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Dock Work Regulation in Italy and Spain: a Difficult Balance of Competition and Workers' Protection

Contents: **1.** Background. **2.** Research questions and methodology. **3.** Dock work regulation in Italy. **3.1.** Historical remarks. **3.2.** The current regulation. **3.3.** The single collective agreement for dock workers. **4.** Dock work regulation in Spain. **4.1.** Historical remarks. **4.2.** The current regulation. **4.3.** The framework agreements regulating labour relations in the dock sector. **5.** Conclusive remarks.

1. *Background*

Globalisation has made it increasingly crucial for a region to have efficient ports. As regards Europe, ports play an important role both in the exchange of goods within the internal market and in providing a link between peripheral areas and the continent. But most of all, ports represent key gateways, connecting Europe to the rest of the world[1]. For these reasons, the EU market needs efficient and competitive ports. Port bottlenecks due to work-related issues can cause congestion, extra emissions and additional costs for shippers, transport operators, consumers and society as a whole. The efficiency and competitiveness of a port depends not only on its geographic location, but also and above all on its logistical performance, which may depend on the adequacy of infrastructure, the quality of services, the degree

[1] 74% of goods entering or leaving Europe travel by sea, and Europe boasts some of the best port facilities in the world (Cf. the data from the EU Commission on: https://transport.ec.europa.eu/index). About the evolution of maritime trade and port logistics, see, among many: VANELSLANDER, SYS, *Port Business, market challenges and management actions*, University Press Antwerp, 2015; MUSSO, FERRARI, BENACCHIO, BACCI, *Porti, lavoro, economia. Le regioni portuali di fronte alla rivoluzione logistica*, Cedam, 2004.

of interconnection with land networks, and, to a large extent, the organisation of labour[2]. As a consequence, the efficient regulation of dock work, which allows for a good and safe organisation of tasks and a sufficient protection of workers, is of strategic importance for a socially sustainable growth of the EU maritime sector.

Dock work regulation has always been tricky. In fact, dock work has very peculiar characteristics, starting with the extreme variety of activities and operations that dock workers are expected to carry out[3]. In addition, dock work is *per se* intermittent, due to unpredictable work peaks. This is why the port sector has always been characterised by the need for companies to rely on temporary labour[4]. For many years, this necessity has been satisfied by the presence in the ports of pools of specialised workers, to whom companies would turn in times of need[5]. Also, a port is traditionally a place with a dichotomous nature. On the one hand, it represents a transit point open to free competition, on which various commercial interests spill over. On the other hand, it is a public asset and a national frontier[6]. This is the main reason why dock work regulation historically has private and public elements. Finally, the need to ensure high standards of safety requires various precautions. In fact, technological change has resulted in significant improvements for the safety of dock workers, but it has also introduced new hazards, and port work is still "an occupation with very high accident rates"[7].

For all these reasons, many European countries have always had a special organisation of dock work, characterised by market barriers, restrictive practices and State-controlled systems with monopolistic features. With the advent of the EU, these systems had to come to terms with neoliberal policies

[2] On this topic, see: Bottalico, *Il lavoro portuale ai tempi delle meganavi*, Egea, 2021, p. 49 ff.; Bologna, *Le multinazionali del mare. Letture sul sistema marittimo-portuale*, Egea, 2010, pp. 45-108.

[3] Ales, Passalacqua, *La fornitura di lavoro portuale temporaneo*, in Xerri (ed.), *Impresa e lavoro nei servizi portuali*, Giuffré, 2012, p. 295.

[4] See, among many: Lefebvre, D'Ovidio, Pescatore, Tullio, *Manuale di diritto della navigazione*, Giuffré, 2022; Ales, Passalacqua, *cit.*; D'Aste, *Il lavoro portuale temporaneo ai sensi dell'art. 17 della legge 84/94. Analisi e temi di riflessione*, in *QP*, 2011, pp. 4-7.

[5] Van Hooydonk, *The Spanish dock labour ruling (C-576/13): mortal blow for the dockers' pools*, in *TR*, 2016, 7-8, p. 276.

[6] Capuano, Gagliardi, *Il caso del porto di Piombino: attualità, problemi, prospettive*, in Xerri (ed.), *Impresa e lavoro nei servizi portuali*, Giuffré, 2012, p. 401.

[7] ILO, *Code of practice: Safety and health in ports (Revised 2016)*, 2018, p. 2.

and the EU Treaties principles on free competition[8]. Recently, the most important challenge of dock work regulation has become that of finding concrete solutions to balance economic freedom and efficient competition with workers' protection and safety[9].

Thus far, each EU Member State continues to maintain its own dock work discipline, risking to lead to an uneven playing field for port companies within the internal market. These distortions of competition may undermine the EU maritime and transport policy. Indeed, the EU Commission has tried several times to regulate market access to port services, but has met with the opposition from some stakeholders, in particular trade unions. In fact, trade unions saw these attempts as a way to liberalise the sector without taking into account social and labour protection. Two Directive proposals were therefore rejected by the EU Parliament[10]. In 2017, EU Regulation 2017/352 was issued, establishing a regulatory framework for the provision of port services, but the cargo-handling sector does not fall within its scope[11].

[8] For an overview of port labour regulations in the EU, see: Van Hooydonk, *Port labour in the EU*, Portius, 2013.

[9] Xerri, *Ordinamento portuale e settore trasporto*, in Xerri (ed.), *cit.*, p. 19; Bottalico, *Towards a common trajectory of port labour systems in Europe? The case of the port of Antwerp*, in *CSTP*, 2019, p. 9. Undoubtedly, this is not an issue that exclusively concerns the port sector. On the contrary, it is part of a broader problem involving workers' protection in general, which is seen by the ECJ as a limitation on the economic freedoms guaranteed by the EU Treaties. On this topic, see, among others: Countouris, De Stefano, Lianos, *The EU, Competition Law and Workers' Rights*, in *UCLRP*, 2021, 2; Lianos, Countouris, De Stefano, *Re-thinking the competition law/labour law interaction: Promoting a fairer labour market*, in *ELLJ*, 2019, 3, p. 291 ff.; Carril Vázquez, *El debate actual sobre la protección social de los trabajadores como límite a la libre prestación de servicios en el mercado interior de la Unión Europea*, in *AFDUC*, 2007, 11, pp. 107-116; Schömann, *Collective bargaining and the limits of competition law*, ETUI Policy Brief, 2022. Online: https://www.etui.org/sites/default/files/2022-02/Collective%20bargaining%20and%20the%20limits%20of%20competition%20law_2022.pdf.

[10] The reference is to the proposed Directives submitted in the early 2000s. For a reconstruction of the proposals and an explanation of their outcome, see: Fernández Prol, *Relacion laboral de estiba portuaria y Libertad de establecimiento*, in Carballo Piñeiro (ed.), *Retos presentes y futuros de la política marítima integrada de la Unión europea*, Bosch, 2017, pp. 225-248; Verhoeven, *Dock Labor Schemes in the Context of EU Law and Policy*, in *ERS*, 2011, 2, pp. 150-166.

[11] Regulation 2017/352 of the EU Parliament and of the Council of 15 February 2017.

2. *Research questions and methodology*

Against the described background, the present research analyses the dock work regulatory system of two EU Member States with a strong maritime tradition: Italy and Spain. The first aim of this analysis is to identify strengths and weaknesses of the two systems and understand their approach in balancing the market dynamics with workers' protection. In addition, the research is carried out with a view to the harmonisation of the subject at the EU level, in order to understand whether it would be useful and what could be the preferable approach of a possible EU legislation.

These two legal systems were chosen for several reasons. On the one hand, they have a similar historical context and comparable dock work legislations. Indeed, the systems are very similar to one another: in both States there are pools of specialised and properly trained dock workers to cope with work peaks, who detain a priority in supplying temporary labour. Also, both legal systems have a troubled history of convictions by the European Court of Justice (ECJ) because of their dock work regimes. On the other hand, the two systems are different from the point of view of collective bargaining and collective agreements' effects. As known, the Spanish legal system, unlike the Italian one, is characterized by sectoral collective agreements with statutory status, statewide scope and *erga omnes* effect[12]. For these reasons, it is worth analysing and comparing two systems that are at once so similar and so different.

The research will be developed as follows.

In the first part (paragraph 3), the Italian system will be analysed, from its historical evolution to the current regulation. Conversely, the second part (paragraph 4) will be devoted to the Spanish system. The Italian system will be analysed first because of the chronological succession of the rulings that led to dock work reforms in both Italy and Spain: the Italian regulation was considered to be incompatible with EU law already in 1991, while the Spanish one only had the same fate in 2014. For both systems, a historical overview will be outlined. This outline responds to the need to understand the deep reasons that led to the existing regulations, which are the result of a concatenation of events and evolutions. Thereafter, the current legislations

[12] Cf. Royal Decree No. 2 of 23 October 2015 (*Texto Refundido de la Ley del Estatuto de los Trabajadores*), Title III.

and collective agreements will be analysed. Lastly, the most relevant considerations will be taken up and developed in the conclusion (paragraph 5).

3. *Dock work regulation in Italy*

3.1. *Historical remarks*

The creation of dock workers' guilds in Italy dates back to the Middle Ages. Dock workers, just as other workers did in the same era, gathered to defend their common interests and for mutualistic purposes. For example, the so-called *Compagnia dei Caravana* was founded in the port of Genoa in the 14th century[13].

These guilds continued to operate until the mid-19th century, reaching large numbers of associates and very complex structures, regulated by internal statutes[14]. They were abolished in 1864[15], causing huge problems of labour exploitation that resulted in a dock work crisis. In fact, dock workers were limited in their power to bargain fair wage conditions, as they had to bargain individually and no longer as a group. In addition, they lost control over the labour market: following the abolition of the guilds, they were no longer guaranteed enough shifts for a sufficient income. Also, many new workers joined the market, working mostly on a casual basis. These workers were day labourers selected through a lottery. The new system was called "free choice system", referring to the contractor's discretion to hire as many workers as he deemed necessary from time to time. In these years dock workers were *de facto* divided into occasional and permanent workers[16]. This *de facto* division characterised the entire period between the end of the 19th century and the first part of the 20th.

In the first half of the 20th century, the fascist government sought to determine a balance between supply and demand for dock labour by restor-

[13] Passaniti, *Eguaglianza, diritto di associazione e laicità. Il significato costituzionale dell'abolizione delle corporazioni nel 1864*, in Maffei, Varanini (eds.), *L'età moderna e contemporanea. Giuristi e istituzioni tra Europa e America*, Firenze University Press, 2014, p. 112.

[14] Maiullari, *Corporazioni di mestiere e quartieri urbani. Coabitazione e coesione in una città portuale del Mediterraneo settentrionale: Genova tra Otto e Novecento*, in *MEFR*, 1993, 2, p. 482.

[15] L. No. 1797 of 29 May 1864.

[16] Bettini, *I vantaggi illusori del lavoro precario. I portuali sotto il fascismo*, in *SS*, 2003, 2, p. 450.

ing the labour supply blockade. This measure aimed at creating a political consensus among masses of workers traditionally close to socialism, as well as at avoiding social tensions in ports, which represented the country's main commercial gateways[17]. Royal Decree No. 166 of 24 January 1929 put an end to the free-choice system and restored the port labour reserve in favour of the newly established *Compagnie*, which resembled the previous guilds. Nevertheless, the new *Compagnie* had less self-government power than the old guilds, as wages were set by the administrative port authority[18].

The *Compagnie* established during the fascist-era were pools of dock workers who supplied port companies with the labour they needed to carry out cargo-handling activities. With the end of the corporate-fascist system, the *Compagnie* remained as cooperative societies[19]. Truth to be told, the legal nature of the *Compagnie* is still debated, but the prevailing doctrinal opinion recognises in the legal status and structure of these pools a privatistic character, tending to qualify them as cooperative societies or labour cooperatives with a mutualistic purpose[20].

In 1942, the Italian Navigation Code was enacted[21]. Its Art. 110 stipulated that the conduct of port operations was completely reserved for the *Compagnie*. In other words, port operators could not use their own employees to carry out cargo-handling activities: they had to turn to the *Compagnie*. In addition, the *Compagnie* predetermined the number of dock workers to be put to work, according to parameters established *ex ante* at their own discretion. Needless to say, this monopolistic dock work system greatly influenced the organisation of port operators[22].

The *Compagnie*'s activity fell under the scheme of labour interposition. As is well known, the disapproval of the Italian legal system toward interposition has been gradually fading, also due to the influence of EU law[23]. Law

[17] Bettini, *cit.*, p. 488.

[18] Cfr. Fragola, *L'ordinamento corporativo del lavoro portuale e le compagnie delle Maestranze*, in *DM*, 1938, 2, p. 2.

[19] The structure of the *Compagnie* has remained similar to that of the fascist era, although their status has changed, and their organisation has been democratised. Bettini, *cit.*, p. 489.

[20] Minale Costa, *Il diritto del lavoro nei porti. Il lavoro portuale tra regolamentazione legale e contrattuale*, Giappichelli, 2000, p. 55; Carbone, *Le compagnie portuali: natura, funzioni, responsabilità*, in *LD*, 1987, p. 525.

[21] Royal Decree No. 327 of 30 March 1942.

[22] Carbone, Celle, Lopez De Gonzalo, *Il diritto marittimo*, Giappichelli, 2011, p. 145.

[23] Ales, Passalacqua, *cit.*, p. 298.

No. 1369 of 23 October 1960 on the prohibition of labour interposition was finally repealed by Decree No. 276 of 10 September 2003. However, in the port sector a form of interposition was allowed far before the repeal of Law No. 1369/1960: the activity of the *Compagnie* was considered an exception to the general principle of the ban on interposition[24].

The presence of the *Compagnie* prevented the spread of occasional labour. Dock labour interposition did not result in workers' rights being threatened: the flexibility of the system did not lead to deregulation and precariousness but to a secure environment, characterised by a strict professional regulation. Dock workers were registered in special lists and provided with a booklet certifying their status and membership. Their registration was subject to age limits, possession of Italian citizenship, residence in the port municipality, absence of criminal convictions, good moral and civil conduct and proof of a healthy body[25].

The *Compagnie* solely supplied personnel to port companies until 1994[26]. The system was clearly contrary to EU principles and, in 1991, a ruling of the ECJ deemed the Italian dock work regulation contrary to EU competition law[27]. In particular, the dock labour reserve in favour of the *Compagnie* (Art. 110 of the Italian Navigation Code) was considered to be incompatible with EU law, since the *Compagnie* held a dominant position, which they used for abusive purposes. The ECJ's interpretation of abusive conduct in this context is quite broad: it includes the imposition of purchase or selling prices or unnecessary performances, the limitation of production or technical development and the application of different contractual terms to equivalent performances[28]. In this sense the *Compagnie* were engaged in abusive conducts[29].

[24] See above all Biagi, *Cooperative e rapporti di lavoro*, Franco Angeli, 1983, p. 250 ff.

[25] Royal Decree No. 2476 of 1923, Artt. 155, 152, 194. See: Raffaelli, *La somministrazione di lavoro portuale*, Ca' Foscari University, 2009, p. 21.

[26] Ales, Passalacqua, *cit.*, p. 300.

[27] ECJ, C-179/90, *Merci Convenzionali Porto di Genova SpA v. Siderurgica Gabrielli SpA*, 1991, Para. 19-20. See: Munari, *Compagnie portuali, imprese concessionarie e operazioni di imbarco e sbarco: il diritto comunitario e la corte di giustizia*, in *DM*, 1991, 4, p. 1128 ff.

[28] Minale Costa, *cit.*, p. 88.

[29] Ales, Passalacqua, *cit.*, pp. 306-308.

3.2. *The current regulation*

Law No. 84 of 28 January 1994 abolished the dock labour reserve in favour of the *Compagnie* and required for the transformation of all the *Compagnie* into cooperatives or common companies. These are still involved in the provision of temporary dock labour, but their legal status is regulated by Art. 17 of Law No. 84/1994. Therefore, they are often called "Art. 17 companies".

As mentioned, the temporary dock labour supply was open to competition, as any company or cooperative can now carry out this activity, as long as it obtains an authorization from the Port Authority. Although they do not enjoy a monopoly on dock work, Art. 17 companies still play a key role in Italian ports[30]. Their sole purpose is to temporarily lend to port companies the workforce they need as a special type of labour interposition. Also, Law No. 84/1994 states that they must have their own resources and their personnel must be properly trained for carrying out port operations. The results of the training are verified by the Port Authority, which administers the list of temporary workers who have completed the training.

To summarise, there are two types of companies in the current framework: port companies engaged in port operations (regulated by Art. 16 and Art 18 of Law No. 84/1994) and Art. 17 companies, which supply temporary workers to port companies. Artt. 16 and 18 companies perform port operations through their own staff and, during intense work peaks, they turn to Art. 17 personnel.

It could be stated that Law No. 84/1994 liberalised dock work[31]. More precisely, it created a "controlled liberalisation"[32]: both Artt. 16 and 18 companies and Art. 17 companies need a special authorisation from the Port Authority, and the dock workers' register is also administered at a public level. This major role of the Port Authority certainly has the consequence of restricting full competition, but it is necessary because of the limited port space

[30] On the strategic importance of Art. 17 companies, see: BENVENUTI, *Ruolo e funzioni dell'art. 17 nell'organizzazione del lavoro portuale del porto di Genova*, in *QP*, 2011, pp. 45-47.

[31] L. No. 84 of January 28, 1994, Art. 18. See: CARBONE, *Dalla riserva di lavoro portuale all'impresa terminalista tra diritto interno, diritto comunitario e diritto internazionale*, in *DM*, 1992, 2, p. 599 ff.

[32] BRIGNARDELLO, *I servizi portuali alle merci: le imprese autorizzate per l'espletamento di operazioni portuali e "servizi portuali"*, in XERRI (ed.), *cit.*, p. 189; XERRI, *cit.*, p. 20.

and the public interests involved. In other words, controlled liberalisation consists of a system that combines competition with security optimization within a regulated market.

Ultimately, dock workers can be hired either by the port companies themselves, or by Art. 17 companies that then send them temporarily to work for port companies. If a port company needs temporary labour, it can only turn to Art. 17 companies. Conventional labour supply agencies come into play only if Art. 17 companies are short of personnel[33]. The current regulation, which sets a prerogative in favour of Art. 17 workers over those of conventional agencies, ensures safety and protects dock workers' employment.

Prior to 2020, a third category of workers could – in some cases – carry out port operations. In fact, shipowners could perform cargo-handling through their own seafarers. This practice is called self-handling. In 2020, an amendment to Law No. 84/1994[34] was enacted, stating that self-handling is only admissible if the labour demand cannot be met through the personnel of Art. 17 companies and if the ship is equipped with adequate means and suitable personnel, who must be dedicated exclusively to port operations. This amendment was necessary for safety reasons, that is, to prevent inadequately trained workers from carrying out complex and dangerous operations[35]. According to a doctrine[36], the discipline thus amended would have the effect of restoring the system prior to the 1994 reform, which had been censured by the ECJ[37]. As a matter of fact, the incompatibility with EU law of the pre-1994 Italian framework was due to the fact that the execution of port operations was completely reserved to the *Compagnie*, while the current regulatory framework allows port companies under Artt. 16 and 18 to use their own personnel. In addition, the European regulatory framework must be applied as interpreted by the ECJ. In the *Commission v. Spain* ruling, the Court, while censuring the Spanish dock system, considered among the various admissible solutions the possibility of "creating a reserve of workers

[33] L. No. 84, 1994, Artt. 16-17.

[34] Decree No. 34 of 19 May 2020, Art. 199 *bis*.

[35] On self-handling and the 2020 amendment, cf.: Faggioni, *Lavoro portuale: una svolta inattesa nella giurisprudenza europea. Spunti di riflessione a partire dalla pronuncia Katoen della Corte di giustizia dell'UE (cause riunite C-407/19 e C-471/19)*, in *DLRI*, 2023, 3, p. 491 ff.

[36] Zunarelli, *La (contro)riforma del regime dell'autoproduzione del regime delle operazioni portuali: il nuovo art. 16 comma 4 bis della l. n. 84/1994*, in *RDN*, 2020, 2, p. 1247.

[37] ECJ, C-179/90, *Merci Convenzionali*, *cit.*

managed by private companies, which operate as temporary employment agencies and make workers available to port companies"[38]. The recent *Katoen* ruling goes even further: the Court shows an openness toward legal systems that completely reserve port operations to recognised dock workers[39]. The solution of the *Katoen* case is based on the relevance of security and safety matters, but it represents a first step towards a greater consideration of social rights in the single market: it is not to exclude that in the near future the need for employment stabilisation of dock workers will be considered by the ECJ as a valid reason for a partial restriction on freedom of establishment.

3.3. *The single collective agreement for dock workers*

After the entry into force of Law No. 84/1994, dock workers were exposed to the risk of fragmentation of working conditions and social dumping. To avoid this outcome, Law No. 186 of 30 June 2000 modified paragraph 13 of Art. 17, Law No. 84/1994, stating that social partners had to negotiate a single national collective agreement for dock workers[40]. This prevented companies from applying particularly unfavourable collective agreements and using labour costs as a competitive advantage.

Following a ruling by the Council of State[41], the text of paragraph 13 was then rewritten again by Law No. 247 of 24 December 2007[42]. Law No. 247/2007 establishes that Port Authorities must include in the authorisations that they release an obligation to ensure workers a treatment that cannot be lower than the standards described in the national collective agreement stipulated by trade unions and employers associations that are comparatively more representative at a national level and by the Italian Ports Association (*Assoporti*)[43]. Therefore, the law does not directly impose the application of

[38] ECJ, C-576/13, *EU Commission v. Kingdom of Spain*, 2014, Para. 55.

[39] ECJ, C-407/19 & C-471/19, *Katoen Natie Bulk Terminals NV v. General Services Antwerp NV, Middlegate Europe NV v. Ministerraad*, 2021. See: FAGGIONI, *cit.*, pp. 485-489.

[40] L. No. 186 of June 30, 2000, Art. 3.

[41] Cons. St., Judgement No. 3821 of 22 June 2006, *Assoporti v. Confitarma et al.* The case cannot be detailed here for reasons of space: please refer to the pages of TINCANI, *Lavoro portuale e contratto collettivo unico di riferimento. Il commento*, in *LG*, 2007, pp. 1009-1016 and COSTANTINI, *Il lavoro portuale: problemi del passato e sfide del futuro*, in *DM*, 2019, p. 51 ff.

[42] L. No. 247 of December 24, 2007, Art. 1, Para. 89.

[43] See Vezzoso's comment on the single port collective agreement. The Author is very

the single agreement, but it does indirectly oblige companies to comply with it. For all the illustrated reasons, the single national collective agreement for dock workers has an extraordinary relevance compared to common national collective agreements. In fact, as is well known, due to the non-implementation of the second part of Article 39 of the Constitution, national collective agreements in Italy have neither *erga omnes* effect nor statutory status[44]. Nevertheless, paragraph 13 of Art. 17 contains a "social clause" through a mechanism of referral *per relationem* to the single collective agreement, so that every company (*ex* Artt. 16, 17 or 18) must guarantee its employees or temporary workers a fair treatment[45].

4. *Dock work regulation in Spain*

4.1. *Historical remarks*

In Spain, precariousness and remuneration irregularity have been historical features of dock work because of the varying pace of maritime traffic and poor regulation of the profession. In the late 19th century, the growth of maritime traffic significantly increased the demand for dock labour. Nevertheless, only certain groups of dock workers could count on job stability,

critical of the role given by the law to this agreement and believes that it undermines the collective bargaining freedom of companies: VEZZOSO, *Sul contratto unico per i lavoratori dei porti*, in *DM*, 2008, pp. 487-488.

[44] To further explore the matter, see in particular the following texts: GHERA, *L'articolo 39 della Costituzione e il contratto collettivo*, in ZOPPOLI A., ZOPPOLI L., DELFINO (eds.), *Una nuova Costituzione per il sistema di relazioni sindacali?*, Editoriale Scientifica, 2014; RUSCIANO, *Lettura e rilettura dell'art. 39 della Costituzione*, in *DLM*, 2013, p. 263 ff.; LECCESE, *Il diritto sindacale al tempo della crisi. Intervento eteronomo e legittimità costituzionale*, in *DLRI*, 2012, p. 479 ff.; DEL PUNTA, *Eppur non si muove: lo stallo del diritto sindacale*, in ICHINO (ed.), *Il diritto del lavoro nell'Italia repubblicana, Teorie e vicende dei giuslavoristi dalla Liberazione al nuovo secolo*, Giuffré, 2008, pp. 381-395; GIUGNI, *sub Art. 39*, in *Commentario della Costituzione*, Zanichelli-Il Foro Italiano, 1979, p. 268 ff.; PERA, *Problemi costituzionali del diritto sindacale italiano*, Feltrinelli, 1960, p. 108 ff.

[45] COSTANTINI, *cit.*, p. 179; VEZZOSO, *cit.*, p. 488; CUNATI, *ll lavoro portuale dopo l'attuazione del c.d. Protocollo Welfare*, in *DRI*, 2008, pp. 213-218. On social clauses, see, among many: COSTANTINI, *La finalizzazione sociale degli appalti pubblici. Le "clausole sociali" fra tutela del lavoro e tutela della concorrenza*, in *Biblioteca "20 Maggio"*, 2014, 1, online: https://csdle.lex.unict.it/sites/-default/files/Documenti/Articoli/2014-1_Costantini.pdf; GHERA, *Le c.d. clausole sociali: evoluzione di un modello di politica legislativa*, in *DRI*, 2001, p. 133 ff.

while the majority of dock workers worked on call and experienced a highly precarious situation[46].

In 1939, a legislation on cargo-handling activities in ports was enacted for the first time[47]. As in the Italian case, the fascist regime wanted to regulate the issue to avoid disorders in a strategic sector and to gain the consensus of the masses. This law stipulated that the cargo-handling activities were to be carried out by members of the *Servicio de Trabajos Portuarios* (STP), then renamed *Organización de Trabajadores Portuarios* (OTP) by Decree No. 88 of 23 May 1968.

In the 1960s and 1970s, a series of orders regulated port labour, increasing the specificity of the discipline. The fascist-era system was based on State-controlled dock labour management[48] and until the Mid-1980s the sector was strongly controlled by the Ministry of Labour. At this time, the OTP was not the direct employer or contractor of dock workers. These were paid by the port companies, but depended on the OTP, and they were only remunerated when they actually carried out cargo-handling activities remaining unemployed for the rest of the time[49].

The paradigm shift from precariousness to stability only took place after the dock work relationship was considered to be special[50]. The special status of dock workers was established by Law No. 32 of 2 August 1984, that modified some articles of the Workers' Statute by regulating the dock labour relationship in a different way than the common one. Entities similar to temporary employment agencies provided skilled dock workers to port companies. The permanent employers of dock workers were the agencies themselves, which applied the special dock work regime. These agencies were first named *Sociedades Estatales de Estiba y Desestiba*, then *Agrupaciones Portuarias de Interes Economico*, and lastly *Sociedades Anónimas de Gestión de Estibadores Portuarios* (SAGEPs).

[46] To further deepen the history of dock work in Spain, see: Ibarz Gelabert, *Oficios y cualificaciones en el trabajo portuario. El caso de Barcelona en la primera mitad del siglo XX*, in *HS*, 2003, 1, pp. 119-137.

[47] Order of the Ministry of Labour of September 6, 1939.

[48] González Laxe, López Arranz, Novo Corti, *La complejidad del sector de la estiba: un análisis económico-jurídico para el caso español*, in *TL*, 2021, 3, p. 256 ff.

[49] Fernández Prol, *cit.*, pp. 235-236. To deepen these aspects, see also: Ballester Pastor, *La relación laboral especial de los estibadores portuarios*, Tirant lo Blanch, 2014.

[50] Fernández Prol, *cit.*, p. 235.

The SAGEPs system was then confirmed by the *Texto Refundido de la Ley de Puertos y de la Marina Mercante* (TRLP) approved by Decree No. 2 of 5 September 2011. According to this legislation, all the port companies who wished to perform cargo-handling services had to be integrated as participants in the port's SAGEP and obliged to cover its operating costs[51].

Theoretically, dock workers could be hired in two ways: either with a special employment relationship with the SAGEP or directly by the port company. In the first scenario, a triangular labour relationship was to be created among the SAGEP, the dock worker and the user company (labour interposition). In the second scenario, the relationship between the dockworker and the port company fell under the common regime. Nevertheless, job offers from the port company were to be directed primarily at workers of the SAGEP[52]. Following the offer, the special employment relationship with the SAGEP was suspended, and the selected worker was then hired directly by the port company through a common employment relationship[53]. At the end of the contract with the port company, the dock worker had the option to resume the original special relationship with the SAGEP. This technical-legal solution guaranteed the stability of dock workers within the SAGEPs.

In addition, Decree No. 2/2011 established the minimum number of workers that port companies had to hire under the common employment regime, corresponding at least at 25% on a year-on-year basis[54].

In 2014, the ECJ condemned Spain for its dock work system, finding it contrary to the principle of freedom of establishment and criticising the fact that port companies could not independently select their employees[55]. In fact, according to a consistent case law of the ECJ[56], Art. 49 TFEU prevents

[51] Royal Decree No. 2/2011, Artt. 142-143. See: Fernandez Prol, *cit.*, p. 237.

[52] Fernandez Prol, *cit.*, p. 237; Bravo Ortega, *La reforma portuaria en España*, in Fotinopoulou Basurko (ed.), *Gobernanza portuaria*, Eusko Jaurlaritzaren Argitalpen Zerbitzu Nagusia, 2011, pp. 75-90; Cabeza Pereiro, *Aspectos jurídico-laborales del trabajo portuario en España*, in Fotinopoulou Basurko (ed.), *Gobernanza portuaria*, Eusko Jaurlaritzaren Argitalpen Zerbitzu Nagusia, 2011, pp. 91-110.

[53] Ballester Pastor, *El nuevo régimen jurídico (legal y convencional) de relaciones laborales en la estiba portuaria ¿cumple ya las exigencias de la liberalización del sector que impone el TJUE?*, in *REJLSS*, 2022, 5, pp. 121-152.

[54] Royal Decree No. 2/2011, Art. 150.

[55] ECJ, C-576/13, *EU Commission v. Kingdom of Spain*, *cit*. See: Van Hooydonk, *cit.*; Bouveresse, *Activités portuaires*, in *RevE*, 2015, 2, p. 32.

[56] ECJ, C-299/02, *Commission v. Netherlands*, 2004, Para. 15; C-19/92, *Kraus v. Land Baden-Württemberg*, 1993, Para. 32.

any measure, even if it is applied without discrimination on the basis of nationality, that may make the exercise of freedom of establishment more complicated. In the case of the Spanish dock legislation, the Court decided that, even if Decree No. 2/2011 equally applied to Spanish and foreign companies, the performance of cargo-handling activities was made less attractive for foreign companies by the fact that they had to compulsorily participate in the SAGEPs' capital and primarily hire SAGEPs' workers.

Of course, freedom of establishment can be restricted if the legislation pursues legitimate objectives – such as those of workers' protection and port safety claimed by Spain[57]. Nevertheless, the Court found that the alleged objectives could have been achieved by less detrimental measures.

Following the ruling of 2014, Spain was obliged to modify its legal framework. This was done through Decrees No. 8 of 12 May 2017 and No. 9 of 29 March 2019 (then partially modified by Law No. 12/2021), which enunciated the principle of freedom of employment of dock work and transformed all the SAGEPs into *Empresas de Trabajo Temporal* (ETTs) or *Centros Portuarios de Empleo* (CPEs)[58]. ETTs are common temporary labour supply companies, while CPEs have as exclusive purpose the recruitment of dock workers and their supply to authorised companies.

Decree No. 8/2017 carried out a real deconstruction of the previous Spanish regime. According to many authors, it implemented a step backward in the protection of dock workers and even went beyond what the ECJ required[59]. Indeed, immediately after the 2017 reform there was a lot of concern among dock workers and their unions[60]. The 2017 Decree was also

[57] See the extensive EU case law on the characteristics of the measures that pursue these objectives, for example: ECJ, C-518/09, *Commission v. Portugal*, 2011, Para. 65; C-288/89, *Collectieve Antenne Voorziening Gouda v. Commissariaat voor de Media*, 1991, Para. 15.

[58] Ojeda Avilés, *La reconversión del sector portuario. Los Reales Decretos Leyes 8/2017 y 9/2019*, La Ley, 2019; Bravo Ortega, *cit.*, pp. 75-90.

[59] Fernández Prol, *cit.*, p. 246; Pazos Pérez, *cit.*, p. 269; Fernández Prieto, *La relación laboral de la estiba tras la STJUE de 11 de diciembre de 2014*, in Cabeza Pereiro, Rodríguez Rodríguez (eds.), *El trabajo en el mar. Los nuevos escenarios jurídico-marítimos*, Bomarzo, 2015, pp. 560-561; Cabeza Pereiro, *Algunos interrogantes acerca de los Centros Portuarios de Empleo*, in Carballo Piñeiro (ed.), *Retos presentes y futuros de la política marítima integrada de la Unión europea*, Bosch, 2017, pp. 206-209.

[60] Pazos Pérez, *La estiba portuaria tras la aprobación del real decreto 8/2017 de 12 de mayo*, in Carballo Piñeiro (ed.), *Retos presentes y futuros de la política marítima integrada de la Unión europea*, Bosch, 2017, 2017, p. 259 ff.

deeply criticised by the doctrine, as it was accused of "replacing the supply of permanent workers with the supply of temporary workers" with the consequence of "replacing decent work with precarious work"[61].

In practice, Decree No. 8/2017 left a key role to collective bargaining, which alone bore the responsibility of ensuring stability for dock workers[62].

4.2. *The current regulation*

In 2019, Decree No. 9/2019 was enacted, which meant a certain progress in terms of dock workers' safety and employment stability[63]. Indeed, this Decree was issued with the aim of combining economic freedoms with workers' rights[64]. It added Chapter V to Law No. 14 of 1 June1994 that regulates temporary labour supply. This Chapter deals exclusively with CPEs, establishing a framework that is different from the one of other labour supply agencies, especially from the point of view of organisational structure and financial security. In any case, many relevant issues are still deferred to collective bargaining. These issues are currently regulated by the 5th Framework Agreement regulating labour relations in the dock sector, signed in 2022[65].

Moreover, Law No. 4 of 25 February 2022 was recently enacted. The main topic of this Law is the protection of consumers and users in situations of vulnerability, but its "Transitional and Final Provisions" give a sort of endorsement to the 5th Framework Agreement[66]. Law No. 4/2022 also clarifies that CPEs carry out a mutualistic activity among their members, which share common interests and expenses. This confirms that CPEs are completely different from common ETTs regulated by Law No. 14/1994[67]. In addition, a key obligation on port companies now appears in Art. 18 of Law No. 14/1994. These companies have to request the temporary assignment of CPEs dock workers every time that they do not use their own personnel. As outlined in the next paragraph, the 5th Framework Agreement reproduces

[61] Cabeza Pereiro, *cit.*, p. 223.

[62] Pazos Pérez, *cit.*, p. 253.

[63] Ballester Pastor, *cit.*, p. 126.

[64] Royal Decree No. 9/2019, Preamble.

[65] 5th Agreement regulating labour relations in the dock sector, in Nation Official Bulletin (BOE) No. 118 of 18 May 2022, pp. 68980-69042.

[66] Ballester Pastor, *cit.*, p. 126.

[67] *Ibid*.

this priority in favour of CPEs personnel. Before this change, port companies could turn to CPEs or ETTs with no order of preference.

4.3. *The framework agreements regulating labour relations in the dock sector*

Collective agreements regulating labour relations in the dock sector have been negotiated since 1998. These agreements, stipulated in accordance with Title III of the *Texto Refundido de la Ley del Estatuto de los Trabajadores*, have general scope and *erga omnes* effect. Particularly interesting for our purposes is the affair regarding the 4th Framework Agreement, signed in 2008. It was declared incompatible with the principles of free competition by a famous decision of the National Competition Commission – which sanctioned the signatory associations – and by the National Court and the Supreme Court[68]. These decisions raise an extremely relevant issue regarding the complex interactions among the single market, free competition and the protection of social and labour rights. The thesis supported by the Spanish courts and the Competition Commission is based on the idea that the collective agreement illegitimately restricts free competition among companies. Of course, collective bargaining does take certain aspects away from the dynamic of competition[69]; this has led to certain frictions in the EU concerning

[68] *Comisión Nacional de la Competencia*, September 24, 2009; *Audiencia Nacional, Sala de lo Social*, June 1st, 2008; *Tribunal Supremo, Sala de lo Social*, November 11, 2010. For the specific arguments that led to the "conviction" of the 4th Agreement – related to the previous legal framework and partially comparable to those that led the ECJ to condemn the Spanish system in 2014 – please refer to: Ojeda Avilés, *La impugnación del IV Acuerdo Marco de la Estiba: un problema laboral con solución mercantil*, in *RTSS*, 2021, pp. 27-52; Odriozola Landeras, *Situación del Sector de la Estiba Cinco Años Después de la Aprobación de la Ley 48/2003, de 26 de Noviembre, de Régimen Económico y de Prestación de Servicios de los Puertos de Interés General*, in *RT CEF*, 2008, 304, online: https://doi.org/10.51302/rtss.2008.5561.

[69] Cf., *ex multis*: Miracolini, *La funzione anticoncorrenziale della contrattazione collettiva*, in *VTDL*, 2021, 2, pp. 355-383; Forlivesi, *Sulla funzione anticoncorrenziale del CCNL*, in *DRI*, 2019, p. 839; Del Punta, *Valori del diritto del lavoro e economia di mercato*, in *Biblioteca "20 Maggio"*, 2019, 2, online: https://csdle.lex.unict.it/sites/default/files/Documenti/Articoli/2019-2_DelPunta.pdf; Orlandini, *Autonomia collettiva e libertà economiche: alla ricerca dell'equilibrio perduto in un mercato aperto e in libera concorrenza*, in *Biblioteca "20 Maggio"*, 2008, 2, online: https://csdle.lex.unict.it/-sites/default/files/Documenti/Articoli/2008-2_Orlandini.pdf; Brino, *Diritto del lavoro e diritto della concorrenza: conflitto o complementarietà?*, in *RGL*, 2005, 1, p. 351; Ichino, *Contrattazione collettiva e antitrust: un problema aperto*, in *MCR*, 2000, p. 639; Pallini, *Il rapporto problematico tra diritto della concorrenza e autonomia collettiva nell'ordinamento comunitario e nazionale*, in *RIDL*, 2000, 2, p. 209 ff.

collective instruments and their impact on competition, freedom to provide services and freedom of establishment[70]. Indeed, the ECJ adopts an inverted perspective compared to that of the constitutional tradition of most Member States: according to the ECJ, economic freedoms can only be compressed if imperative reasons of general interest justify a limitation[71]. The decisions concerning the 4th Agreement demonstrate the influence that this European case law has had on national courts, leading them to a restrictive interpretation of labour rights as limits to economic freedoms[72].

However, as outlined above, the *Katoen* ruling appears to represent a – albeit slight – change of course on the part of the ECJ. By virtue of this new course, the current Spanish framework can be considered in line with EU law. As regards the collective framework, it is worth describing more in detail the agreement in force today: the 5th Framework Agreement, signed in 2022. It represents the minimum standard, allowing other agreements or contracts of lesser scope to regulate certain matters, albeit within the terms and limits set by the Framework Agreement itself. This ensures uniformity in compliance with the legal framework while respecting the tradition whereby each port has its own collective agreement.

The 5th Framework Agreement guarantees job stability and quality of employment revolving its entire regulation around the right to an effective employment, whether the workers are employed directly by companies or belong to CPEs[73]. The importance placed by the Agreement on effective employment is such that the main measures to achieve greater flexibility ex-

[70] See, for example, the Albany case (ECJ, C-67/96, September 21, 1999, *Albany International BV v. Stichting Bedrijfspensioenfonds Textielindustrie*) and the Viking case (ECJ, C-438/05, December 11, 2007, *International Transport Workers' Federation, Finnish Seamen's Union v. Viking Line*). See: Ichino, *cit.*; Ballestrero, *Le sentenze Viking e Laval: la Corte di Giustizia "bilancia" il diritto di sciopero*, in *LD*, 2008, 2, pp. 372-391; Raison, Chaumette, *L'arrêt Viking Line sur les entraves syndicales à la liberté d'établissement*, in *DMF*, 2009, pp. 794-808.

[71] Ballestrero, *cit.*, p. 381; On the same topic, see also: Carril Vazquez, *Cuando as libertades do mercado da Unión Europea limitan os dereitos de proteccion social de persoas que traballan*, in *AFCTUC*, 2010, 1, pp. 53-70.

[72] See: Carril Vázquez, who finds this increasing power of the *lex mercatoria* over workers' rights very worrying: *El impacto de las normas de competencia sobre el IV acuerdo para la regulación de las relaciones laborales en el sector de la estiba portuaria y el papel de la comisión nacional de competencia en el control de legalidad de los convenios colectivos*, in Quintáns-Eiras, Díaz De La Rosa, García-Pita y Lastres (eds.), *Estudios de derecho marítimo*, Thomas Reuters Aranzadi, 2012, p. 520.

[73] 5th Agreement for the regulation of labour relations in the dock sector, *cit.*, Art. 13.

clusively apply to companies that respect certain employment quality indicators[74]. This has an impact on the relationship between CPEs and their member companies. Indeed, the mutualistic nature of CPEs means that the member companies have some obligations in terms of employment stability, vocational training, etc., *vis à vis* the personnel of the CPEs of which they are members[75]. In addition, the Agreement enhances the priority given to the personnel of CPEs: port companies must turn to CPEs workers both when they decide to make new hires and when they occasionally do not assign activities to their own employees. Of course, the role of ETTs is really marginal[76], but this does not surprise since the recent legal framework also gives a leading role to CPEs over other models. The previous system, which left to companies a totally free choice, put the safety of workers (and of the entire port area) at risk and jeopardised workers' job stability.

The compatibility of the priority mechanism appearing in the 5th Framework Agreement (and "authorised" by Law No. 4/2022) represents the most controversial issue when it comes to considering the compatibility of the Spanish system with EU principles. However, once again the system should be analysed in light of the recent *Katoen* ruling[77]. In that occasion, the ECJ stated that safety protection requirements may justify a restriction on freedom of establishment, declaring compatible with EU competition principles a regulation that reserves port operations to recognised dock workers[78]. Therefore, the priority mechanism does not conflict with EU law[79]. In addition, it should be considered that the previous Spanish legislation

[74] For the quality indicators, see: 5th Agreement for the regulation of labour relations in the dock sector, *cit.*, Art. 28.

[75] 5th Agreement for the regulation of labour relations in the dock sector, *cit.*, Chapter XI. Arrieta Idiakez, *Análisis de los aspectos más destacables del V Acuerdo para la regulación de las relaciones laborales en el sector de la estiba portuaria*, in *RGDTSS*, 2022, 63, Para. IV, online: https://www.iustel.com/v2/revistas/buscador.asp?id=2&meta=%22Labour%20%20relations%22.

[76] In any case, according to the data of the Ministry of Transport, in 2020 almost 90% of dock workers were members of a CPE. See: Ministry of Transport – National Ports, *Movilidad y agenda urbana, Análisis de la evolución de la liberalización del sector de la estiba en España*, November 2021.

[77] ECJ, C-407/19 & C-471/19, Katoen, *cit.*

[78] The only requirement for such a regulation to be legitimate is that the conditions for being a recognised dock worker are based on objective, non-discriminatory criteria known in advance, that allow workers from other Member States to demonstrate that they meet equivalent requirements. Also, the reserve must not establish a *a priori* limited quota of workers eligible for the recognition.

[79] Thus also: Ballester Pastor, *cit.*, pp. 150–151.

(the one enacted in 2017) did not comply with ILO Convention No. 137[80]: by going beyond what the ECJ required, Spain had created a system that did not guarantee dock workers any stability of employment. Therefore, the current framework is preferable because it allows Spain to comply with both its obligations under international and EU law. Besides, the priority mechanism in favour of CPEs is similar to the Italian one. In fact, the Italian system is also characterised by conventional work outsourcing and dock work outsourcing, which differs from the former for certain peculiarities and a specific regulation. Therefore, it is coherent to compare Spanish CPEs to Italian Art. 17 companies. Both the CPEs and Art. 17 companies cope with the unpredictable and irregular work peaks typical of the sector. Moreover, they function in a very similar way: they hire workers and then send them on temporary assignments to companies authorised to carry out port operations.

5. *Conclusive remarks*

Both the Italian and the Spanish current regulations have tackled the quest for balancing freedom of competition with workers' interests. As regards freedom of competition, in both systems it is guaranteed by the existence of different models for the provision of dock services, and particularly by the fact that port companies can hire their own personnel. Of course, the systems are not fully liberalised. They give rise to a "controlled liberalisation" based on authorisations and the obligation to turn – in case of need for temporary labour – to recognised dock workers who are part of specialised pools. The described restrictions are first justified by the public interests at stake. In addition, these rules allow a control on the adequate qualifications of those hired, in order to ensure safety in the provision of the service[81]. Last but not least, the two systems manage to combine the need to cope with work peaks with the need to ensure employment stability. In the port sector, which is characterised by a marked intermittency of labour demand, the stability of temporary dock workers is crucial to obtain a smooth functioning of cargo-handling. In fact, if the most skilled workers leave the profession, frightened

[80] Cabeza Pereiro, *cit.*, p. 208; Rodríguez Ramos, *El régimen jurídico de la relación laboral de los estibadores: pasado, presente y futuro*, in *TL*, 2018, 2, p. 103.

[81] Fernández Avilés, *La estiba sigue en conflicto: liberalización de mercados vs. garantías sociales*, in *RTSS*, 2017, 4, p. 10.

by its precariousness, port companies will have to hurriedly fill a large demand for labour without a stable pool from which to source, risking having to turn to agencies to supply poorly trained workers. Such a situation could greatly diminish the quality of services, with risks for the entire industry. Conversely, the Italian and Spanish regulations set up instruments to counteract downward competition, both among workers in the access to the labour market and among companies based on working conditions[82].

The analysis definitely shows that the evolution of the two systems is not dissimilar. In particular, it is indicative that the two collective bargaining systems, despite coming from different starting points, at a closer look appear very similar. In fact, the Italian single collective agreement for dock workers resembles a Spanish statutory agreement: the law does not go so far as to give it *erga omnes* effect, but the social clause of referral *per relationem* has a comparable result.

The evolution undergone by the two regulatory systems fits into one larger trend: while the 1990s and early 2000s witnessed a common tendency in European port systems toward an increasing flexibility and market liberalisation[83], in the most recent years there has been a return to regulation to the benefit of safety and dock workers' employment stability. The Spanish Law No. 4/2022 and the Italian amendment of 2020 are two examples of this new trend, and the *Katoen* ruling is also part of the process, as it has in some ways endorsed this regulatory resurgence. These new developments give hope for a future in which economic and market values recognise the imperatives of equity and social sustainability. In this way, and when labour law also takes due account of the challenges of market efficiency, the traditional juxtaposition of competition and labour law can be overcome[84].

[82] On the competition-regulating role of labour law, see: Tullini, *Concorrenza ed equità nel mercato europeo: una scommessa difficile (ma necessaria) per il diritto del lavoro*, in *RIDL*, 2018, 2, pp. 199-232.

[83] On this common tendency, see the contribution of Bottalico, *cit.*

[84] See Treu, *Compiti e strumenti delle relazioni industriali nel mercato globale*, in *LD*, 1999, p. 193, who already called for a narrowing of the distance between market dynamics and labour law approaches when facing the complexity of sustainable development. On the complementarity and interdependence of competition law and labour law, cf. Brino, *cit.*, pp. 319-360 and Id., *Diritto del lavoro, concorrenza e mercato. Le prospettive dell'Unione europea*, CEDAM, 2012. On the relationship between competition law and labour law see also, among many others: De Luca Tamajo, *Concorrenza e diritto del lavoro*, in Perulli (ed), *L'idea di diritto del lavoro, oggi. In ricordo di Giorgio Ghezzi*, Giuffrè, 2016, 13 ff.

Another asset of pursuing this direction is that solutions like the ones adopted by Italy and Spain fit into that slight area of overlap between EU law and the ILO Convention No. 137. Indeed, EU law and international law have different – though not totally irreconcilable – lines on this matter. In fact, systems based on dock labour pools, where port operations are reserved for specialised and properly trained workers, are supported and encouraged by the ILO, whose Convention No. 137 expresses the need to: (a) ensure that dock workers have a stable or regular employment, (b) guarantee that dock workers are registered on special lists, (c) make sure that dock workers enjoy a right of priority of engagement for cargo-handling activities[85].

If a weakness is to be found in the analysed systems – which, to be fair, is not a small one –, there is a risk of loss of competitiveness of Italian and Spanish ports, and of all ports governed by similar legislations. That is because in some neighbouring Member States temporary labour can be used more freely and shipping companies can use their own personnel for cargo-handling activities. These countries have not ratified ILO Convention No. 137 or just do not comply with it. However, a solution to this issue is the harmonisation of dock work organisation at the EU level, which would lead to the creation of a level playing field within EU ports.

It is true that previous attempts at harmonisation failed. Nonetheless, the failure was due to the fact that the proposals neglected dock workers' protection and employment stability, which is why they faced opposition from trade unions. In view of the latest developments, it can be assumed that a common legislation that is more respectful of the needs of dock workers is now possible. For example, this common legislation could include an obligation to reserve port operations to recognised dock workers who have been adequately trained, as well as a requirement to prioritise pool-affiliated dock workers with respect to temporary labour. The common EU framework should probably not be contained in a Regulation, as it was done in 2017 for the other port services, but preferably in a Directive[86]. In fact, some differences between Member States in terms of competences and management rely on long-lasting traditions, and local specificities have ancient roots. Such a Directive could indicate the pivots on which the States, with some level of discretion, should outline their dock work organisation without upsetting their *status quo.*

[85] ILO, Convention No. 137, 1973, Artt. 2-3.

[86] Thus also: PAZOS PEREZ, *cit.*, p. 267.

Abstract

The paper analyses the dock work regulatory systems of Italy and Spain in order to identify their approach in balancing freedom of competition with workers' protection, with a view to the harmonisation of the subject at the European level.

Keywords

Dock work, Ports, EU law, Spain, Italy, Competition.