

**SPAIN – STEVEDORE STRIKE ACTION – NEW LEGISLATION LIBERALISING
STEVEDORING SERVICES.**

BARCELONA, MARCH 2017

1. Background:

In Spain the established legal regime imposes certain obligations on companies which provide cargo handling services in the ports. Among these is the obligation to have a shareholding in the public stevedoring pool company (SAGEP) of the port in question, in return for which the participating terminals are obliged to hire stevedores from SAGEP's pool, to pay them fixed salaries and always to comply with contracting minimum numbers of employees from the pool

2. Judgment of the Court of Justice of the European Union:

The European Commission brought this matter before the CJEU (C-576/13) alleging that Spain was in breach of the right to freedom of establishment (article 49 TFEU). On the 11th of December 2014, the CJEU held that the current stevedoring system breaches EU legislation since it imposes barriers to entry on companies based in other EU states, by the imposition of the aforesaid obligations. Thus, the CJEU has compelled Spain to change the current stevedoring model by providing for a system allowing choice in the sourcing of stevedoring labour. In view of Spain's failure to comply with the Court's decision, a daily fine has been imposed that to date amounts to approximately EUR 22m, and could increase by EUR 134,000 per day of breach if there is a further judgment from the CJEU.

3. Spanish Royal Decree-Act 4/2017:

In order to avoid the fine and to comply with the CJEU's decision, on 25/02/17 the Spanish Government passed a new Royal Decree which substantially amends the current stevedoring model. In accordance with Spanish law, the Government is entitled to draft a Royal Decree as a statutory instrument with the same legal effect as an Act of Parliament, which is then immediately legally binding when there are extraordinary or urgent reasons to justify it. Despite such Royal Decrees being immediately legally binding, in order to come into force they must be ratified by Parliament, which in this case seems is likely to happen bearing in mind the current parliamentary majority.

There are two main points of this Decree that are worth mentioning:

- a) The change in the restrictive stevedoring system imposed by the SAGEP will be gradual. The percentage of employees to be contracted from the SAGEPs will progressively decrease from the entry into force of the Royal Decree: 75% in the first year, 50% in the second and 25% in the third. Then the SAGEP's, as monopoly companies of stevedoring services, will disappear, and terminals requiring stevedoring services will be able to choose freely which stevedores they wish to hire.
- b) The Port Authorities will be obliged to compensate the SAGEP's employees for the loss of their employment, which has been calculated will have a cost of around EUR 350m. This point is subject to the Commission's approval.

The stevedores stand firmly against this Royal Decree since they view it as an imposition of the CJEU's decision in its harshest interpretation.

4. **Stevedores' reaction to the Decree:**

A strike called in February was recently called off at the last minute as the government agreed to postpone the passage of the proposed Royal Decree through Parliament. However, with the publication of the Royal Decree the stevedores have now declared 9 days of official partial strikes from 6th of March onwards. The strikes are planned to last for more than three weeks, and as there is no schedule of strikes set out, unofficial "go-slows" are also expected.

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