

EVALUATION OF LEGAL AND INSTITUTIONAL IMPLEMENTATION OF LANDLORD PORT MODEL IN THE FUNCTION OF CROATIAN INLAND PORT SYSTEM MANAGEMENT

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ABSTRACT

The Act on Inland waterway navigation and ports from 1998, and later with amendments during year 2007 has taken over, similarly to the maritime ports, the so called «landlord» model of port system management. Nevertheless, it was necessary to change the landlord model due to technical and technological specificities that characterize inland ports and piers. For legal and institutional implementation of the landlord model it was essential to establish the Port Authority as a regulatory body of total activities, operations as well as port development policy. Arguments were presented that favor the chosen model of port management. With regard to the permanent development of the port system, legal and institutional implementation is shown in three stages: restructuring of the landlord port management model, transitional period of professionalization and improvement of efficiency of the port authority, as well as evaluation of ongoing model implementation on the basis of issued concessions and/or permissions for carrying out activities in the port area of inland ports opened for international transport.

KEY WORDS

landlord. port system. concession. port authority.

1. INTRODUCTION

The Inland waterway navigation and ports Act (1998) has taken over, similarly to the sea ports, the so called «landlord» model according to which the state withholds the powers of managing the ports and port infrastructure, and the port operations have been privatised in the manner that concessions have been allocated to the port operators. However, there is no such 'sea assets' on the inland waters, and the Port Act does not regulate the privatisation of ports separately because it was impossible at the time of its appearance. In the mean time, the ports have gone through transition process namely; some had been privatised before the Act came into force according to the general privatisation law which did not specifically qualify the ports as the assets of public interest to be privatised in conformity with any generally accepted model of privatisation of ports. Due to the aforementioned, there occurred a situation in which some ports have been privatised, and some have mixed property regime.

Owing to the fact that the ports are the assets of public interest, it is desirable for the state to withhold certain forms of control of managing the ports in order to efficiently carry out the relevant development policy of ports. In particular, it is related with the attainment of the ownership of land and port infrastructure in the port area. The organisational and managing model of public inland ports is basically characterised by the division of management and administration, and commercial port operations.

Organisational-administrative functions are allocated to port authorities whilst commercial port operations are allocated to commercial companies following the specific permits for the performance of port operations throughout a determined period of time.

The Inland Navigation Act (2007) has introduced certain novelties when compared with the former Port Act. One of them is the introduction of a performance permit instead of a concession. Due to the form of ownership and specific technological requirements of inland ports, concession is impracticable or limiting, and does not allow clear and full definition of the role of landing structure/docking/piers within the port system. Piers/landing structure

does not have all characteristics that ports have and they are the specific feature of the inland transport. However, they are a country's constituent part of the port system. In addition, the Act has allowed the establishment of privately owned ports and piers/landing structures but, on the other side, has protected the rights and interests of the Republic of Croatia by allocation of public powers to the port authorities.

The port authorities are the key factor for the implementation of stipulations of the Inland Navigation and Ports Act and accompanying sub-acts, and are responsible for the implementation of the overall inland waterway transport and port policy. In this paper, certain shortcomings have been identified which diminish the functioning of the overall inland port system.

2. LANDLORD PORT MODEL OF INLAND PORT SYSTEM MANAGEMENT

At the global level, various models have been introduced in port management. One way to model the various models for the management of the port-level is differentiation of private sector involvement in four key areas: infrastructure, suprastructure, terminal operations and other services. The World Bank-PPIAF Port Reform Tool Kit defined four types of standardized port management models¹: Public Service Port Management Model, Tool Port Management Model, Landlord Port Management Model and Private Port Management Model. Port management models differ in the distribution of risks, roles and responsibilities between the private and public sector. Worldwide, Landlord port model is commonly used for the management of ports. The table below shows how the risks, roles and responsibilities assigned to each of the port management models.

¹ The instruments for Port Reform funded by PPIAF Program,
<http://www.ppiaf.org/ppiaf/sites/ppiaf.org/files/documents/toolkits/Portoolkit/Toolkit/overview.html>

Table 1. Port management models

Model type	Infrastructure	Suprastructure	Operation	Other services
Public Service Port Management Model	Public sector	Public sector	Public sector	Public sector
Tool Port Management Model	Public sector	Public sector	Private sector	Public/Private sector
Landlord Port Management Model	Public sector	Private sector	Private sector	Public/Private sector
Private Port Management Model	Private sector	Private sector	Private sector	Private sector

The prerequisite of successful implementation of so called «landlord» model, which is applied in Croatia, is the full control over the basic infrastructure within the port area including the riverside, port territory, land surfaces in the port area, roads and railway, and public utilities system. The port authority has a role of regulatory body dealing with the overall port activities and port operations in order to ensure competitive conditions of a port, equal status of the port clients, fair treatment of all shippers using the port, and maximal utilisation of the potentials of a port. The main advantage of this model is that both parties (public and private) invest in key resources, both carrying time and a part of the risk. The private sector is given the right to operate the terminal by signing concession contract and/or permission, in exchange for the concession payments paid by private parties and private investment in port infrastructure. Landlord model success is directly related to the quality of the concession/permission contract.

3. TECHNICAL AND TECHNOLOGICAL SPECIFITIES OF INLAND PORT SYSTEM

Technical and technological characteristics of ports of inland ports do not differ significantly from the seaports. The difference, however, exists with regard to the environment in which they operate. This environment has the following particularities:

- dimensions of the vessel
- transportation technology,

- natural conditions-fluctuations in water levels in port aquatorium.

Inland waterway vessels are smaller load capacity, less freeboard, and their dimensions (length, width and draft) are adapted to the fairway. The depth of aquatorium, the number and size of berths are as well adapted to the technical and technological characteristics of inland ports. The major problem of inland ports are definitely water level fluctuations and hydrologic characteristics. Hydrologic changes that manifest as speed and direction of flow, coastal erosion, produce and apply materials in the waterways. It is therefore necessary to adjust the appearance coast, build and control hydrobuildings and as well perform constant dredging activities. Hydrological conditions and water level changes affect the layout of the pier and shore configuration.

The port authorities are the key factor for the implementation of stipulations of the Inland navigation and ports Act and accompanying sub-acts, and are responsible for the implementation of the overall inland waterway transport and port policy. In the implementation process of the regulations, certain shortcomings have been identified which diminish the functioning of the overall port system. These problems are identified and shown in Table 2. A brief remark together with the incurred consequences is added to the each. The plan also suggests the adequate measures for the elimination of the same, or just how to make them local to the most possible extent.

The manner of financing of ports as strategic transport and economy related resources of a country is vital for creation and realization of a successful development policy of ports. The approach which sees the port operators as the only financial investors can have only limited application as regards the inland ports and

conceives provision of enough space to be ensured by port authorities, whilst the port operators themselves will take liability of investing into the port facilities and construction namely, the liability of constructing the port infrastructure, port traffic connections, and operational riverside. Such cases are rare in practice and they are related with the sea ports, so called hub-centres. However, the interest in investing into the Croatian inland ports exists in terms of particular kinds of cargo. The interest of the private capital to invest into the terminals of general cargo or multipurpose terminals is limited due to the lack of large profits gained on such terminals in the port loading and unloading processes. In addition, how

successful these terminals will be largely depends on the extent to which the transport infrastructure out of the port area has been constructed. Therefore, it is a common practice to construct such terminals through different types of partnerships between public and private sector in terms of financing of the port facilities and structures. The development of a port should be planned in the manner which will obtain attractiveness of the port and port system as a whole, and not to become dependent on only one successful port operator. Due to this fact, each public port and in particular, E- port must have enough space to allow complementary sub activities in the port area, namely within business zone.

Table 2. Key shortcomings and incurred consequences related with the inland port system

	Problem	Remarks	Consequences
1.	Property issues of the port area	Ports have been privatized in pursuance to a general privatization model so that some port commercial companies and port operators became owners of the entire infrastructure, buildings, and land in the port area.	„Land-lord“ model can not be implemented, lack of finance to initiate development cycle
2.	Giving priority Concessions for Port activities	Giving rights to existing companies, founded in privatization, to perform port operations in public ports is understood.	Compliance with standards, defining of business concept/policy, vague business strategy.
3.	Equal status of All public ports	All public ports have the same status regardless the role they have on the international market and development potentials.	It is not possible to develop all four ports at the same time. due to their characteristics financial power, and general economic principals.
4.	Insufficient port Infrastructure	After complete devastation during the War, only partial reconstruction of capacities has been completed, so that some ports do not have elementary port infrastructure.	Limited ability of acceptance of vessels, in particular on the ports on the Sava river.
5.	Poor technological equipment	Lack of advanced technical equipment and specialized terminals for handling with specific kinds of freight.	Lacks of specialized terminals which are technically equipped weaken the market position and competitiveness.
6.	Maintenance of waterways and approaches to ports	Constant deepening and dredging must be carried out due to specific characteristics of waterways of Sava and Drava river which are natural water courses.	Reliability of transport hence the efficiency and competitiveness of ports on the Sava and Drava river has been significantly diminished.
7.	Meeting the requirements of Agn agreement	The most important conditions are: enough space for development of complementary activities and possibility of integration with business zones.	In the EU accession process only E-ports will have possibility of aggregated freight transport.

4. LEGAL AND INSTUTUTIONAL IMPLEMENTATION OF PROPOSED MODEL OF PORT SYSTEM MANAGEMENT

Participation of private sector investment in inland ports and their management in Croatia is regulated by a number of different laws and regulations, including those relating to environmental protection to those relating to construction. The most important of them are:

Act on Inland Navigation and Inland Ports (Off. Gazette 109/07), Water Act (Off. Gazette 153/09), Law on Concessions (Off. Gazette 125/08), 21 Public Procurement Act (Off. Gazette 110/07), and the corresponding Regulations. Distribution of roles in terms of management, business activities and operation of river ports in the Republic of Croatia are divided between:

1. Ministry of Maritime Affairs, Transport and Infrastructure
2. port authorities, and
3. private operators.

The Ministry appears as the founder of port authority is subject to administrative supervision and inspection by the Ministry. The Governing Council of Inland Ports, which operates within the Ministry, is responsible for monitoring, developing and investing in inland ports. Port authorities are responsible for the continuous and uninterrupted provision of public services and other activities intended to have the management of ports in a particular area in accordance with the plans for the development and maintenance. Port authorities are public institutions that have the following legal authorization:

- preparation of a draft planning documents for the development of the port system,
- concerns about the implementation of planning documents,
- perform activities in related to granting of concessions and/or authorization to carry out port activities,
- management of real estate in the port area owned by the Croatian Government,
- managing the free zone in port area established by Decision of the Government of the Republic of Croatia pursuant to regulations governing the free zones,
- supervising the work of port operators and port users carrying out port activities, in accordance with obligations assumed, ensuring the provision of services of general interest and for those for which there is no economic interest of other economic operators,
- other activities set out by the law.

As described in the previous section, the proposed port management model that would represent the final state of the Landlord port model, where a public port authority granted the concession for the activity of loading and unloading and warehouse rent to private port operator. The proposed implementation plan, which is described in Chapter 2, provides a road map that may lead to the proposed final state.

4.1 Implementation phase no. 1: Restructuring of the "landlord" model

During Phase no. 1 restructuring of a public institution has been established for port management. Furthermore, legal documents with amendments were prepared and preparations had been made for the institutional, administrative and operational separation activities. A temporary concession had been established between port authorities and port operators. Separation of public and private management functions were realized as a result of this phase. The objective of this phase was to implement the desired port structure according to the model Landlord in an environment of public and private actors.

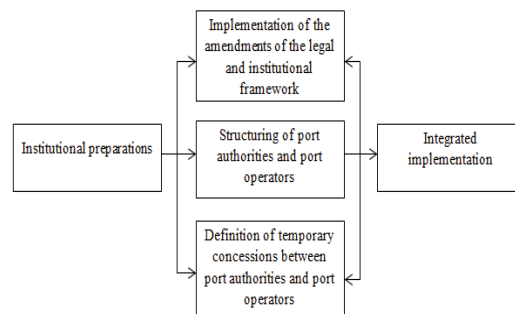


Figure 1. Restructuring of landlord port model

Institutional preparations regarding restructuring relate to the key decisions that include following: restructuring of the inland ports in accordance with the Landlord model with the aim of granting concessions for port activities, foundation of port authorities and the establishment of temporary concessions between port authorities and port operators before the long-term concessions present on market; appointment of responsible entities (ministries) responsible for implementing the

project of the reform process. After the institutional preparations, implementation of changes in the legal and institutional framework, as well as the structuring of port authorities and port operators are completed, Landlord model can be really integrally implemented.

4.2 Implementation Phase No. 2: Transitional Period

During Phase No. 2 newly established Port Authority will work on professionalism, strengthening and rationalizing their respective roles within the Landlord model. Port needs a strong and professional Port Authority for the development and promotion of the port area, throughout the provision of fair competition and protection of high standards of safety and environment. Improvement of personnel, recruitment of new associates and collaborators as well as "institutional building" requires the development of appropriate management structures and human resources. Considering above mentioned, following functions are particularly important:

- Project management of major construction projects,
- marketing and promotion of the port on the transport market,
- Know-how in projects of attracting businesses in the port area.

Interesting might be measures of "institutional building", which is the core of recruitment of experts from EU member states and candidate countries. In the case of "normal" procedure of Twinning, experts are suggested for a period of 12 months or longer, for "short" TWINNING there is no need for permanent commitment. Accompanying measures may include the conferences, preparation of documentation, etc.

4.3 Implementation phase No. 3 : Evaluation of implementation

Four Port Authorities are established for the inland waterways in Croatia: in Vukovar for a public port on the Danube River and the future Danube-Sava rivers multi-purpose canal, in Osijek for the ports on the Drava River, whilst the responsibility for the ports on the Sava river is shared between Sisak Port Authority and Slavonski Brod Port Authority. In addition, the

port authorities are responsible for issuing of the practice permits for ports and piers/landing structures within the area under their responsibilities. The positive effect of legal and institutional implementation of landlord port model are quantified on the case of issued concessions since year 1998 under the provisions of the inland ports Act, or permissions for performing the port activities upon the entry of Inland Navigation and Inland Ports Act into force during November 2007. (OG 109/07).

Table 3. Indicator of issued concessions / permissions in the port area of Croatian inland ports for the period since 1998 - present

	Port authorities	Number of concessions issued since 1998 - 2007	Number of permissions issued since 2007 – present
1.	Sisak Port Authority	2	5
2.	Slavonski Brod Port Authority	2	19
3.	Osijek Port Authority	1	7
4.	Vukovar Port Authority	4	1

Based on the information from Table 3 it can be concluded that a more liberal system of permission granting for port activities generated positive effects for the interest of investors in the port areas of Croatian inland ports.

5. CONCLUSIONS

Landlord port model is commonly worldwide, used for port management. The prerequisite of successful implementation of so called «landlord» model in Croatian inland ports is full control over the basic infrastructure within the port area including the riverside, port territory, land surfaces in the port area, roads and railway, and public utilities system. Landlord model success is directly related to the quality of the concession/permission contract, which is shown in this paper through an indicator of issued concessions/permissions in the port area of Croatian inland ports for the period since 1998 – present. Due to technical and technological specificities that characterize inland ports and piers it was necessary to restructure the landlord model. This paper shows through three phases how institutional preparations, implementation of changes in the legal and institutional framework, as well as the structuring of port authorities and port operators are important for integral implementation of Landlord model. It can be concluded that a more liberal system of permission granting for port activities generates positive effects for the interest of investors in the port areas of Croatian inland ports.

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