



FOR SEAPORT MANAGEMENT IN POLAND AGAINST THE BACKGROUND OF THE ACT ON SEAPORTS AND HARBOURS

Michał PLUCIŃSKI*

Para citar este artículo puede utilizarse el siguiente formato:

Michał Pluciński (2012): "For Seaport Management in Poland Against the Background of the Act on Seaports and Harbours", en *Revista europea de derecho de la navegación marítima y aeronáutica*, n.º 29 (diciembre 2012), pp. 1-13. Ver <http://www.eumed.net/rev/rednma/29/mp.pdf> en línea.

ABSTRACT: In recent years there have been mainly «getting more autonomy» trends in the European ports management systems. Based on the Act on Seaports and Harbours the state and self-government system for managing the largest seaports of Poland should be viewed as a compromise between the centre's stance and ambitions of the independent local governments established in the early 90's. The state and self-government joint stock companies of public service which jointly manage the ports of Szczecin and Świnoujście and the ports of Gdańsk and Gdynia are mainly responsible for development and modernization of the port infrastructure, proper seaport land management and port development prediction, programming and scheduling. The main source of financial resources for the managing entities are port fees and the fees for seaport land lease. In recent years the EU regional policy resources and revenues from privatization of transshipment and storage companies have been a major source of financial resources. The Act has explicitly settled that the public sector (seaport land management) and the commercial sector (operating services) be separated.

KEY WORDS: Seaports, Seaports management system, Poland.

STRESZCZENIE: Tendencje zmian w systemach zarządzania europejskimi portami morskimi w ostatnich latach związane były przede wszystkim z ich "autonomizacją". Powstały na bazie ustawy o portach i przystaniach morskich państwowo – samorządowy system zarządzania największymi portami morskimi Polski należy odczytywać jako kompromis między stanowiskiem centrum, a aspiracjami powstałych na początku lat dziewięćdziesiątych samodzielnych i niezależnych samorządów terytorialnych. Państwowo – samorządowe spółki akcyjne użyteczności publicznej zarządzające portami morskimi w Gdańsku, Gdyni oraz wspólnie dla portów w Szczecinie i Świnoujściu, odpowiedzialne są przede wszystkim za rozbudowę i modernizację infrastruktury portowej, właściwą gospodarkę gruntami w portach morskich oraz prognozowanie, programowanie i planowanie rozwoju portów. Główne źródła środków finansowych podmiotów zarządzających portami stanowią zaś opłaty portowe oraz opłaty za dzierżawę gruntów portowych. W ostatnich latach ważnymi źródłami środków finansowych były środki polityki regionalnej UE oraz wpływy z prywatyzacji spółek przeładunkowo - składowych. Ustawa jednoznacznie rozstrzygnęła konieczność rozdzielenia sfery publicznej (zarządzania terenami portowymi), od sfery komercyjnej (realizacji usług portowych).

SŁOWA KLUCZOWE: Porty morskie, System zarządzania portami morskimi, Polska.

1. Introduction

Since the beginning of system and economic transformations in Poland the biggest difference between the Polish seaports and their counterparts in the capitalist countries has been the way in which seaport management and

* Assistant lecturer at Faculty of Management and Economic Services at the University of Szczecin (Poland).

operation are organized. Excluding the short period of time after the WWII the Polish seaports in this respect can be described by:

- having one entity (Seaport Authority) performing strictly commercial functions relating to port operation (warehousing, storage, transshipment, towing, mooring, pilotage, transportation and other services) and tasks which are typical of a managing entity (issuing regulations, maintaining port infrastructure).
- fragmented management of the entire seaport divided into state-owned enterprises running their businesses on the seaport land (including Seaport Authorities, shipyards, ship repair yards, and fishing enterprises), state maritime administration (mainly in terms of sailing safety, waterway maintenance, hydraulic units), which resulted in a lack of coordination in efficient use and development of the land, location and scheduling of the seaport industry development, building and maintaining the infrastructure and environment protection¹.

If we add a lack of local governments at the time of centrally planned economy in Poland – instead of local governments there were state authority bodies at the provincial and municipal level - one can risk saying that both the seaport towns, where there were no local governments, and the ports, where there was no one ownership over the entire seaport land, was deprived of 'genuine administrators' looking after their proper development. In the period the research was focused on there was no development of both direct and indirect organizational connections that could have linked the seaport towns with their ports. The local governments had not been formed in full shape. Therefore it was impossible for them to be fully involved in seaport management. It is the state of Poland which is a sole owner of the seaport land.

2. Systems and strategies for seaport management in Western Europe

The most common criteria for seaport management systems that you can come across in the literature on economics and seaport organization are based on the ownership of land and buildings belonging to the port infrastructure. According to these criteria the municipal, autonomous, state and private systems can be distinguished.

Normally, in the countries where there is more than one seaport there is no one uniform port management system implemented in the ports. Great Britain, where there are all the most important systems adopted, is a typical example. It should be stressed that a port management system adopted in a particular port has its origin in some tradition².

The municipal system is the oldest system of seaport management. Geographically, it is adopted in some of the Baltic ports and in the North Sea ports including the largest seaports in terms of transshipment volume, i.e. the ports of Rotterdam, Antwerp and Hamburg. Their tradition of seaport management has been known as 'Hanseatic tradition' according to which it is a

¹ The authors who wrote about this issue include D. Bernacki, J. Góra, K. Luks, *Prywatyzacja w polskich portach morskich*. Uniwersytet Szczeciński. Rozprawy i Studia V. 154. Szczecin 1994, p. 28.

² H. Ćwikliński, *Act on Seaports and Harbours of 26 August 1997*, *Towarzystwo Ekonomistów Polskich, Ośrodek Monitorowania Inicjatyw Legislacyjnych*. Biuletyn Issue No. 8/97, Warszawa 1997, p. 6.

municipal council that establishes all the organizational, legal, economic and financial regulations. This body supervises and controls the executive body of port authority and in practice is also the owner of the entire aquatic area. In practice there are two primary strategies for the solutions adopted in the ports:

- the managing entity is separated from the general municipal administration (see Rotterdam or Amsterdam),
- the tasks related to the municipal port management are performed by the entities which are integral to the general administration of a particular port town (see Hamburg or Bremen).

The autonomous system for port management adopted in the French ports of Le Havre, Marseille and in the Italian port of Genoa as well as in some of the British and Scandinavian ports has been regarded as very effective in Europe, but not only, since it provides a possibility of carrying out a very flexible port policy. The autonomous port status is granted under a relevant act.

Autonomous ports are administered by their Port Authorities which consist of their two primary bodies, i.e. the Administrative Council and Chief Executive. Their Port Authorities have their own legal entity, budget and the area they perform their activities on. They are also autonomous ownership entities over the seaport land and its buildings.

The Autonomous Port Council, i.e. its Administrative Council, is its managing body which decides on all issues relating to the business activity and development of a seaport. It decides on the issues connected with the infrastructure and land development, location of the transshipment and storage terminals as well as the port industry terminals. It determines the rules pertaining to the operation of port equipment which is under its management and fixes port charges. The current port operation including its current management is performed by the executive board with its chief executive as head of the board.

The following management strategies within this system can be distinguished³:

- full management strategy - the so called one landlord strategy - characterized by a strong position of the Port Authority and its high degree of managerial autonomy; no involvement in port operations
- landlord – operator strategy characterized by a strong position of the Port Authority; it is often a company with a state and municipal capital although it presents limited involvement in port operations due to economic limitations.

In practice, the state system for seaport management has been used in the ports of EU to date. This system has been used mainly in Spain and Portugal and along with other systems in such countries as Great Britain, France, Italy, Belgium, Greece and Germany. In the state management system the ports are directly controlled and supervised by central authorities. In this system the state is a sole owner of the port aquatic and land area as well as the buildings of transportation infrastructure which are located on them. Therefore it is responsible for their maintenance and development and financial support in this respect. It is also the central authorities which determine the rules and strategies of operational activities in the ports as well as exercise direct and indirect supervision. The concrete solutions in connection with the state port

³ A.S. Grzelakowski, Rozwój logistyki i logistycznych łańcuchów dostaw oraz ich wpływ na systemy zarządzania portami morskimi. Logistyka, Issue No. 6/2009.

management system can differ from each other considerably. In this case the entity structures are more of a reflection of the state central and regional administration in their country than of port uniqueness. In the literature on this subject the following strategies within this management system can be distinguished⁴:

- centralized management strategy which is characterized by the Port Authority's weak position which sometimes results in a lack of autonomy and its high level of involvement in port operations,
- decentralized management strategy which is characterized by the Port Authority's strong position; state-owned company; limited involvement in port operations.

In some ports of the EU, especially in the ports of Great Britain including Belfast, Felixtone and Aberdeen, a private port management system has been successfully implemented. The ports managed within this system are usually dedicated ports of regional significance or the ports which belong to the industrial plants.

In some of the British ports the management sector of port infrastructure has been privatised by adopting one of the three methods specified below⁵:

- a public sale of shares which had been previously adopted in privatisation of the state-owned Associated British Ports in 1983. A 49% of shares were sold by way of a public offering and a 2.5% of shares were given directly to the employees;
- Management Buy – Out or Management and Employee Buy – Out - these were popular at the end of 80's but they were expensive and time-consuming methods;
- based on the Ports Act of 1991 which said that port authorities could be established as limited liability companies successively selling their shares to private entities.

In this case a private entity is the port's managing entity as well as its operator and infrastructure owner. It is responsible for the preparations and completion of development plans including financing new investments and port buildings maintenance.

According to A.S. Grzelakowski in the EU the highly deregulated economies, increase in the market liberalization, an ever growing globalisation as well as improvement in the logistics and global delivery networks have resulted in:

- state seaport management system with a port authority holding strong autonomous entitlements and responsibilities which moderately gets involved in port operations,
- municipal/self-government seaport management system in which not only a managing entity is separated, but it is also granted numerous entitlements in the managerial, developmental and operational fields resulting in the Port Authority's much stronger position,
- private seaport management system, especially in its cartel form based on horizontal capital connections.

However, the autonomous seaport management system, which is distinctly different from the other ones, does not seem to be justified. It results from the fact that the other seaport management systems have become more and more

⁴ *Ibidem*.

⁵ H. Ówikliński, Act on Seaports and Harbours... op. cit., p. 6.

autonomous which is caused by the requirement of a better adaptation to the competitive environment.

3. *The debate on the final form of the Act on Seaports and Harbours*

The Act on Seaports and Harbours of December 1996 played a significant role in changing the system of Polish seaports land management⁶ (hereinafter referred to as 'Act'). However, before the Act became law there had been long-running debates among numerous committees on a strategy for managing seaports, which especially pertained to the largest ports, and about the role of a seaport municipality in a future seaport authority. While debating an organizational and capital form of a new seaport authority a number of various concepts cropped up including the most extreme, autonomic ones on one hand and a communal (self-government) ones on the other hand.

After 1991 the most important drafts of the subsequent ports act included:

- *A draft devised by the Commission of Experts on Seaports under Professor Z. Pełczyński at the request of Ministry of Transport and Maritime Economy in June 1992 entitled 'Act on Seaport Management'.*
- *The first draft by Związek Miast i Gmin Morskich of July 1992 prepared under K. Krucalak entitled 'Act on Seaports and Harbours'.*
- *A draft devised by Komisja Kodyfikacyjna Prawa Morskiego under J. Łopuski entitled 'Act on Seaports'.*
- *The so called 'Szczecin draft' devised under K. Luks⁷ entitled 'Act on Seaports of Republic of Poland and their Management'.*
- *The second draft by Związek Miast i Gmin Morskich.*

The future of the ports of Szczecin and Świnoujście (the so called 'together or separately' argument) was also disputed with various ideas cropping up in the debate. In 1992 the municipality of Świnoujście proposed a motion to the Ministry of Transport and Maritime Economy that the future ports act should take into consideration an independent port authority for the port of Świnoujście. In the opinion of Świnoujście local government it was only a regional port managing entity which could be a municipality's partner and guarantor of a mutually devised strategy. However, a great number of experts argued that a mutual managing entity for the ports of Szczecin and Świnoujście was a better solution. They stressed

- interrelated geographical location of the ports which suggests cooperation,
- high level of complementarity of the ports in terms of tonnage load operation capacity, range of transshipment and storage services, transportation availability, etc.
- one port authority provides more opportunities in terms of new investments (capital accumulation, greater loan reliability) and the rational use of its service capacity,
- in recent years there has been a worldwide trend to integrate/merge - see the example of a merger between Copenhagen and Malmö port authorities.

However, all drafts of the Act stated that necessary changes should be included in a strategy for the Polish seaports. The biggest challenge was how to

⁶ Consolidated text Dz. U. [Journal of Laws] of 2010 No. 33, item 179.

⁷ That draft was supposed to be a parliamentary draft and counter-draft to the government draft.

separate management from operation. The goals of the Act which were considered of nearly the same importance included the appointment of one administrator over the entire area of a seaport (seaport complex) and integration of the goals of seaport developments with the goals of seaport conurbation developments.

4. The final choice of a system for managing the large Polish seaports

The new system for managing the large Polish commercial ports included the ports of Gdańsk, Gdynia, Szczecin and Świnoujście as ports of key importance to the Polish economy⁸. The management system can be described as a state and self-government system. Within the managing entities of the ports of Gdańsk and Gdynia a 51% of shares were supposed to be owned by State Treasury and a 34% of shares by self-governments. The Act stated that one managing entity would manage the ports of Szczecin and Świnoujście. In the state and self-government managing company State Treasury owned a 51% of shares, but the self-governments of Szczecin and Świnoujście owned a 24.5% of shares⁹. Therefore it can be stated that the adopted solution took into account the role of the State as an entity which created and accomplished the primary goals of the state maritime policy and the role of maritime municipalities as entities which influenced the municipal and seaport symbiosis.

A joint stock company was regarded as the best organizational form that such an entity could adopt. It is worth noticing that in accordance with the applicable Polish laws only a joint stock company (out of the commercial and civil law companies) can run both a business activity and non-business activity¹⁰.

Art. 13.5 of the Act says that the State Treasury's share shall maintain a 51% of all votes in a managing entity, which is a guarantee that in the event of dealing in the State Treasury shares State Treasury shall not be deprived of the right in the company's votes (the so called 'State Treasury's golden share').

5. The tasks of new seaport managing entities and their sources of finance

The tasks imposed by the Act on Seaports and Harbours on a managing entity are related to its key role of a seaport land administrator. In accordance with Art. 7.1 of the Act the tasks in question include:

- land and port infrastructure management,
- port development prediction, programming and scheduling,
- building, improvement, maintenance and modernization of a port infrastructure,
- obtaining property for the port development,
- providing services relating to the use of port infrastructure
- providing access to the port units collecting waste from vessels in order to transfer it for recycling or neutralization.

⁸ Art. 2, item 3 of the Act on Seaports and Harbours.

⁹ Art. 13.1 - 3 of the Act on Seaports and Harbours.

¹⁰ Edited by K. Kruczalak, *Przekształcenia własnościowe w gospodarce morskiej*. Published by Wydawnictwo LEX, Sopot 1997, p.199.

As regards the accomplishment of the last before the last of the above mentioned tasks the legislators also gave a managing entity the pre-emptive right to sell or transfer perpetual usufruct (release for perpetual usufruct) with regard to the land located within the limits of a seaport¹¹. Undoubtedly, this solution is supposed to be partially compensating for the situation in which the former users within the limits of seaports were expropriated. If a managing entity has not exercised this right it is State Treasury that is entitled to do it.

In accordance with Article 9.1 of the Act a managing entity can obtain financial resources for the accomplishment of its tasks from:

- property use fees, rent, ground rent or a payment determined by virtue of an agreement which states that a managing entity gives the land or buildings, units or port installations for use.
- port fees,
- income from services provided by a managing entity,
- or other revenues.

Art. 8.1 of the Act contains fees for the port infrastructure use. According to K. Kruczalak¹², 'other revenues' are financial resources from selling bonds and shares, bank loans, targeted State Treasury grants, shares in other companies excluding these entities which would run direct and solely economic businesses related to the commercial aspect of port services.

Article 10.3 of the Act on Seaports and Harbours has also given a possibility for subsidizing the tasks related to building, modernization and maintenance of the port infrastructure, which is financed by the managing entity, from the State budget. This provision, however, is of general nature and does not bind, which results in the fact that Port Authorities are unable to take it into account in the system of long-term planning.

It should be assumed that subsidizing an investment in the port infrastructure by the state could be performed in an indirect fashion by way of including tax relieves, subsidizing preferential interest payments on loans and loan warranties. The requirement to implement these measures can be used to reach the following goals¹³:

- to provide a quick increase in a port handling capacity relative to the state's interest of importance
- to obtain favourable conditions for a foreign capital investment in the seaports
- to improve the Polish ports in terms of competition with foreign ports.

The same article of the Act, item 1, says that modernization and maintenance of the infrastructure providing sea access to the ports should be financed from the state budget at a rate determined by the budget act. In practice the tasks in this respect are performed by way of local maritime administration, i.e. maritime offices whose responsibilities are regulated by the Act of 21 March 1991 on Marine Areas of the Republic of Poland and Maritime Administration. The obligation relating to maintenance of the port access infrastructure which is of

¹¹ Art. 4, item 1 of the Act on Seaports and Harbours.

¹² Edited by K. Kruczalak, *Przekształcenia własnościowe ... op. cit.*, p. 203.

¹³ K. Luks, K. Kruczalak, S. Szwanowski, *Działania MTiGM w procesie przekształceń podmiotowo – własnościowych w morskich portach handlowych związane z wprowadzaniem ustawy portowej*. Instytut Morski Gdańsk. 1996, p. 21.

importance in terms of the seaport land operations (economic resources) pertains to:

- the port managing entity – railway infrastructure, roads, vehicle parks within the administrative limits of the port,
- representatives of municipal or state-owned road service – road infrastructure providing access to the port boundary,
- PKP Polskie Linii Kolejowe – port access railway infrastructure,
- public utility enterprises – energy network infrastructure, water and sewage infrastructure, heating infrastructure, communication infrastructure.

The Act defines clearly what a managing entity's income can be spent on. Apart from the accomplishment of the main tasks resulting from its business activity, a managing entity's income can be spent on covering its operating costs¹⁴.

The Act on Seaports and Harbours also says that managing entities shall be public service companies¹⁵. In accordance with Art. 310 par. 1 of the Commercial Code a public service company is a 'non-profit', i.e. not yielding a profit, company. However, it does not mean that by running its activity a managing entity does not follow the rules of good business, especially in terms of costly infrastructure investments and high expenditures related to obtaining new land for port operation.

The amendment to the Act on Seaports and Harbours of 2001 made the Polish ports of primary importance to national economy including Szczecin and Świnoujście even more attractive to possible investors. At present if you want to transfer the perpetual usufruct ownership of the ground property which is owned by the State Treasury or a local self-government unit and located within the limits of the ports and harbours or let it for the perpetual usufruct, let it for usufruct, lease or rent for the period exceeding 10 years, you have to be granted a permission by the relevant State Treasury minister exercised by way of an administrative decision in concert with a relevant maritime economy minister. The original version of the aforementioned Article 3 of the Act on Seaports and Harbours requested permission by the State Treasury minister at the time of releasing the port land for a period exceeding three years, which obviously hampered the port authorities that were trying to attract new investments in the ports. It resulted in extended investment process duration.

6. The interaction of a managing entity with the port operating entities, municipal self-government or the appropriate maritime economy minister

The very Act itself and the drafts that went before it did not regulate the issues in connection with the profit-oriented use of the port by operating entities. According to the legislator the economic relations between the seaport authorities and enterprises performing port services shall be based on relations between the lessor and leaseholder of the port land and port buildings. In this system the seaport authorities play a role of a landlord who maintains and prepares the future port infrastructure for seaport enterprises which operate on

¹⁴ Art. 9.2 of the Act on Seaports and Harbours.

¹⁵ Art. 6.2 of the Act on Seaports and Harbours.

the market in order to yield a profit¹⁶. It was settled in Art. 3 of the Act of 18 June 1999 amending the Act on Seaports and Harbours that in the event of incorporation of the existing entities managing the largest seaports of Poland into the new state and self-government managing entities the shares and stocks in the companies providing operating services (port services) should have been obtained by 31 December 2003¹⁷. By virtue of the Act amending the Act on Seaports and Harbours and the Act amending some of the acts of 16 December 2004 this date was postponed to 31 December 2005¹⁸. The Councils of Seaport Stakeholders established in the ports as advisory bodies for managing entities were supposed to play a very important role by integrating entities which provided operating services on the seaport land in accordance with Art. 12.1 of the Act.

The participation of seaport self-governments in managing the ports located within their municipality fulfilled their ambitions they had from the very beginning of the debate on a new system for managing the seaports of Poland. Art. 19 of the Act is of the greatest meaning for the seaport self-governments. It says that the supervisory board shall include the State Treasury and municipality(-ies) representatives. The article in question states that a municipality representative shall be appointed supervisory board president. In the case of the supervisory board of Szczecin and Świnoujście Seaports Authority it is either a municipality representative of Szczecin or Świnoujście who is by turns appointed supervisory board president. Participation in seaport management is related to some possible benefits obtained by seaport municipalities. Among these benefits A. Tubielewicz and D. Waldziński included¹⁹:

- economic development of the municipality which is manifested in quantity and quality-related aspects
- spatial development of the municipality which includes investments in the communal technology infrastructure
- social development manifested in positively formed and enhanced relationships,
- cultural development in all aspects, especially in terms of local and regional culture and its openness to foreign cultures,
- strengthening of self-government as a democratic life style which is, for example, manifested in a joint responsibility of the residents in their port and municipality management,
- effective functioning of the local government as a local public authority body.

In terms of the implementation of the Act the key partner for the seaport municipality self-government is the appropriate maritime economy minister and the three Maritime Offices which are subordinated to him or her. The most important tasks of the minister in connection with the implementation of the Act on Seaports and Harbours (in relation to the ports of the primary importance to

¹⁶ K. Misztal, Wewnętrzne i zewnętrzne uwarunkowania restrukturyzacji polskich portów morskich, in: Edited by K. Misztal, *Restrukturyzacja Transportu Morskiego Polski. Studia i Materiały Instytutu Transportu i Handlu Morskiego UG*, 1997, p. 12.

¹⁷ Art. 3 of the Act of 18 June 1999 amending the Act on Seaports and Harbours. Dz. U [Journal of Laws] No. 62, item 685.

¹⁸ Art. 5 of the Act of 23 November 2002 amending the Act on Seaports and Harbours. Dz. U. [Journal of Laws] of 2004 No. 169, item 1766.

¹⁹ A. Tubielewicz, D. Waldziński, Zarządzanie organizacjami „non profit” w polskich portach morskich. *Zeszyty Naukowe Politechniki Opolskiej*. No. 233/97, p. 21.

the national economy) include issuing orders with regard to the buildings and infrastructure installations which provide access to the ports. However, one cannot forget that during the investment process on the seaport land the key role is played by the appropriate State Treasury minister (agreements concluded for a period of more than 10 years).

7. Fifteen years of the Act on Seaports and Harbours

As the Act on Seaports and Harbours was introduced fifteen years ago it is possible to conduct a general analysis of its major provisions accomplishment.

1. The entities established by virtue of the Act which are managing seaports of the primary importance to the Polish economy, i.e. the Port of Gdańsk Authority S.A. and Port of Szczecin and Świnoujście Authority S.A. are seaport land administrators conducting infrastructure projects both on the undeveloped land within the limits of the seaports and by way of revitalization of the developed seaport land. Bearing in mind the current EU financial framework 2007-2013, apart from the investments at the new wharves or the ones which are undergoing modernization there are projects being conducted with the aim of modernizing the port internal railway and road infrastructure. The above mentioned entities which manage the largest commercial seaports of Poland participated in developing *Strategia rozwoju portów morskich do 2015 roku* ['A strategy towards development of seaports by 2015'] which is a document of government status²⁰, and prepared their own documents of strategic importance to the ports: Gdynia – 2003, Gdańsk – 2009, Szczecin – Świnoujście – 2000 and 2007.

2. By performing no liquidation of the 'old' port managing entities, i.e. the ones which had been operational before the Act on Seaports and Harbours became law, the legislator had to realize that at least during the initial period for the Act coming into force there would be two managing entities in each port. This duality was a big problem for the clients of particular ports who were in a dilemma which port administrator they should have enquired when it came, for example, to an issue of tonnage fees settlement - whether ask a 'new one' appointed under the Act or the 'old one' who was given perpetual usufruct for the seaport land. The problem was not solved until the 'old' port authorities were incorporated into the 'new' ones.

3. So far the entities managing seaports of Gdańsk, Gdynia, Szczecin and Świnoujście have rarely exercised the pre-emptive right to buy the seaport land under the seaport administration. Exercising this right always entails a reservation of financial resources for a possible purchase. Additionally, the land for sale was not always appropriate for the accomplishment of goals relating to the developmental strategies conducted by these entities. The examples of exercising the pre-emptive right are: purchasing the ferry terminal land in Świnoujście from Polferries (Polish Baltic Shipping Company) by Port of Szczecin and Świnoujście Authority or a purchase of a land within the limits of Stocznia Gdynia and Stocznia Nauta made by Port of Gdynia Authority. Although the pre-emptive right pertaining to the seaport land purchase is also

²⁰ A strategy towards development of seaports by 2015; Ministry of Marine Economy, Warsaw 2007, (legally binding document)

given to State Treasury (unless an entity which manages a seaport exercises it), in practice it has not been used by State Treasury so far.

4. As it was predicted in the Act on Seaports and Harbours the main source of financial resources for the managing entities are lease fees and port fees. The example of Port of Gdynia shows that the ground rent to the port fees ratio was 60 to 40²¹. The port experience over the last eight years has shown that the EU regional policy resources are a key source of financial resources used by the managing entities for the investments in the costly port infrastructure. The resources obtained from privatization of the companies providing port operating services have also played a significant role. The Act on Seaports and Harbours has also given a possibility for subsidizing the tasks related to building, modernization and maintenance of the port infrastructure, which is financed by the managing entity, from the State budget. The practice so far has shown that this provision has not been implemented yet.

5. The privatization of transshipment and storage enterprises has been already finished in the ports of Szczecin and Świnoujście. It is just about to be finished in the ports of Gdańsk and Gdynia. In Gdynia it is the Baltic General Cargo Terminal that is still to be privatized (Port of Gdynia Authority has a 50% of shares). In 2012 in Gdańsk it is the Port of Gdansk Cargo S.A. (the last and the biggest company providing seaport operating services) that is undergoing privatization. Once the entities managing ports of Gdańsk and Gdynia get rid of the shares in the above mentioned entities one can say that the actual separation between management and operation in the Polish ports is complete.

6. The state and self-government system of managing the largest Polish seaports was originally supposed to be a compromise between the State Treasury business and seaport self-governments ambitions. As a result of adding the seaport land to the managing companies by State Treasury, the shares of municipalities went down to a symbolic level. The municipalities were not interested in increasing their shares by means of introducing the seaport public utility grounds to the companies. There was even a situation when some of the port borders were reestablished by excluding some of the seaport land from their limits (for example Dalmor company in the port of Gdynia). In most cases such an exclusion or modification of the land ownership between municipalities and managing entities was functionally justified: the Starówka terminal land transferred to the municipality of Szczecin by Szczecin and Świnoujście Seaports Authority in return for the land located in the Zachodniopomorskie Centrum Logistyczne area; excluding from the Port of Świnoujście area the land adjacent to the Basen Północny and used for water tourism.

7. Art. 3 of the Act on Seaports and Harbours has not hampered the investors who are interested in putting their capital into the seaport land (see the investments accomplished on the Polish seaport land within the last 15 years including the first Deepwater Container Terminal in Gdańsk). The managing entities have been successful in obtaining the State Treasury ministry's consent to sign long-term lease agreements on the seaport land. The confirmed long-term cooperation was of key importance to investors who often decided to put sizeable capital for their investments on the Polish seaport land.

²¹ Based on the data included in the article 'Port zarabia i inwestuje'. *Namiary na morze i handel*; issue no. 5/2011.

In this respect the cooperation between the managing entities and investors has been based on one of the following strategies: (1) private initiative - one external investor, (2) public/private initiative - one external investor, (3) public/private and private initiative - numerous external investors²².

8. The provision of Article 10 of the Act on Seaports and Harbours contributed to a clear division of duties in terms of port infrastructure maintenance as well as sea and land port accessibility infrastructure. Still the real problem of key importance to the further development of Polish seaports is a lack of chronological coordination relating to the accomplishment of projects with regard to building and improvement of the linear infrastructure which provides land access to the port (motorways, express roads, high quality railway and inland infrastructure) with the investments in the internal port infrastructure which are currently underway.

9. Although the most important difficulties relating to the seaport land management have been sorted out and the Act on Seaports and Harbours has been law for 15 years, the debate on further evolution of the seaport land management system in Poland has not been finished yet. Recently, one of the demands for an amendment to the Act was to increase the local governments' share in the seaport land management²³.

10. The future amendments to the Act on Seaports and Harbours will also have to take into account the current trends in altering the ports management systems - the increasing autonomy in port management systems. The argument promoted in some of the Polish ports that the Port Authorities should be only a passive administrator of their own property must be changed into an active role of the Port Authority - both in the field of port management and in the field of activities aimed at joining the strategy of the delivery logistics networks operators. Not only are the ports transformed into the integrated land-sea components of transportation networks from the separated port infrastructure facilities but they are also converted into components of the delivery logistics networks.

References

Act on Seaports and Harbours. Consolidated text Dz. U. [Journal of Laws] of 2010 No. 33, item 179.

Act of 18 June 1999 amending the Act on Seaports and Harbours. Dz. U. [Journal of Laws] No. 62, item 685.

Act of 23 November 2002 amending the Act on Seaports and Harbours. Dz. U. [Journal of Laws] of 2004 No. 169, item 1766.

A strategy towards development of seaports by 2015; Ministry of Marine Economy, Warsaw 2007.

Bernacki D., Góra J., Luks K., *Prywatyzacja w polskich portach morskich*. Uniwersytet Szczeciński. Rozprawy i Studia V. 154. Szczecin 1994.

Ćwikliński H., *Act on Seaports and Harbours of 26 August 1997*, Towarzystwo Ekonomistów Polskich, Ośrodek Monitorowania Inicjatyw Legislacyjnych. Biuletyn Issue No. 8/97, Warszawa 1997.

²² It is described in more detail in the other article written by I. Kotowska and M. Pluciński.

²³ S. Jaśkowiec-Kamińska, O optymalny system zarządzania portami. *Namiary na morze i handel*, issue no. 19/2010.

- Grzelakowski A.S., *Rozwój logistyki i logistycznych łańcuchów dostaw oraz ich wpływ na systemy zarządzania portami morskimi*. Logistyka, Issue No. 6/2009.
- Jaśkowiec-Kamińska S., *O optymalny system zarządzania portami*. Namiary na morze i handel, issue no. 19/2010.
- Kruczalak K., *Przekształcenia własnościowe w gospodarce morskiej*. Published by Wydawnictwo LEX, Sopot 1997.
- Luks K., Kruczalak K., Szwanowski S., *Działania MTiGM w procesie przekształceń podmiotowo – własnościowych w morskich portach handlowych związane z wprowadzaniem ustawy portowej*. Instytut Morski Gdańsk. 1996.
- Misztal K., “Wewnętrzne i zewnętrzne uwarunkowania restrukturyzacji polskich portów morskich”, in: Edited by K. Misztal, *Restrukturyzacja Transportu Morskiego Polski*. Studia i Materiały Instytutu Transportu i Handlu Morskiego UG, 1997.
- 'Port zarabia i inwestuje'. *Namiary na morze i handel*; issue no. 5/2011.
- Tubielewicz A., Waldziński D., *Zarządzanie organizacjami „non profit” w polskich portach morskich*. Zeszyty Naukowe Politechniki Opolskiej. No. 233/97.

Recibido el 21 de agosto de 2012 y aceptado el 1 de diciembre de 2012.