff for minibus use
  - f) Tariff for van use
  - g) Tariff for use port platform for parking

The values of the tariffs applied for each situation are established periodically and are published on the company's website: [www.romanian-ports.ro](http://www.romanian-ports.ro)

#### **D. Fees applied by NC River Danube Ports Administration Co.Giurgiu**

1. Port tariffs for use of naval transport infrastructure
  - a) Quay tariff
  - b) Tariff for use of port basin
  - c) Tariff for use of naval transport infrastructure by passenger ships
  
2. Port tariffs- providing of services
  - a) Tariff for mooring / stationary on pontoons
  - b) Tariff power supply
  - c) Tariff for water supply
  - d) Tariff for maintenance of sewerage networks, septic tanks
  
3. Port tariffs- environmental services
  - a) Tariff for technical assistance in the prevention of pollution
  - b) Tariff for the intervention boat
  - c) Tariff for collection of waste from ships, assistance for pollution prevention and control
  - d) Tariff for collecting and separation of the water mixture with hydrocarbons from ships in depollution complexes
  - e) Tariff for collection and treatment of sewage from ships in depollution complexes
  - f) Tariff for collection of household waste from ships to depollution complexes
  - g) Tariff for collection, temporary storage and disposal of non-chlorinated engine oils, transmission and lubrication from ships to depollution complex
  - h) Tariff for collection, temporary storage and disposal of hazardous waste (absorbent materials soaked in petroleum products) from ships to depollution complex
  
4. Port tariffs - other services
  - a) Issuance Notice of principle for the execution of investment works, expansion and modernization carried out by third parties within the port boundaries
  - b) Issue CTE Notice for execution of investment, extension and upgrading works by third parties within the port boundaries
  - c) Tariff for issuing workbooks for port workers
  - d) Tariff for annual visa for port workers workbooks
  - e) Issuance Notice of principle for the execution of port activities
  
5. Tariff applied to the access ways in the port
6. Tariff for use of naval transport infrastructure by Ro-Ro ships

The values of the tariffs applied for each situation are established periodically and are published on the company's website: [www.apdf.ro](http://www.apdf.ro)

## **11 Annex 3: List of port bylaws of the Romanian Danube ports**

- 1. Port regulation of the Romanian maritime ports under the administration of the National Company Maritime Ports Administration Co. Constanta, no. 31732 of 26/10/2012*
- 2. Port regulation of ports located on the Danube - Black Sea Canal and Poarta Alba-Midia-Navodari Channel, National Company Maritime Port Administration Co. Constanta, 2015*
- 3. Port regulation of the Romanian maritime and river ports under the administration of the National Company "Maritime Danube Port Administration" Co. Galati*