

PORT ORDINANCE APPROVING A SPECIAL BERTHING PRIORITY SYSTEM AT BARCELONA PORT'S PUBLIC CONTAINER TERMINALS.

PREAMBLE

Barcelona Port Authority is responsible for the organisation and allocation of berths in Barcelona Port in accordance with articles 25(h), 106(a) and (b) and 107 of Legislative Royal Decree 2/2011 of 5 September, approving the consolidated text of the State Ports and Merchant Navy Act (TRLPEMM).

Current traffic needs have revealed the desirability of establishing berth allocation criteria in public container terminals in response to certain traffic circumstances. Specifically, when there is congestion at the line of berths at these terminals, the general criterion for berthing order (*first come/first served*) needs to be adjusted to protect the public interest of the port activity. Thus, in certain circumstances, berthing priorities will be granted that differ from the aforementioned general criterion.

Since the line of berths is a scarce resource, in this case the public interest is met by, firstly, loading and unloading full local containers for import and export from the hinterland of Barcelona Port, and secondly, meeting other logistical needs, such as loading and unloading transit and empty containers.

For this purpose, in accordance with the provisions of article 26.1(i) of the TRLPEMM, an ordinance must be drawn up to regulate the aforementioned circumstances with the procedures and requirements established by port regulations and ensure they are complied with.

The purpose of this Ordinance is thus to create a particular or special berthing priority system in Barcelona Port's public container terminals. In certain cases, this will differ from the general *first-come/first-served* system to ensure that liner shipping services connecting Barcelona Port, and therefore the hinterland it serves, which carry a high volume of full local containers, have a degree of berthing priority over other services in the event of congestion at the line of berths at the aforementioned public terminals.

The Maritime Administration Local Office has issued a report approving this Ordinance regarding aspects over which the Directorate General of the Merchant Navy has powers, in accordance with the provisions of article 295.3 of the TRLPEMM.

CHAPTER I

General Provisions

Article 1. Purpose.

The purpose of this port ordinance is to establish and regulate a special berthing priority system for certain vessels belonging to liner shipping services that will operate in Barcelona Port's public container terminals. This will be applied as an exception to the general berthing order criterion of "*first-come/first-served*".

Article 2. Scope.

1. The special berthing priority system regulated by this Ordinance applies only to public terminals exclusively dedicated to container traffic in Barcelona Port and only to quays associated with their concessions or with a preferential right of use. It applies to the entire berth line allocated to the concession.

2. This Ordinance thus applies compulsorily to the concessionaires of Barcelona Port's public container terminals.

3. The Ordinance also applies to all vessels that will operate in the public container terminals in Barcelona Port, notwithstanding that the special berthing priority system regulated in the Ordinance only applies to vessels expressly recognised as coming under this special priority system.

Article 3. Definitions.

The terms below have the following meanings:

a) Arrival at Port: a vessel is considered to have arrived at Barcelona Port, for the purposes of determining the order of arrival for their berthing order, as soon as the following two conditions are met:

- Having reported the "Notice of Arrival" call within one hour prior to arrival at buoy "S" Sierra at Barcelona Port Control.
- On its approach to Barcelona Port, the vessel is less than 20 nautical miles from buoy "S" Sierra.

b) First come/first served criterion: the general berthing order criteria in Barcelona Port's public container terminals, whereby the berthing order is allocated in sequential order of arrival at the port.

c) Waiting vessel: a vessel with "Arrival at Port" status, but which cannot berth at the corresponding container terminal due to the berthing order allocation resulting from this Ordinance.

c) Special berthing priority system: a set of specific rules to give certain vessels, which meet certain requirements, berthing priority over the “first-come/first-served” general berth allocation rule.

d) Priority vessel: a vessel used for a liner shipping service for container traffic for which the priority system envisaged in this Ordinance has been recognised.

- Group 1 (G1): The group consisting of priority vessels that have arrived at port.

e) Full local TEUs indicator: indicator calculated for a liner shipping service with the following formula:

$$\left[\frac{\text{Average local TEUs per call}}{\text{Average length in calls at port} \times \text{Average number of days berthed}} \right] \times \text{Average local TEUs per call}$$

f) Time of departure from the terminal: the time when the last line is cast off in vessel unberthing operations.

g) Time of arrival at the terminal: the time when the first line is provided in the vessel's berthing manoeuvre.

h) Total operating time: terminal operating time for a vessel, which elapses from the first container movement to last movement.

i) Swap: a swap is a change of berthing order turn from one vessel to another when both belong to the same shipping line.

j) Proforma traffic: the traffic forecast agreed between a shipping line and a container terminal.

k) Average local TEUs per call: to calculate the average, for each call of a vessel used in the maritime service requesting recognition carried out in the calculation period, the corresponding full local TEUs are recorded. The full local TEUs for all calls are added together and divided by the number of calls.

l) Full local TEUs: all full containers operated under the maritime arrival of goods or maritime departure of goods system, according to the definitions in Annex II of the Consolidated Text of the State Ports and Merchant Navy Act. Consequently, empty containers, maritime transit containers, transshipment containers and container removals that may take place during the call are excluded. For recording purposes, forty (40) or forty-five (45) foot containers shall be considered to be two (2) TEUs.

m) Berth line Congestion: this situation arises when an arrived vessel requesting for berthing to operate at a terminal cannot be berthed because there is insufficient quay space available at that terminal. This situation ends when there is no vessel waiting due to there being no space available at the quay.

n) Average length over all: this factor is calculated as the arithmetic mean of the LOA of the vessels that have called at port during the year of the calculation period. Therefore, if a vessel has called at port three times in that period, all three calls at port are counted in the divisor and its length is added to the dividend three times.

o) Average berthing time: this refers to a value in days calculated by adding the sum of the time that each of the vessels belonging to a liner shipping service has stayed been berth at the port during the year of the calculation period, divided by the total number of calls at port by those vessels in that period.

CHAPTER II

Specific provisions regulated by the port ordinance

Article 4. Special berthing priority system at public container terminals.

1. The special berthing priority system at Barcelona Port's public terminals gives priority in the berthing order over other waiting vessels to those belong to group G1 that have been expressly recognised by Barcelona Port Authority as coming under the special berthing priority system, in the manner provided for in this Ordinance.
2. The inclusion of vessels in the special berthing priority system is voluntary and temporary. Therefore, it will only apply to vessels belonging to liner shipping container traffic services that have requested it and have been expressly recognised the priority right under that system by Barcelona Port Authority, and only for the period of time set in the recognition decision.
3. Recognition of the special berthing priority system does not exempt vessels with this priority from the obligation to obtain the relevant call authorisation in accordance with the Integrated Calling Procedure (*Procedimiento Integrado de Escala* - PIDE). The call request must state the number of the Liner Shipping Service to which they belong.
4. Barcelona Port Authority shall announce on its website and, when appropriate, in the other media it deems necessary, the order of arrival at port of all vessels requesting to call at the public container terminals. It shall specifically state the priority vessels.

Article 5. Criteria for liner shipping services' vessels to qualify for the special berthing priority system.

1. All vessels dedicated to container traffic used in liner shipping services (as defined in Legislative Royal Decree 2/2011 of 5 September, approving the Consolidated Text of the State Ports and Merchant Navy Act) may qualify for the special berthing priority system regulated in this Ordinance when the full local TEUs indicator for that liner shipping service passes the two thousand (2000) threshold.

2. Evidence of passing the threshold of full local TEUs may be provided with historical data from the previous year for existing services or 'proforma traffic' forecasts for new services. Justification of the proforma traffic shall be provided by the shipping line or its representative by stating at least the number of vessels, size of the vessels, ports of rotation and forecast volumes.

3. In order to qualify for the special berthing priority system, the corresponding recognition must be obtained from Barcelona Port Authority, following an application by the interested party, in the manner provided for in this Ordinance.

Article 6. Application procedure for recognition of the special berthing priority system.

1. In order for vessels that belong to liner shipping services at a specific terminal to be recognised as coming under the special berthing priority system, shipping lines or their shipping agents must officially request it through the application form that will be approved in accordance with the Final Provision of this Ordinance.

2. Applications may be submitted individually by each shipping company or jointly by all the shipping companies that comprise a liner shipping service. Applications will be processed in chronological order of submission.

3. For each application, the Port Authority will request a non-binding report from the concessionaire of the public terminal to verify both compliance with the qualification requirements by the liner shipping service and its technical feasibility, and the appropriateness of the request. If the terminal does not issue the requested report within fifteen (15) calendar days, the Port Authority may continue to process the recognition file through to completion.

4. Barcelona Port Authority will grant or refuse recognition of berthing priority with an express decision of which the applicants and the container terminals will be notified.

5. The recognition of berthing priority will be valid for 1 year from the date of the decision granting it.

Article 7. Criteria and procedure for application of the special berthing priority system at Barcelona Port's public container terminals.

1. The special berthing priority system provided for in this Ordinance will only be applied as an exception to the "*first-come/first-served*" general criterion for allocating berths when there is congestion at the berth line and there is a waiting vessel that belongs to group G1 that has been expressly recognised by Barcelona Port Authority.

2. If there is more than one waiting vessel belonging to group G1 that has been expressly recognised as coming under the special berthing priority system, the order of berth allocation between them shall be determined by the “*first come/first served*” criterion.

3. The berthing priority regulated by this Ordinance for vessels belonging to group G1 applies from the time the priority vessel is considered to have arrived at port in accordance with article 3.

4. The special priority system shall apply even in the event that the space freed up in the first place is not sufficient to allow the G1 vessel to berth. In these cases the quay line shall be reserved until other departures provide sufficient space for the priority vessel to berth.

In spite of the foregoing, for the sole purpose of optimising the management of the berth line in public container terminals, the terminal may exceptionally alter the special priority system by requesting the prioritisation of calls by vessels that have arrived at port that can operate in the slots available in the berth line, provided that the operating time of such calls does not delay the expected entry time of the first G1 vessel waiting.

Article 8. Exceptions to the special berthing priority system at Barcelona Port's public container terminals.

1. If several vessels are waiting, from both group G1 and other vessels, a shipping line may swap the order of calls, provided those calls are consecutive in the berthing order.

If they are not consecutive, swapping will also be allowed provided other vessels' time of entry into port is not delayed.

In the case of swapping a vessel “X” from priority group G1 for a non-priority vessel “Y”, after that change vessel “X” will be considered as the swapped vessel “Y”, such that it will lose G1 priority status, taking the turn of swapped vessel “Y”.

2. In order to optimise the line of berths at public container terminals, such terminals may exceptionally vary the order of berthing priority when there is a reason based on the incompatibility of the technical specifications of the available lineup with the technical requirements of the vessel in question.

Therefore, in the event that a vessel, due to its draught, crane type requirements or other similar circumstances, is unable to enter an available lineup, that lineup will be taken by the next vessel, according to the list of priority, which can operate in that lineup.

3. If the terminal is at a degree of occupancy above a limit set for the terminal's normal operation (85% in the case of the South Quay terminal, and 90% in the case of the Prat Quay terminal), at the terminal's request, the Port Authority may prioritise the berthing of calls (never above priority group G1) that are coming to carry out loading operations greater than 90% of the total activity in that call.

4. Barcelona Port Authority may temporarily suspend the application of the priority criteria set in this Ordinance when exceptional situations arise which, for reasons of safety or optimal port operation, may condition maritime accessibility for a certain group of vessels, such as establishing a “*maritime traffic restriction*” situation.

Article 9. Joint scheduling and berth allocation.

1. In order to better monitor the planning of operations and optimisation of terminal use, terminals shall submit a proposed berthing plan at the quays associated with their terminal. This scheduling plan shall be based on the most reliable data on the estimated times of arrival and departure of the vessels that will operate or are operating at the terminal and it shall consider the application of the special berthing priority system in accordance with those times. However, since this scheduling is based on estimates, it is only informative for planning purposes. Vessels’ actual times of arrival at port and terminal departure times will be decisive in the effective application of the priority criteria.

2. This proposal shall be submitted daily to Barcelona Port Authority’s berthing service in accordance with the procedure for the exchange of information to be approved in accordance with that set out in the Final Provision of this Ordinance, focusing on operations scheduled on daily bases, with the exception of public holidays or weekends, when it must be submitted on the previous working day.

Article 10. Withdrawal of recognition of the special berthing priority system.

Recognition of the special berthing priority system will be withdrawn in the following cases:

- a) Expiry of the valid term of the berthing priority recognition.
- b) In the event of a liner shipping service failing to meet the minimum threshold of full local TEUs during a six-month period, with respect to the rest of the scheduled year.
- c) An express decision by Barcelona Port Authority, due to breach of this Ordinance or committing the infringements provided for in Legislative Royal Decree 2/2011 of 5 September, approving the Consolidated Text of the State Ports and Merchant Navy Act, and in the Operation and Policing Regulations that may be approved, when applicable.
- d) If Barcelona Port Authority approves a new special berthing priority system that is incompatible with that regulated in this Ordinance.

Article 11. Monitoring compliance with the requirements of this Ordinance.

1. Barcelona Port Authority may, at any time, audit compliance with the special berthing priority system by terminals and liner shipping services. For this purpose, the terminals must provide all necessary information when requested to do so.

They must also report any incident concerning compliance with the special berthing priority system.

2. In any case, the terminal shall keep a record, for all vessels operating at the terminal, containing the following parameters:

- Name of vessel.
- Service to which it is attached.
- Arrival time at the Port. These data will be generated by Barcelona Port Authority and will be published on the Port Authority's website.
- Time of departure from the terminal.

3. In addition, on a monthly basis, the terminals shall send Barcelona Port Authority the following KPI indicators concerning the control and management of the line of berths:

- Degree of occupation of the line of berths: sum of the staying time of each vessel, multiplied by its length, divided by the time of one month, multiplied by the length of the quay.
- Average waiting time each month: calculated as the sum of the times from the time of arrival at port to the berthing time of all vessels during the month being analysed, divided by the number of vessels berthed in that month (both for all calls at port and particularly for calls belonging to group G1).
- Relative waiting time each month: calculated as the sum of the average waiting times for each month, divided by the total operating time of all vessels during that month, divided by the number of vessels berthed in that month.

Article 12. System of penalties.

1. Breach of the provisions of this Ordinance shall be penalised in accordance with the provisions of Legislative Royal Decree 2/2011 of 5 September, approving the Consolidated Text of the State Ports and Merchant Navy Act and, when applicable, the Operation and Policing Regulations.

2. During the penalty procedure, the effects of recognition of the special berthing priority system may be suspended as an interim measure.

3. The decision ending the penalty procedure may, in addition to the applicable penalty, withdraw recognition of the special berthing priority system for the period of time determined in the decision.

Final provision one. Authorisations.

1. The Director General of Barcelona Port Authority is authorised to issue the necessary resolutions to:

a) Modify the threshold of full local TEUs required for recognition of the special berthing priority system regulated in this Ordinance, when there are technical or operational reasons that make it advisable.

b) Modify the degree of occupation of Barcelona Port's public container terminals provided for in article 8.3 of this Ordinance.

c) Approve the application form for recognition of the berthing priority system and the procedural flow.

d) Approve the procedure for exchange of information concerning the proposed scheduling of berth allocation between the terminal and the Port Authority.

2. In accordance with the provisions of article 33.2(a) of the TRLPEMM, the Director General of Barcelona Port Authority is entitled to decide on applications for recognition of the berthing priority system referred to in this Ordinance.

Final Provision Two. Waiting vessels.

The decisions and instructions issued by the Maritime Administration Local Office within the scope of its powers shall apply to situations of “Waiting Vessels”, notwithstanding any protocols that may be approved in this regard.

Final provision three. Maritime safety.

The berthing order priority at Barcelona Port’s public container terminals must be suspended if it entails any risk to safety. In particular, it may be modified at the request of the Head of the Maritime Administration Local Officer for emergency reasons that justify safeguarding the safety of navigation, human life at sea, prevention of pollution by vessels, or to adopt measures to ensure the integrity of goods.

Final provision four. Entry into force.

This port ordinance shall enter into force twenty days after it is published in the Official State Gazette.

DISCLAIMER: In the event of any discrepancy, the Spanish version will prevail.