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Reference:

Van de Voorde Eddy, Verhoeven Patrick.- Port governance and policy changes in Belgium 2006-2016 : a comprehensive assessment of process and impact
Research in transportation business & management - ISSN 2210-5395 - 22(2017), p. 123-134
Full text (Publisher's DOI): <https://doi.org/10.1016/J.RTBM.2016.12.004>
To cite this reference: <https://hdl.handle.net/10067/1421500151162165141>

PORT GOVERNANCE AND POLICY CHANGES IN BELGIUM 2006-2016: A COMPREHENSIVE ASSESSMENT OF PROCESS AND IMPACT

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14 December 2016

1. INTRODUCTION

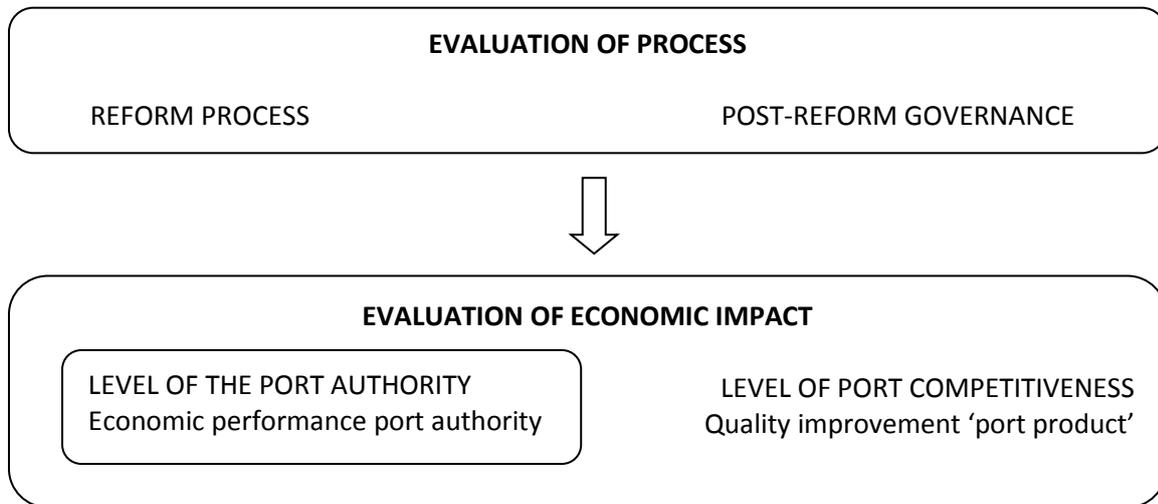
In most seaports around the world, port management is in the hands of a port authority, a body which has the statutory responsibility to manage a port's water and land-side domain (De Monie 2004). Port management bodies differ, *inter alia*, in terms of ownership, form, objectives, responsibilities and levels of autonomy. This diversity in turn depends on how governments view the role of ports in the first place (Suykens and Van de Voorde 1998). The role and features of port authorities have changed considerably over time, due to technological evolution, waves of privatisation and liberalisation and socio-economic factors. Port authorities became topical subjects in port economics research in the early 1990s and port governance has now become a widely professed field of study (Pallis et al 2011; Brooks and Pallis 2012).

This paper discusses port governance and policy changes in Belgium, more specifically in Flanders, the region where the most important seaports are located. The basic principles of Flemish ports policy are laid down in the Flemish Port Decree, which was adopted in 1999. The Decree intended to create a transparent and competitive governance framework and establish a level playing field among Flemish seaports. It also meant to anticipate supra-national trends at the level of the European Union, notably on port financing.

Although the Decree was amended a few times since its original publication, there has not been a fundamental change that could be qualified as a 'reform' of the Flemish port system. Nevertheless, there have been a number of significant evolutions over the past decade, notably regarding the financial responsibility of port authorities, cooperation between port authorities and corporatisation. Our main research question is whether these changes contributed to the original objectives of the Decree, in terms of transparency, competitiveness, level playing field and anticipation of supra-national developments. This will enable us to assess whether the Decree still provides a solid basis for the Flemish port system.

To answer the research question we apply the analytical framework for port management reform developed by Van de Voorde and Verhoeven (2014), which was applied for the first time on the reform of Rotterdam Port Authority (Verhoeven 2015). This framework identifies influential process factors and measures the economic impact of port management reform, as illustrated in Figure 1. The multi-layered framework provides a comprehensive tool to evaluate port management reform *ex-post*, producing both quantitative and qualitative results that complement each other. The process dimension aims at understanding how the reform programme was devised and delivered, seeking to evaluate its effectiveness, *i.e.* to evaluate whether reform achieved what it set out to do and explain why it did (or did not). It consists of two elements, an assessment of the actual port reform process and assessment of post-reform governance. The impact dimension also consists of two elements, assessing the impact of reform on the economic performance of the port authority itself and on the competitiveness of the port (Van de Voorde and Verhoeven 2014).

Figure 1 – Analytical framework for port management reform



Source: Van de Voorde and Verhoeven (2014)

Section 2 of the paper describes the basic principles of the Flemish Port Decree and the three main policy and governance changes that occurred over the past decade. The next section analyses the process of these changes and highlights a number of features of the ‘post-change’ governance. Given that the Port Decree was meant to anticipate supranational rules, specific attention is paid to the EU context. Section 4 tracks the economic performance of the port authorities and the ports they manage over the past decade through a selection of performance indicators. The next section discusses the main findings of our analysis and puts them in a broader conceptual context. Finally, we conclude with the answer to our research question and an indication of further research avenues.

2. EVOLUTIONS IN FLEMISH PORT POLICY AND GOVERNANCE 2006-2016

Belgium is a federal state, composed of communities and regions. Devolution occurred since 1970 through a series of state reforms. The regions obtained responsibility for ports policy after the second state reform, in 1989 (1). Given that Belgium’s four commercial seaports Antwerp, Zeebrugge, Ghent and Ostend are located in Flanders, port policy has effectively been the responsibility of the Flemish Region for almost three decades (2).

Meersman et al (2007) describe how Flemish ports policy evolved in the first two decades since devolution. Milestone is the Flemish Port Decree, which was adopted in 1999 (Vlaams Gewest 1999). This Decree is based on six basic principles, as summarised in Table 1. The Decree notably ensures uniform working conditions for port authorities, codifies the ‘Hanseatic’ principle of municipal port ownership and provides a transparent system of port financing. It has taken effect through a series of implementing decisions. A Regional Port Commissioner supervises the application of the principles of the Decree in the four seaports. The Commissioner has a seat on the board of directors of each port authority.

Table 1 – Basic principles of the Flemish Port Decree

1. Autonomy of local port authorities in the management and exploitation of ports
2. Uniform operating conditions for all seaports
3. Greater flexibility for port authorities in labour matters
4. Mandatory legal status for all port authorities
5. Clear and transparent relations between port authorities and the Flemish Region
6. An objective Flemish port financing policy

Source: *Vlaams Gewest (1999) and Meersman et al. (2007)*

Flemish port policy and governance evolved along three main lines over the past decade: (1) port authorities had to take on heavier financial responsibilities, (2) the Flemish government increasingly pushed port authorities to co-operate, and (3) most port authorities became limited companies.

2.1. Financial responsibility of port authorities

The Port Decree outlines the financial responsibilities of the Flemish Region and port authorities. The Flemish Region is responsible for the construction, upkeep, maintenance and exploitation of maritime access routes and basic infrastructure outside the port areas. Port authorities are responsible for the upkeep, maintenance and exploitation of sea locks and basic infrastructure inside the port area, i.e. docks, as well as for the exploitation and maintenance of equipment infrastructure, which *inter alia* includes quaywalls, jetties, embankments and roro ramps meant for the handling of goods or the transport of people. Port authorities can obtain subsidies from the Flemish Region for investments in basic infrastructure inside the port area and equipment infrastructure. The Decree does not mention the amount of aid the Region can provide, this is specified in implementing acts, within the limits of the Region's budget. Apart from subsidies for infrastructure investments, port authorities can also obtain subsidies for the public tasks of their harbour master's division, to ensure safety of navigation and prevent environmental pollution. The Flemish Region cannot subsidise superstructure investments (Vlaams Gewest 1999).

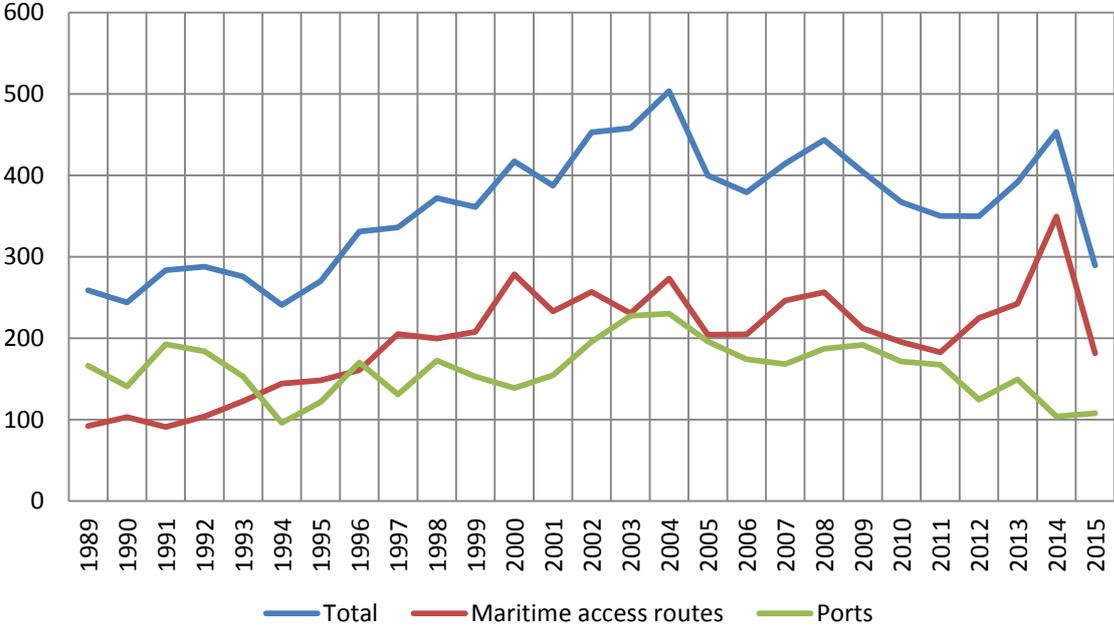
The financial framework of the Port Decree was devised in anticipation of EU guidelines on State aid. It was notified to the European Commission, who concluded that subsidies for harbour master tasks and government funding of maritime access routes and sea locks do not constitute State aid as these are not considered economic activities, but public tasks in the general interest (European Commission 2002, 2004). The Commission further found that subsidies for basic infrastructure inside the port area and equipment infrastructure could constitute State aid in principle. Nevertheless, the aid was declared compatible with the common market as it fitted with EU transport and territorial policies and would not distort competition to an extent contrary to the common interest (European Commission 2004).

Figure 2 shows the evolution of government spending since 1989, the year in which the Flemish Region became responsible for ports policy. The amounts are expressed in real prices of 2015. A distinction is made between government spending on maritime access routes and spending on ports, including subsidies for sea locks and basic infrastructure in ports, equipment infrastructure and harbour master tasks.

The total amount of government spending steadily increased until 2004. Afterwards it showed a downward trend, although a new upward movement occurred in 2012-2014. The latter is entirely

due to increased spending on maritime access routes, notably the deepening of the river Scheldt. Port-related funding decreased continuously since 2004 and is currently at its lowest point since 1989. This is partly due to a gradual decrease in the maximum aid percentages for equipment infrastructure.

Figure 2: Flemish Region spending on seaports 1989-2015, in million €, in real prices 2015

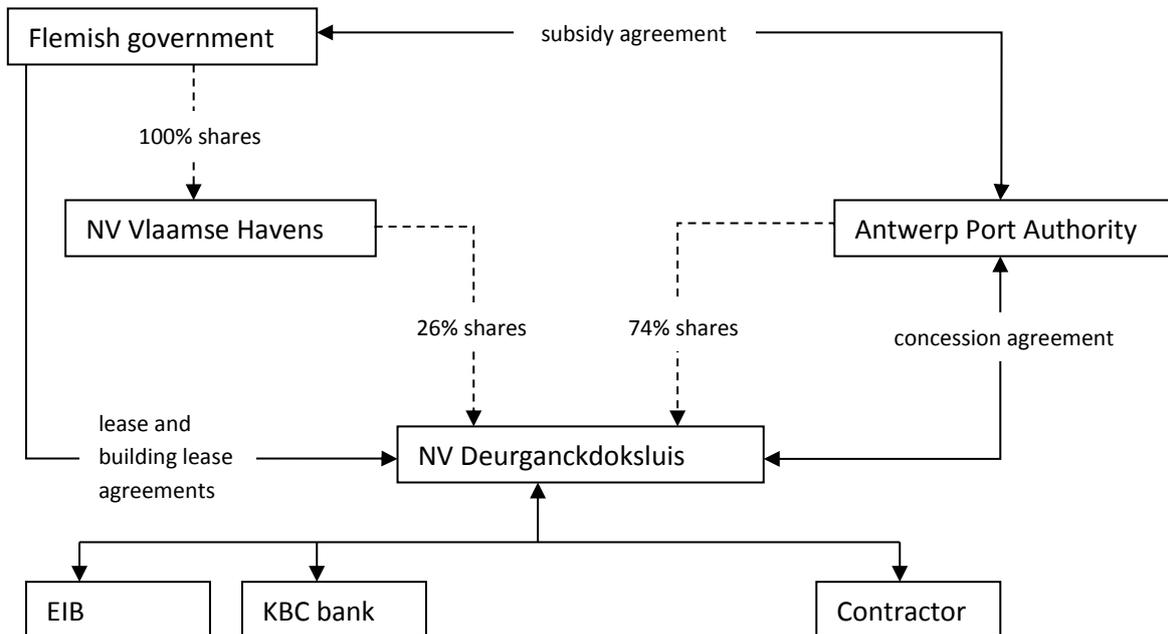


Source: Merckx, J.-P. and Neyts, D. (2016)

Since 2009, the Flemish Region is no longer exclusively responsible for the construction of sea locks. This resulted from the fact that the Flemish government was confronted with a request of three port authorities (Antwerp, Ghent and Zeebrugge) for the construction of a new sea lock, representing a total investment of about two billion Euros. Under the original rules of the Port Decree, construction costs would have to be entirely funded by the Flemish Region. Budget limitations would however have made this impossible. Rather than choosing in favour of (a) particular port(s), the government proposed to make port authorities financially co-responsible. In 2009 the Flemish Parliament adopted a Decree which authorised the government to set up the ‘NV Vlaamse Havens’ (Flemish Ports Ltd), a private-law limited company with a mission to develop and provide basic maritime access infrastructure, in particular sea locks, in the ports of Antwerp, Ghent and Zeebrugge (Vlaams Gewest 2009). The Ports Decree was amended so that responsibility for the execution and financing of the construction and provision of sea locks was transferred from the Flemish Region to the new limited company. The limited company is tasked to create for each new sea lock a daughter company that will be in charge of developing the lock and making it available to the respective port authority. The port authority concerned is a majority shareholder in that daughter company.

Figure 3 illustrates how the new system works, applied to the construction of the Deurganck lock, the new lock for the port of Antwerp. It was inaugurated in June 2016, when it obtained its name ‘Kieldrecht lock’. The project company ‘NV Deurganckdocksuis’ was established in 2011. It built the lock and became its owner. 74% of the shares are held by Antwerp Port Authority. After construction, the daughter company has given the lock in a 20-year concession to the port authority. The European Investment Bank (EIB) financed 50% of the total cost of the construction, with a maximum of 160.5 million Euros. In addition, KBC bank provided a credit line of 81 million Euros.

Figure 3: Financing of Deurganck lock (Kioldrecht lock)



Source: Departement Mobiliteit en Openbare Werken (2016)

2.2. Port co-operation

The Flemish government has always stimulated port authorities to co-operate closely, in particular to ensure that public money is well-spent and that infrastructure capacities are optimally used.

The Flemish Port Commission, which was set up in 1989 to advise the Flemish government on ports policy, has among its specific assignments the drafting of proposals to promote coordination between the policies of the ports and to promote dialogue and enhanced cooperation between the ports. The Commission consists of the four port authorities and representatives of port employers, trade unions, chambers of commerce and transport modes as well as academic experts. Its most significant role, and its most difficult one, is to provide advice on investment projects. The Flemish Minister for Mobility and Works is obliged to seek the opinion of the Commission on investment projects that exceed 10 million Euros. Given that the Commission includes port authorities that are “fighting for money, investments and capacity” (Meersman et al. 2007), it goes without saying that these opinions did not always come about easily. Still, the Port Commission has successfully provided opinions and recommendations on various policy matters. It was also instrumental in shaping the Ports Decree (Meersman et al. 2007).

In 2007, the Flemish government decided to step up its efforts to stimulate better cooperation among seaports. Under the name ‘Flanders Port Area’, a project was initiated that aimed at stimulating cooperation in three strategic areas: societal integration of ports, the anchoring of ports in logistic chains and reinforcement of the competitive position of Flemish seaports. A mixture of soft and more far-reaching forms of cooperation was envisaged. Concrete results

included the organisation of a biennial ‘Flemish Port Day’, during which the four seaports open their doors to the general public, and the development of a Cargo Community System. In addition, a code of conduct was concluded among the port authorities for commercial contacts with customers and investors (Flanders Port Area 2016).

Overall, Flanders Port Area did not really deliver on its expectations. The Hanseatic tradition of municipal governance prevented the top-down initiative from establishing far-reaching forms of cooperation between the port authorities. Notably Antwerp, the largest seaport, failed to see the value-added and feared the initiative would harm its competitive position and international brand-name. In 2013, the government tried to revitalise the initiative with a new and ambitious cooperation agreement that presented thirty action points in six areas: economic and commercial cooperation, logistics cooperation, cooperation on policy themes, common development of operational tools, a common approach towards students and employees and the joint creation of societal integration of ports. The new agreement was supported by academic research (Stevens et al 2012). It again contained a mix of soft and more far-reaching forms of cooperation but boasted a higher level of ambition, especially on economic and commercial cooperation. The specific actions under each of the six areas are presented in Table 3.

Table 3: Flanders Port Area 2013 – key areas and intended actions

Economic and commercial cooperation	<ul style="list-style-type: none"> Renewed engagement Code of Conduct Co-operation Antwerp-Zeebrugge containers Co-operation Zeebrugge-Ostend cruise Multi-modal platforms inland waterways Access railway operators to port terminals Promotion of clean fuels and energy efficiency Joint trade missions and exhibitions Joint promotion of Flemish Region Flanders Port Area quality label Communication of statistics and indicators Foreign trade missions Exchange of port and logistics know-how
Logistics cooperation	<ul style="list-style-type: none"> Study on hinterland connections Optimisation of combined rail traffic Dialogue on federal railway strategy Co-operation Antwerp-Ghent inland waterways New pipeline corridors
Cooperation on policy themes	<ul style="list-style-type: none"> Coordination of Flemish port interests at EU level Joint viewpoints on Federal policy issues Joint positions on Flemish policy issues Modernisation nautical chain management
Common development of operational tools	<ul style="list-style-type: none"> Development Cargo Community System
Common approach students and employees	<ul style="list-style-type: none"> Integrated approach for initiatives port sector Projects on education and job market Centralisation of educational material on ports Co-operation with provinces and Flemish employment agency
Joint creation of societal integration of ports	<ul style="list-style-type: none"> Inventory of existing initiatives Electronic newsletter for the general public Flemish Port Day

Source: Flanders Port Area (2013)

Despite the re-boost, Flanders Port Area continues to struggle moving beyond relatively ‘soft’ forms of cooperation. The most genuine and tangible case of economic and commercial cooperation in the Flemish port landscape concerns the ambition of the port of Ghent to eventually merge with its neighbouring ports in the Dutch province of Zeeland (Port of Ghent 2016a). Given its cross-border nature, this bottom-up project however falls outside the scope of Flanders Port Area. A few years ago, the ports of Zeebrugge and Ostend, which are located at barely 20 kilometers from each other, contemplated the prospect of a merger. A feasibility study presented a number of reasons that would justify this (Deloitte 2010). However, several factors, including political resistance from the municipal governments concerned and differences in corporate culture, prevented this merger from happening (De Kée 2013). The two port authorities do cooperate on the management of cruise traffic (4).

The continued crisis in the container sector may give impulses to further cooperation. The fact that Zeebrugge lost considerable traffic flows and that Antwerp is pleading for increased capacity brought about a societal and political discussion about better use of existing container capacity in the Flemish port system. In November 2015, the CEOs of the port authorities of Antwerp and Zeebrugge and the Flemish Minister for Mobility and Works signed a commercial cooperation agreement, which was dubbed ‘historical’ in the media. The agreement foresees the establishment of a development company which will monitor evolutions in the container market and provide a platform for dialogue, coordination and, where possible, targeted action. Significantly though, Antwerp Port Authority made sure that the agreement would not undermine public support for its own port expansion project (Port of Antwerp 2015)

2.3. Corporatisation

The Port Decree requires all port authorities to be incorporated and to be owned by their municipalities. Initially, the port authorities of Antwerp, Ghent and Ostend had taken on the *sui generis* legal form of ‘autonomous municipal companies’, whereas the port authority of Zeebrugge was established as a limited company in 1895. In 2014 and 2016, the port authorities of Ghent and Antwerp respectively became limited companies as well.

For the port authority of Ghent, becoming a limited company was meant to facilitate a future merger with Zeeland Seaports, raise capital for the financing of a new sea lock and involve neighbouring towns closer in the management of the port. The latter effectively happened in November 2016, when the municipalities of Evergem and Zelzate became shareholders of the port authority and joined the board of directors (Port of Ghent 2016b). For the Antwerp port authority and, in particular, the municipal government it was mainly a way to improve the corporate governance of the port authority. Other cited reasons were facilitation of participations in other companies and attraction of third party capital (Vlaams Parlement 2015).

It should be noted that Zeebrugge, Ghent and Antwerp are ‘public law’ limited companies, which *inter alia* implies that shares cannot be held by private undertakings. Whereas the corporatised port authorities have – to a varying extent – adopted principles of corporate governance, they all retain political representatives in their board of directors. Antwerp has gone furthest in bringing independent expertise to the board, which is since 2016 composed of six politicians and six independent people. A decisive voice nevertheless remains with the chairman of the board, who is the city’s vice-mayor responsible for the port. Corporatisation did not bring about major changes to the autonomy of the port authorities concerned, as this was already relatively high under the previous governance model and is overall embedded in the Port Decree.

3. PROCESS

In this section, we first analyse the processes that led to the policy and governance changes in the Flemish port system over the past decade. Secondly, we take a closer look at the current governance framework and how that affects the functions of Flemish port authorities. Finally, we spend some time on the supra-national context of the European Union. It also meant to anticipate supra-national trends at the level of the European Union, notably on port financing

3.1. Analysis of change processes

Pollit and Bouckaert (2011) developed a model of public management reform which revolves around the process of elite decision-making and identifies three important spheres of influence: economic and socio-demographic factors, political and intellectual factors and administrative factors. Chance events can play a significant role as well. It is from the interplay of these forces that reforms emerge (Pollit and Bouckaert 2011). The model proves to be particularly well-suited to analyse reform of port authorities (Verhoeven 2015). Table 4 applies the main factors of the model to the three policy and governance changes that marked the Flemish port system during the past decade.

Table 4: Analysis of policy and governance changes Flemish port system

	Financial responsibility	Cooperation	Corporatisation
Elite decision-makers	Flemish government Port authorities	Flemish government Port authorities	Municipalities Port authorities
Socio-economic forces	Market developments Supra-national policies	Market developments	Market developments City-port relations Supra-national policies
Political system	Belgian political heritage	Hanseatic tradition Belgian political heritage Stakeholder views	Hanseatic tradition New management ideas Party political views
Chance events	None	None	None
Administrative system	Flemish Port Commission	Flanders Port Area Port Commissioner	Port authority staff

Source: adapted from Pollit and Bouckaert (2011)

At the heart of the processes stands the elite decision-making between three entities: the Flemish government, the port authorities and the municipal governments that own them. The interplay between the Flemish government and the port authorities was most outspoken on financial responsibilities and port cooperation. Corporatisation has been more of an issue between port authorities and municipalities.

Socio-economic factors and, notably, the economic crisis that particularly affected the maritime sector, influenced government spending on port infrastructure and better use of existing port capacity through improved cooperation. Port-city relations and the need to involve neighbouring towns more closely in the governance and of the port and capital of the port authority was one of the reasons why Ghent Port Authority opted for a limited company structure. The opposite

happened in Antwerp. As a result of corporatisation, the organisation representing the interests of the towns on the left bank of the port area was no longer represented in the board of directors (5). The fact that most Flemish seaports, with the exception of Ostend, have largely outgrown their local importance and are ports of European significance makes them more subject to the influence of supra-national policy and legislation, as we will discuss further under 3.3.

Rather than opting for a ‘mainport’ policy, whereby the most significant international seaport receives priority attention, the Flemish government has chosen to promote the Flemish port system as a whole, underlining its intrinsically complementary nature. In doing so, the Flemish government is somehow indebted to the unitary Belgian political system whereby large infrastructure works in Flanders were mirrored in Wallonia and vice-versa as part of a communitarian pacification policy dubbed ‘waffle iron politics’, which led to many uneconomic investments. The Flemish government is however increasingly making port authorities financially responsible for their own investments, as the new policy on sea lock financing illustrates. The governance and policy changes that occurred over the last decade demonstrate very well how the policy of the Flemish government often stands at odds with the Hanseatic tradition of municipal port governance. This is especially clear in the relation with Antwerp, the largest seaport. Port authorities in the end want the best of both worlds, whereby they are eager to maintain full autonomy about investment decisions, but still wish to rely on financial support from the Flemish government as much as they can. New management ideas and party-political views play a role as well. The steep ascent to power of a relatively young Flemish nationalist party, which since 2014 (de facto) leads both the Flemish and Belgian coalition governments and, since 2012, the municipal government of Antwerp, may not have had much influence on Flemish ports policy, but it was certainly instrumental in the corporatisation of Antwerp Port Authority. Stakeholder views were most outspoken on the cooperation element. The Flemish Ports Association, which represents the private sector interests in the four ports, has been a relentless advocate of more intense cooperation.

There were no noteworthy chance events that had an influence on policy and governance changes, but the administrative system does play a role in the implementation process. We already referred to the role of the Flemish Port Commission and the supervisory role played by the Flemish Port Commissioner. In 2015, a new Port Commissioner was appointed, who obtained an outspoken mandate to stimulate cooperation between port authorities. Corporatisation of publicly owned organisations often meets with strong resistance from staff, who may lose certain privileges linked to their civil servant status. This did not occur here, as the status of port authority staff was not particularly affected.

3.2. Current governance framework and functions of port authorities

The policy and governance changes that occurred over the past decade were meant to reinforce the economic activities of port authorities but emphasise at the same time their public nature. The hybrid configuration of port authorities (Van der Lugt et al. 2013; Verhoeven 2010) makes clarity of objectives, autonomy from political intervention, accountability, participation, transparency and predictability very pertinent criteria to assess their governance (Stern and Holder 1999; Van de Voorde and Verhoeven 2014).

We already found that Flemish port authorities enjoy a relatively large degree of autonomy from the Flemish Region. The Port Decree codifies this autonomy. Port authorities nevertheless remain dependent on financial support from the Region, even if port-related financial support

has decreased over the last decade. Corporatisation has advanced independence from the municipal owners of the port authorities, although potential political influence from municipalities remains fairly high. None of the port authorities concerned have opted for a fully independent governance model that for instance prevails in Rotterdam and other Dutch ports (Verhoeven 2015).

Corporate form does not automatically imply corporate behaviour. This is why we will look in this sub-section at the actual behaviour of port authorities by making a quick scan of the revenue-generating functions they perform. These include the provision of infrastructure, the leasing of land and the provision of port services. Given that most Flemish port authorities operate in a landlord configuration, they generate most of their turnover from the first two activities.

3.2.1. Provision of infrastructure

Flemish port authorities charge general port dues to seagoing vessels and, where applicable, inland barges as a retribution for the right to sail into, pass through, moor or stay in the port area. In addition, port authorities can charge specific port dues for infrastructure or specific services that the port authority provides. Port authorities are obliged to advertise general and specific port dues in a transparent manner. They have the autonomy to set the level of port dues, but these have to be “reasonable and proportional” (Vlaams Gewest 1999). The qualification ‘retribution’ differs port dues from ‘taxes’, in that they represent a payment for a service rendered. Retributions however remain public in nature and are not commercial prices.

The legal nature of port dues, the competence of port authorities to charge them autonomously and the competence of port authorities to charge port dues in areas of the port that are not on the territory of the municipality that owns the port authority were challenged over the past years in a series of court cases that a port user brought against Ghent Port Authority and the Flemish Region. The matter was finally settled in the Belgian Constitutional Court, which also has competency to oversee regional legislation.

The court dismissed all claims of the plaintiff and confirmed the relevant clauses of the Port Decree. The court notably found that general port dues are charged in compensation for a service rendered by the port authority, regardless whether the port area forms part of the public domain. It also concluded that the port authority has the right to differentiate between categories of port users and set the level of port dues accordingly. The Port Decree stipulates that port dues have to be reasonable and proportional and this gives complainants sufficient ground to challenge decisions of the port authority in court. The Constitutional Court also pointed at the supervisory role of the Flemish Port Commissioner, which is again foreseen in the Port Decree. As to the possibility for a port authority to charge port dues outside the territory of the municipality that owns the port authority, the Court held that it is the Port Decree that defines the four port areas in Flanders and the competence that port authorities have over these areas. Defining the limits of the port area is the competence of the Flemish Region, not of the municipalities (Grondwettelijk Hof 2015).

3.2.2. Land lease

The Port Decree qualifies the management and exploitation of the public and private sites in the port area as a specific competence of port authorities. It further allows port authorities to make port land available to third parties, for renewable periods of determined duration, with a maximum of 99 years. This can be done through domain concessions, public works concessions,

rental contracts or leaseholds. The Decree gives port authorities the freedom to determine the conditions under which they want to make land available to operators (Vlaams Gewest 1999).

As most port land belongs to the public domain, most contracts between port authorities and terminal operators take the form of domain concessions. The Decree does not contain specific provisions regarding the way contracts have to be awarded or renewed. The practice of allocating sites after an open selection procedure is of more recent origin and applies mostly to larger sites. Especially Antwerp Port Authority has taken recourse to a more transparent policy, after it experienced litigation in the 1980s and 1990s about the allocation of container terminals (Devos 2003).

Port authorities increasingly use performance clauses in concession contracts, requiring minimum traffic volumes, modal shift criteria etc. (Notteboom et al. 2012). In Antwerp, this led to a legal dispute in 2012. Concession contracts included a legal penalty for not meeting certain traffic criteria. Due to the economic crisis, a number of terminal operators, including global players PSA and DP World, were not able to meet these criteria and were liable to pay penalties of 35.5 and 15.6 million Euros to the port authority. The port authority however did not collect the fines, whereas it did collect them from other operators. One of these operators, Katoen Natie / Seaport Terminals, which has a history of litigation against the port authority, started a series of legal procedures. One procedure was brought to the European Commission on the basis of unlawful granting of State aid, which was still pending at the time of finalising this paper. In a second procedure, Katoen Natie / Seaport Terminals sued the Flemish Region for not providing adequate supervision over the decisions of the port authority. The court declared the case unfounded, upon which the plaintiff appealed. The appeal was still pending at the time of finalising this paper. Other procedures were brought before the Council of State and the federal competition authority. Two other concession-holders have also challenged the traffic criteria penalties they were asked to pay. The port authority seems confident in the outcome of all procedures as it decided not to make a provision for the disputed penalties in its financial accounts (Havenbedrijf Antwerpen 2016).

3.2.3. Provision of port services

Port authorities can provide four types of operational services: services to police safety of navigation and prevent pollution, which are typically rendered by the harbour master's department, technical-nautical services (pilotage, towage and mooring), cargo-handling services and ancillary services, which are mostly provided for the benefit of the wider port community, such as waste handling, providing shore power for vessels etc. (Verhoeven and ESPO 2011).

Services provided by the harbour master's department can be qualified as 'public services'. In the Flemish case, the status of the harbour master was originally laid down in a law of 1936, which was later integrated in the Port Decree. The law stipulates that harbour masters are part of the port authorities, but they are appointed by the (Flemish) government. To perform their public tasks in an adequate manner, harbour masters have the status of officers of the judicial police and deputy officers of the crown prosecutor (Vlaams Gewest 1999). As mentioned before, the European Commission approved the subsidies provided by the Flemish government for the performance of these public tasks which do not generate specific revenue from port users (European Commission 2002).

Technical-nautical services can be qualified as 'services of general economic interest'. Such services are provided against payment but are executed in the general interest, in this case safety of navigation. Only Antwerp Port Authority provides such a service, namely towage operations in

the port area behind the locks. The revenue from this service constitutes a relatively significant part of the port authority's turnover (15% in 2015 – Havenbedrijf Antwerpen 2016). The towage monopoly of the port authority has not been challenged recently.

Flemish port authorities are generally not providing cargo handling services, with the exception of Antwerp Port Authority that operates a number of floating and dock-mounted cranes that are rented out for special operations. The revenue generated from this activity is relatively small (1% of total turnover in 2015 – Havenbedrijf Antwerpen 2016).

Flemish port authorities provide a number of ancillary services but the income generated from these is marginal.

3.3. Supranational framework of the EU

The Port Decree appears to provide a relatively stable framework to guide the activities of port authorities in a transparent, predictable and accountable manner. Although Flemish port authorities are not entirely autonomous from (municipal) political intervention, a system of checks and balances is in place that prevents the hybrid profile of port authorities from creating conflicts of interest. This is reinforced through the increased adoption of corporate governance principles.

We recall that the financial chapter of the Port Decree was written in anticipation of EU guidelines on port financing and State aid. These guidelines have not materialised yet, but it is clear that the decision-making practice of the European Commission and the European Court of Justice has become more restrictive compared to ten years ago, when the Flemish government notified its financial scheme to the Commission (Mellwig 2014). The Commission is currently preparing a proposal to extend the so-called 'General Block Exemption Regulation' to ports (and airports), which would declare certain aid measures for ports compatible with the internal market under the EU State aid rules (European Commission 2015). The Flemish government responded to the Commission's initial draft, expressing a series of concerns related to the status of previously notified and approved aid measures and the notion of aid as such, notably where it concerns the maintenance, including dredging and maintenance dredging, of access and basic infrastructure. Also the port authority of Antwerp responded with a number of specific concerns about port authority spending for the execution of public tasks (DG Competition 2016).

The current uncertainty about the applicable EU framework does not only concern government funding for infrastructure and public tasks of port authorities. The Commission recently decided to initiate a competition procedure against Belgium for exempting port authorities from corporate taxation (European Commission 2016). A similar procedure was initiated against France and both were triggered by an earlier procedure against The Netherlands. The recently adopted political agreement on the EU Ports Regulation is a weak version of earlier attempts to regulate market access to port services and the role of port authorities. It would at first sight not have too much impact on Flemish ports. But, given that towage remains included in the scope of the market access' chapter, it could have implications for the towage monopoly of Antwerp port authority. Substantial uncertainty also remains about the allocation and duration of concessions and land-lease contracts. The EU Concessions Directive excludes, under certain conditions, public domain or land lease contracts in ports (European Parliament and Council 2014). A pending infringement procedure against Lithuania contesting priority rights for cargo-handling operators renewing their land lease contract upon expiry could however have consequences for

the entire sector. Rules on port concessions and land lease contracts could also appear through the backdoor of the aforementioned General Block Exemption Regulation (European Commission 2015).

4. ECONOMIC PERFORMANCE

To measure the economic impact of governance changes, we need to distinguish between the impact on the economic performance of the port authority and the overall impact on the competitiveness of the port. To measure the latter, Van de Voorde and Verhoeven (2014) developed a methodology based on the generalised cost concept, which estimates the impact of reform on demand for the overall port product. The governance changes that occurred in Flanders over the past decade do not represent a full-fledged reform. Furthermore, the changes occurred at different moments in different ports, some as recent as 2016. Some led to only minor modifications. This therefore makes it difficult to make an overall ‘before/after’ comparison, let alone to isolate the effects from other internal and external influences that may have occurred simultaneously. To perform a generalised cost analysis, we would also need indicators on non-monetary aspects that would tell us something about time, risk and reliability factors. Unfortunately, none of the Flemish port authorities publish such indicators.

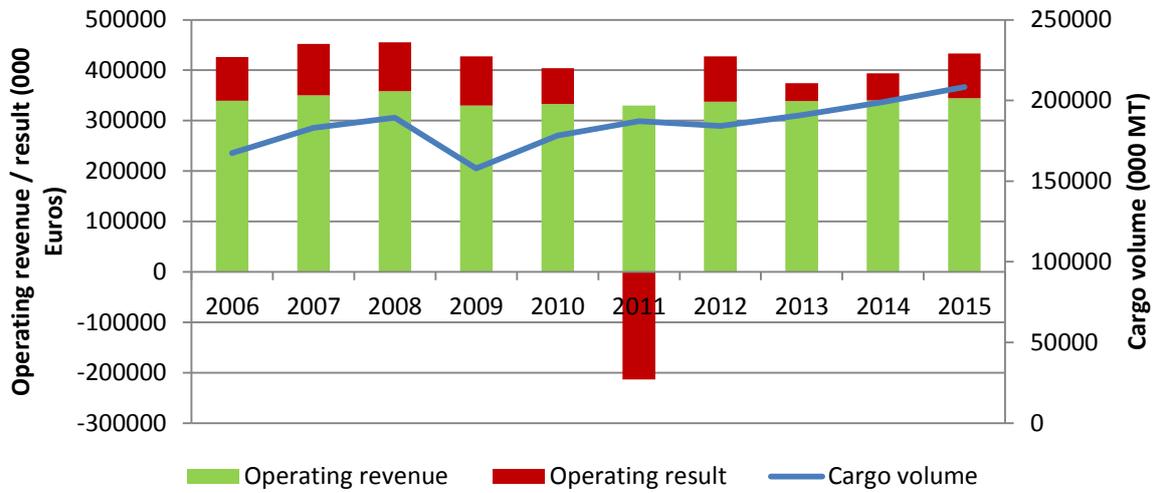
For these reasons we restrict ourselves here to the comparison of a number of key indicators, which give a general picture of the evolution of both the performance of the port authorities and their ports over the observed period. We first compare cargo volumes with the operating revenue and the operating result of the port authorities. Secondly, we analyse the profit figures more in detail, looking notably at the impact of the subsidies that port authorities receive. Thirdly, we look at the efficiency and, to conclude, we compare the market shares of the Flemish seaports in the Hamburg-Le Havre range.

4.1. Cargo volumes, operating revenue and operating result

Most port authorities around the world tend to focus on traffic volumes as a measure of successful performance. Despite this obsession with tonnes of cargo and numbers of passengers, throughput indicators reveal very little about the output of landlord port authorities, as these are not directly responsible for cargo handling operations. Establishing a proper output indicator for port authorities is a challenging task (Verhoeven 2015). The evolution of operating revenue and the operating result may give a better indication of the port authority’s own performance, although both will be influenced by traffic volumes as well. Figures 4, 5, 6 and 7 compare the evolution of cargo volume with the evolution of operating revenue and operating result for each port / port authority. Operating revenue and result are expressed in 2015 prices.

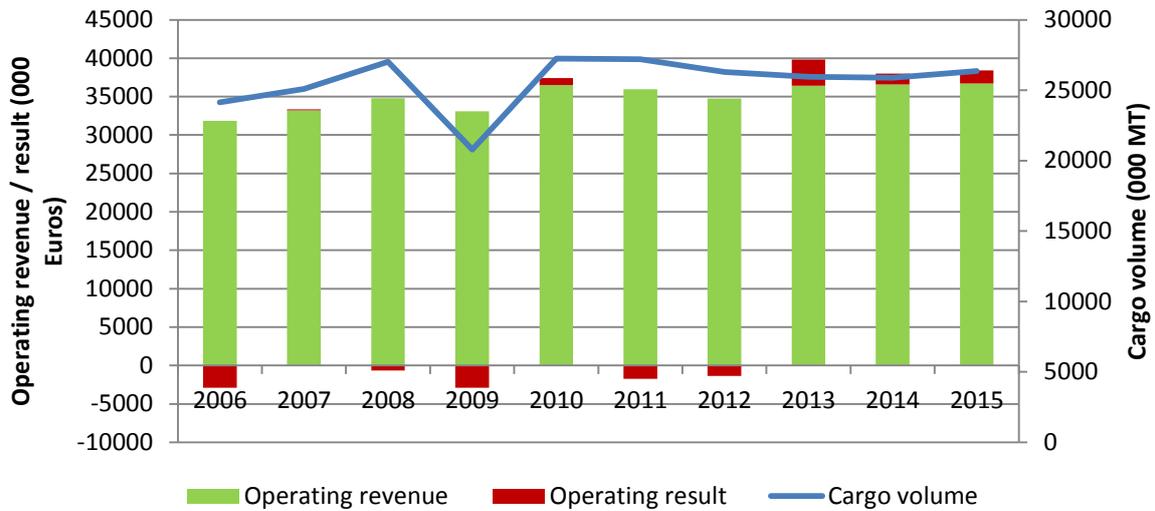
The operating revenue of the port authorities largely consists of turnover. As landlord port authorities, the two main turnover sources of the port authorities are revenue from land lease and port dues. Antwerp also gets a significant part (15%) of its revenue from towage services. The operating revenue also contains the exploitation subsidy that port authorities receive from the Flemish Region for the execution of public harbour master tasks. Over the period observed, this subsidy represents on average 8.5% of the operating revenue for Antwerp, 7.2% for Ghent, 9.2% for Zeebrugge and 17.6% for Ostend.

Figure 4: Total cargo volume, operating revenue and operating profit Antwerp 2006-2015



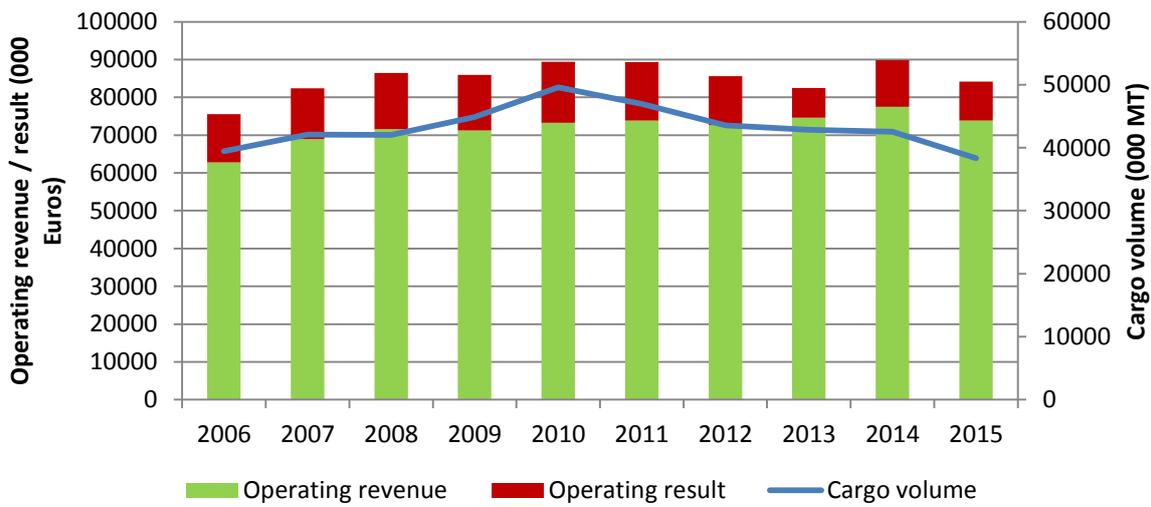
Source: Annual reports Antwerp Port Authority

Figure 5: Total cargo volume, operating revenue and operating profit Ghent 2006-2015



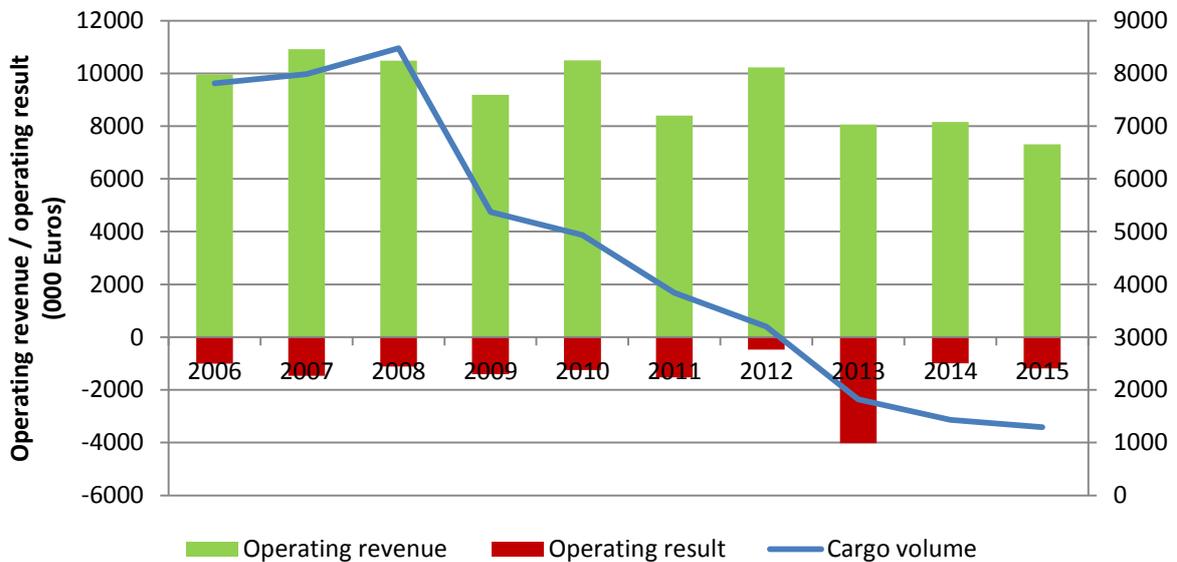
Source: Annual reports Ghent Port Authority

Figure 6: Total cargo volume, operating revenue and operating profit Zeebrugge 2006-2015



Source: Annual reports Zeebrugge Port Authority 2006-2015

Figure 7: Total cargo volume, operating revenue and operating profit Ostend 2006-2015



Source: Annual reports Ostend Port Authority 2006-2015

The graphs illustrate how the economic crisis hit all ports in 2009, except Zeebrugge. In the following years, only the port of Antwerp portrayed consistent growth. Cargo volumes remained fairly stable in Ghent. In Zeebrugge, volumes gradually declined from 2011 onwards. The post-crisis picture for Ostend is dramatic, with cargo volumes steeply reduced to marginal proportions. As a coastal port, Ostend used to specialise in cross-Channel transport of both goods and passengers but the picture for passengers is not better. Numbers decreased from 231.364 in 2006 to 11.277 in 2015 (Haven Oostende 2007; 2016). The port authority is looking for a new role for the port as energy offshore hub (Haven Oostende 2016).

The operating revenues of the port authorities of Antwerp and Ghent follow a rather similar pattern than the cargo volumes, although in Antwerp the growth of turnover in the post-crisis period is less outspoken than cargo growth. Zeebrugge Port Authority again appears not affected by the crisis, but turnover continues to grow modestly throughout most of the period afterwards, despite dwindling cargo volumes. Also the operating revenue of Ostend Port Authority does better in the post-crisis period than the cargo (and passenger) volumes. A fuller analysis of the turnover sources and calculation bases is needed to draw firm conclusions about the pricing policies of the port authorities.

Finally, the comparison shows that only Antwerp and Zeebrugge had a consistently positive operating result over the entire period. The outlier loss of Antwerp Port Authority in 2011 is due to an exceptional provision made to accommodate new pension rules for provincial and local authorities (Gemeentelijk Havenbedrijf Antwerpen 2012).

4.2. Profit

Although Flemish port authorities are public law entities, which do not have profit-making as a prime objective, an analysis of their profitability is useful to gain insight into performance, taking into account the increasing financial responsibility of port authorities and given the European developments on state aid and taxation that we identified earlier.

Table 5 compares the evolution of the operating result and Earnings Before Taxes (EBT) for the four port authorities over the period 2006-2015. The difference between EBT and net profit is marginal, since Flemish port authorities are exempted from corporate taxation. The table shows that the EBT of port authorities is usually (much) more positive than the operating result. This underlines the importance of financial and extra-ordinary revenue. For Ostend and, in some years, Ghent this revenue in the end makes the difference between profit and loss.

Table 5: Profit Flemish port authorities 2006-2015 (in 000 Euros and prices 2015)

		2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
ANTWERP	Operating result	86811	101735	97365	97574	70644	-213596	89825	35873	53341	88582
	EBT	100540	115011	124256	71632	86992	-178411	142225	55538	90040	105144
GHENT	Operating result	-2908	108	-631	-2889	939	-1738	-1358	3396	1393	1725
	EBT	6961	7951	11286	6913	10078	6881	8359	12407	10399	10355
ZEEBRUGGE	Operating result	12812	13415	14909	14673	16122	15488	12914	7839	12382	10262
	EBT	15509	16982	18989	17222	19790	21486	19604	13422	18938	16362
OSTEND	Operating result	-1010	-1466	-1115	-1403	-1249	-1528	-470	-4024	-989	-1183
	EBT	536	284	785	361	105	778	764	-2854	164	-55

Source: Annual reports port authorities

We explained earlier that all port authorities receive both exploitation and capital subsidies from the Flemish Region. Exploitation subsidies are granted to compensate the public tasks of the harbour masters' department. These are included in the operating revenue of port authorities. Capital subsidies are given for investments in basic port and equipment infrastructure. The depreciation of capital subsidies is included in the financial revenue of port authorities. Table 6 shows what the operating result and EBT of port authorities would have looked like if these subsidies would not have been allocated, *ceteris paribus*.

Table 6: Profit Flemish port authorities 2006-2015 without subsidies (in 000 Euros and prices 2015)

		2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
ANTWERP	Operating result	57561	71388	63693	69308	40709	-238935	62010	1644	27251	64040
	EBT	51524	68102	75530	26376	42359	-218086	97167	5204	49515	66068
GHENT	Operating result	-6118	-2852	-3482	-5811	-1530	-3912	-3459	1229	-770	-101
	EBT	-4295	-3233	-1119	-5039	-1825	-5110	-2889	1380	-506	0
ZEEBRUGGE	Operating result	6428	6670	8224	7924	9437	8925	6232	1252	5459	4287
	EBT	4563	5444	7473	5375	7750	9320	7107	1103	6198	4490
OSTEND	Operating result	-2553	-2982	-2959	-3248	-2692	-2806	-1683	-5189	-2151	-2338
	EBT	-1007	-1231	-2564	-3451	-3721	-2572	-2728	-5646	-3273	-2873

Source: Annual reports port authorities

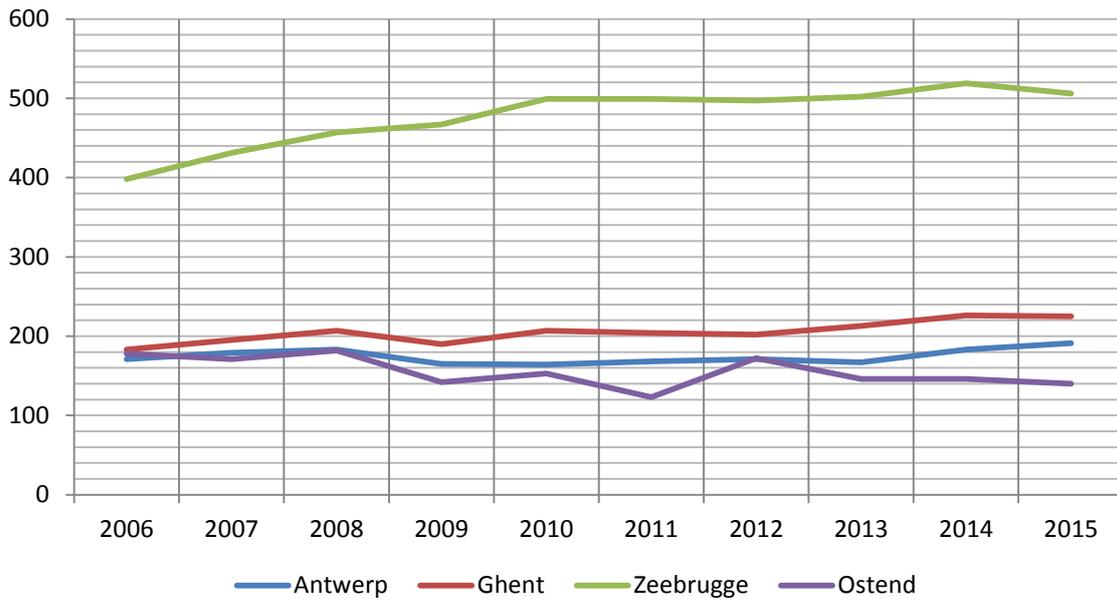
Unlike in Table 5, the operating result is now often better than the EBT. The table shows that only the port authorities of Antwerp and Zeebrugge would have been able to present a consistently positive result over time. The port authorities of Ghent and Ostend would have consistently been loss-making, both in terms of operating result and EBT. The difference between the quite healthy EBT of Ghent Port Authority in Table 5 and the negative figures in Table 6 is especially striking. The amount of capital subsidies that features in the annual accounts is relatively high compared to that of the other port authorities.

Whilst it is at present unlikely that an extreme scenario would materialise whereby the EU would rule out all port-related subsidies, Tables 5 and 6 illustrate how vulnerable Flemish port authorities are to changes in the EU state aid regime. This includes the fiscal regime. We mentioned before that the difference between earnings before taxes (EBT) and net profit is currently marginal given that Flemish port authorities are exempted from corporate taxation. If the European Commission would pursue its case that port authorities should be subject to such taxation (European Commission 2016), then net profits could be up to one third less than EBT (not taking into account possible reductions and deductible costs, Belgium 2016).

4.3. Efficiency

As an indicator of efficiency, we compare turnover with staff employed, as presented in Figure 8. From this picture, one would conclude that Zeebrugge Port Authority is the most efficient and has improved efficiency most over time. This however needs to be interpreted with care, as Zeebrugge outsources certain tasks to third parties (Colpaert and Loyen 2011).

Figure 8: Turnover/staff Flemish port authorities 2006-2015 (000 Euros in 2015 prices per average FTE)

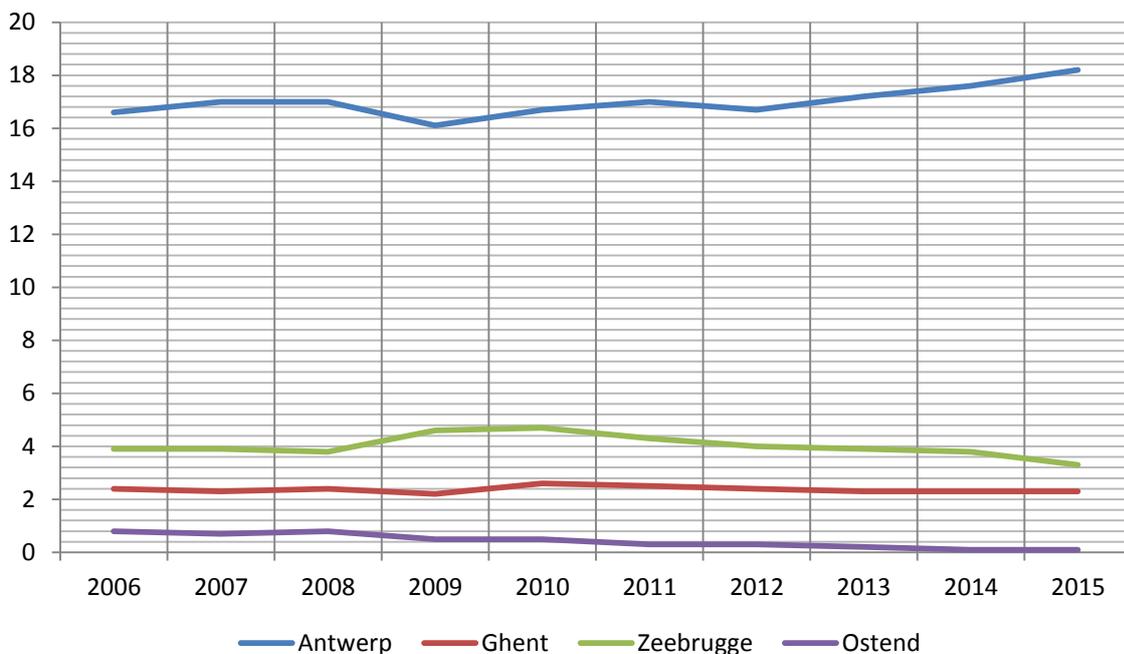


Source: Annual reports port authorities

4.4. Market share

As a proxy to measuring competitiveness, we compare in Figure 9 the relative market shares of the Flemish ports in the Hamburg-Le Havre range.

Figure 9: Market shares Flemish seaports in Hamburg-Le Havre range 2006-2015 (% total cargo volume)



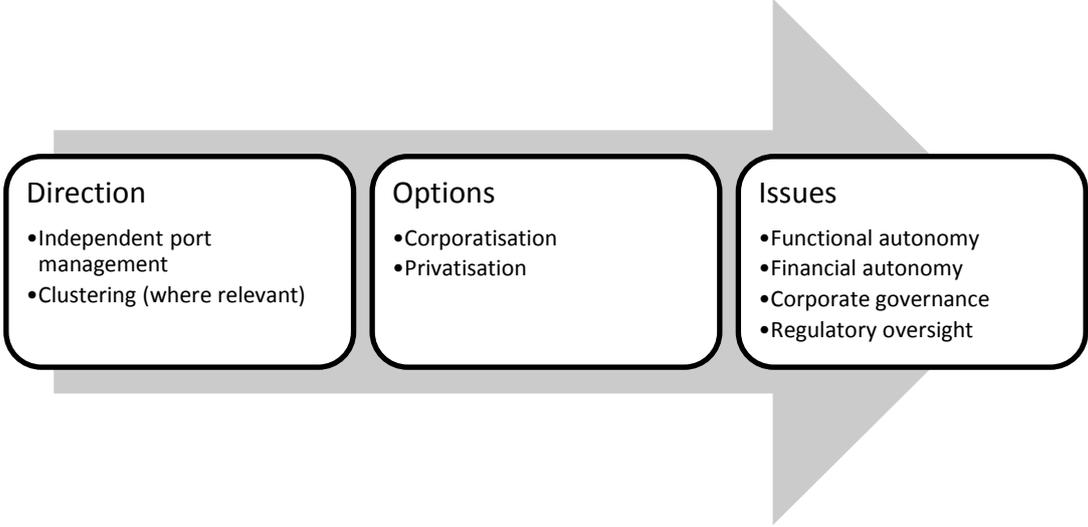
Source: Annual reports port authorities

General caution must be expressed about using market share as a performance indicator, certainly in relation to governance changes, given the multiple influences that impact on it. The graph shows that only Antwerp was able to increase its competitive position in the range over time. It illustrates again that the economic crisis did not immediately hit Zeebrugge, but that its market share in the range started to decline in 2011 and, so far, did not recover.

5. CONCEPTUALISATION AND DISCUSSION

Independent management can be considered the most viable governance direction for European seaports that have outgrown their local importance. This conclusion is based on the common market and common legal order of the EU and picks up on an emerging trend. Independent management is also an important pre-condition to allow far-reaching forms of cooperation. There is however a difference between adopting independent management in form and having genuine autonomy. A number of key issues need to be addressed, including functional autonomy, financial autonomy, corporate governance and regulatory oversight. Port clustering or other forms of far-reaching cooperation furthermore need to be based on genuine bottom-up arguments, inspired by the need to improve the competitiveness of the ports concerned (Verhoeven 2015). Figure 10 conceptually illustrates the scope for port management reform in Europe.

Figure 10 – Scope for port management reform in Europe



Source: Verhoeven (2015)

Applying this conceptual framework to our case at hand, it is clear that the evolution towards independent management of Flemish ports is more than just a matter of the corporate form that most port authorities have now adopted. Port authorities have a high amount of functional and financial autonomy, which is guaranteed through the Port Decree, and are increasingly adopting principles of corporate governance. Regulatory oversight is provided through a Regional Port Commissioner, whose role has recently been strengthened, and decisions of port authorities are subject to general judicial review, which has effectively been invoked in a number of recent cases.

The independence of Flemish port authorities however has its limitations. Seen in relation to the Flemish Region, port authorities remain considerably dependent on financial support for both operational tasks and infrastructure investments, even if the Flemish government has increased the financial responsibility of port authorities over time. Furthermore, municipal politics continue to have a significant influence on port governance. Antwerp and, to a lesser extent, Zeebrugge have made steps towards a genuine corporate governance model, whilst Ghent and Ostend remain embedded in the traditional municipal governance model, even if Ghent Port Authority took the form of a limited company.

The financial relation with the Flemish Region gives the latter a bigger sway over the port authorities, which, so far, it has used rather gently to stimulate port clustering. Despite the renewed attempt in 2013, Flanders Port Area has not yet triggered any far-reaching forms of economic and commercial cooperation. Flanders Port Area illustrates that a top-down approach on port clustering is difficult to achieve, especially in a Hanseatic context of municipal port governance and a port system that is dominated by one mainport. The only genuine bottom-up cooperation so far is developing between the port of Ghent and its Dutch neighbours in Zeeland Seaports. The recently concluded agreement between Antwerp and Zeebrugge on container traffic may be a second case, although it may appear that the agreement was mostly driven by Antwerp's ambition to preserve its future expansion plans.

Whilst a top-down approach like Flanders Port Area has its limitations and difficulties, it is entirely justified for the Flemish Region, given its financial involvement, to strive for optimal use of port capacity in the Flemish port system, to ensure that public money is well-spent. By setting up a transparent financial framework through the Port Decree, the Flemish government anticipated EU rules on public funding of seaports. These rules have still not been clearly established. Whilst the Flemish financial model was initially approved by the European Commission, the decision-making practice of the Commission and the European Court of Justice however evolved to a more restrictive interpretation of what is considered (admissible) state aid. Together with a tightening of rules on corporate taxation of government-owned companies, this may threaten the current financial viability of Flemish port authorities. Related developments at EU level may also bring about changes in the way concessions and land lease contracts are granted and managed and commercial services are provided in-house. Overall, the European Union is clearly considering port authorities as economic undertakings that operate in a competitive environment, regardless of the public tasks they may have.

6. CONCLUSION AND RESEARCH AGENDA

Returning to our research question, we can conclude that the Port Decree has so far provided a solid basis for the governance of Flemish seaports. The Decree has generally contributed to a competitive and transparent port system and a level playing field among the ports concerned. It was able to withstand several challenges through a number of incremental changes. In line with the forward-looking approach taken in the late 1990s, time may however have come for the Flemish government to consider a more fundamental revision of its seaport policy, in order to anticipate the changing (European) environment. This should entail, but not be limited to, the following elements:

- plan the transition of the financial and fiscal framework to take into account those elements which are most likely to fall foul of EU rules (subsidies for port-internal infrastructure, corporate taxation exemption of port authorities);

- shed any remainders of the ‘distributive allocation’ funding policy of the past and develop a long-term prioritised port investment programme;
- embed this programme in the context of the Trans-European Transport Networks (TEN-T) so that any possible EU support is also well-spent on actual priorities (5);
- help port authorities to make the full transition to corporate entities that work in the sole interest of making their ports as competitive as possible;
- strive for legal certainty and an EU level playing field on the granting and management of concession and land lease contracts and the in-house provision of port services;
- actively support bottom-up initiatives for port clustering that make sense from a competitiveness perspective, including cross-border projects;
- assess the potential abuse of dominant positions of the port authorities, in view of possible modifications to the supervisory regime.

The development of Flemish port policy and governance takes place in a particular institutional and political context marked by supra-national governance, which makes it difficult to transpose one-to-one to other parts of the world. Even within Europe, historical governance traditions make the intensity of port management reform very different (Verhoeven 2015). But the drive for independent port management and clustering makes sense universally, given the socio-economic context many countries face, including restricted government budgets, increased competition and tighter regulation. In particular, the comprehensive assessment of process and impact of port governance and policy changes we presented in this paper can be widely applied to all kinds of port systems.

Availability of data to measure economic impact of changes and reforms constitutes the principal challenge of the analytical framework presented in this paper, especially if these took place recently or were fragmented. This should however not stop further applications of the framework to other cases, both in and outside Europe. For European seaports, a specific research avenue would be to assess whether present and planned governance and policy changes anticipate supra-national regulation and policy development at the level of the European Union.

NOTES

- (1) Shipping policy has remained a federal competency.
- (2) The other seaports of Belgium are located in the Flemish Region (Blankenberge and Nieuwpoort), Brussels Region (Brussels) and the Walloon Region (Liège, Namur and Charleroi) (Strubbe 1987). The Brussels and Walloon ports are primarily inland ports that are able to receive seagoing vessels of a limited draft, mostly coastal and sea-river vessels.
- (3) The paper focuses on policy and governance changes affecting port authorities. Other evolutions, such as dock labour reform are not addressed here.
- (4) The ports of Zeebrugge and Ostend nevertheless still feature as a ‘cluster core network port’ in the Trans-European Transport Networks and are as such eligible for EU funding (European Parliament and Council 2013).
- (5) One could however argue that the previous representation of the left bank interests was rather pro forma anyway, see Dooms et al (2013).
- (6) A recent report of the European Court of Auditors concluded that there are too many ‘core ports’ in the Trans-European Transport Networks (104 in total, to which the majority of EU funding under the TEN-T programme is to be allocated). This prevents EU funding from targeting the most important ports (European Court of Auditors 2016).

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