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ECONOMIC AND LEGAL ASPECTS OF THE STRUCTURAL TRANSFORMATION OF POLISH SEAPORTS**Dąbrowski J.***Institute of Maritime Transport and Seaborne Trade
University of Gdańsk***ABSTRACT**

The transformation of the political-economic system in Poland after 1989 forced and, at the same time, made it possible to conduct a thorough restructuring of systems and models of seaports management. The article discusses the process of structural transformation of Polish seaports in 1990-2013. Current problems in the area of real estate management and port infrastructure are described. The paper presents the existing and proposed ownership structure of the entities that manage Polish seaports of fundamental importance for the national economy, the process of separation of port infrastructure management from operational activities and the creation of a new structure of the operational sphere based on market mechanisms.

Keywords: Polish seaports, political-economic system, port management, ownership structure.

Introduction

At the time when Polish economy was centrally planned (1945-1989), seaports were managed according to the state system. Seaport authorities were multi-entity state-owned companies, responsible for management of the land and infrastructure of a large part of port areas and were focused on cargo handling services, taking a quasi-monopoly position on the market. Seaports functioning in the conditions of a centrally planned economy, which ensured provision of Polish foreign trade cargo and partially transit cargo within the Comecon, did not need to take a proactive approach to acquisition of cargo or maintain high quality of port services.

In the early 90s, the situation radically changed when Polish seaports opened up to the “real” market. The directions of Polish foreign trade changed rapidly. Poland opened up to the free exchange of goods, allowing unrestricted movement of cargo from the entire potential domestic and transit hinterland of Polish seaports to foreign ports, mainly Hamburg, Bremen, Bremerhaven and Rotterdam. The gap between Polish and foreign seaports became apparent, in terms of an up-to-date approach to cargo organization and handling, modes of transport, frequency of regular shipping connections, efficiency of transport services to the hinterland. Investment deficiencies became visible due to degradation of port infra- and suprastructure. Financial problems intensified, turnover reduced significantly and the problem of overstaffing became evident. In this situation, restructuring of Polish seaports became necessary.

The aim of this article is to describe the process of structural transformation of Polish seaports during 1990-2013 and to highlight current problems in the area of

port infrastructure management. Issues arising from the ownership structure of Polish seaports of fundamental importance for the national economy will also be defined.

The process of structural transformations in Polish seaports

Based on the experiences of seaports in countries with more developed market economy, Gdansk, Gdynia, Szczecin and Swinoujscie seaport authorities decided to:

- separate port infrastructure management functions from operational activities,
- change the management system to one that can keep the ports in a good technical condition, develop the port potential and secure funding for these objectives,
- create a new organisation of the operational activity based on free market mechanisms,
- gradually privatise the operational sphere [4].

The Act on Privatisation of State Enterprises adopted on the 13th of July 1990 [4] formed the basis for the process of ownership and structural transformations of Polish seaports. This act enabled state enterprises to follow one of the two major procedures of ownership transformation:

- privatisation through transformation (the indirect method) – Firstly, a state enterprise is transformed into a sole shareholder company of the State Treasury (joint stock company or limited liability company). The second stage is selling the shares to third parties.
- privatisation through liquidation (the direct method) – This method is based on formal liquidation of a state enterprise and consequently selling or leasing its property by transferring the assets to a newly formed company, sale of assets (in whole or in part) to a third party or giving the property (in whole or in part) for paid and temporary use.

The authorities of Gdansk, Gdynia and, managed by the same body, Szczecin and Swinoujscie ports chose the indirect method of privatisation. In 1991 national seaports were commercialised, i.e. transformed into sole shareholder companies of the State Treasury. Three joint stock companies were formed: the Commercial Seaport of Gdansk SA (30th of April 1991) the Szczecin-Swinoujscie Port Authority SA (10th of May 1991) and the Commercial Seaport of Gdynia SA (12th of November 1991). The scope of business activity of the companies remained the same and involved both administrative and operational activities. However, from that moment, seaport companies started operating in accordance with the provisions of the Commercial Law passed in 1934, not the Act on State Enterprises adopted on the 25th of September 1981.

To separate the function of port infrastructure management from operational activities and to form a new structure of port operational activity based on market mechanisms, it was necessary to proceed to the second stage of the privatisation process. It was based on the formation of operational enterprises from assets of the existing joint stock port companies and selling their shares to private entities. This process varied between ports.

The port of Gdansk was privatised and its operational activities were restructured through formation of employee companies (limited liability companies owned by employees). In 1991, twenty eight companies were formed (seven cargo handling and warehousing services companies, one maritime services company and twenty auxiliary services companies). 55% of shares were held by the employees of these companies, 45% remained under the ownership of the Commercial Seaport of Gdansk SA. Operational activities of these companies were conducted based on the infrastructure and facilities of cargo handling and were housing taken on lease from the Commercial Seaport of Gdansk SA. In June 1993, the Commercial Seaport of Gdansk SA sold its shares to the employees of those companies, as well as elements of movable assets to their tenants. A new company was established – Port of Gdansk Cargo SA – the task of which was to manage marketing activities, trade settlements, acquire cargo and coordinate port tariff policies. The sole shareholder of the company was the Commercial Seaport of Gdansk SA. Subsequently, some of the companies were acquired by other companies and as a result of the process, the current structure of the services market within the Port of Gdansk has been shaped. The transformations of the operational sphere co-occurred with changes in port management. As a result of these, on the 22nd of September 1993, the name of the Commercial Seaport of Gdansk SA was changed to Port of Gdansk Authority SA. At the same time, the scope of its operation was reduced to management of port areas and infrastructure and planning of port development.

The privatisation model of Szczecin and Swinoujscie ports was similar to that of the port of Gdansk. Seventeen limited liability companies were formed and their employees became the major shareholders. The remaining part of the shares (45% of assets) was held by the Szczecin-Swinoujscie Port Authority SA. Gradually progressing privatisation of these companies occurred, differently than in the case of port of Gdansk, by selling shares belonging to the port authority and elements of the port infrastructure to well-known companies, who were major players on the logistics market.

Three years after commercialisation, the Commercial Seaport of Gdynia SA began the process of transformation into a holding. During 1994-1997, ten cargo handling and auxiliary services companies were formed. The Commercial Seaport of Gdynia SA contributed infrastructure and financial assets to the newly formed limited liability companies and remained their sole shareholder. In 1996, the Commercial Seaport of Gdynia SA was renamed into the Port of Gdynia Holding SA. The following stage of port of Gdynia restructuring was based on a gradual sale of shares of the newly established companies to investors, who would guarantee the public nature of the services provided by them and further development of investment for these companies. In contrast to seaports of Gdansk, Szczecin and Swinoujscie in which employee companies had been established, the port of Gdynia formed and organised companies for which a fair sale price could be obtained, which would then contribute to the further development of the seaport.

While seaports were undergoing structural and ownership transformations, the Act on Seaports and Harbours was adopted [12] (also known as the Port Act). According to the Act, three new entities were established to manage seaports of

fundamental importance for the national economy, including seaports of Gdansk, Gdynia and Szczecin and Swinoujście. The Act defined that the shareholders of the newly established companies (the Port of Gdansk Authority SA, the Port of Gdynia Authority SA and The Port of Szczecin-Swinoujście Authority SA) were to be the State Treasury (at least 51% of shares) and respective municipalities (municipality of Gdansk at least 34% of shares of the Port of Gdansk Authority SA, municipality of Gdynia at least 34% of shares of the Port of Gdynia Authority SA; municipalities of Szczecin and Swinoujście at least 24.5% of shares each of the Port of Szczecin-Swinoujście Authority SA).

As a result of the Act on Seaports and Harbours being in force, every major Polish port had two managing bodies responsible for port lands and infrastructure. The reason for that was that the new managing companies were established alongside already existing port management boards, not in their place. The old entity (already existing management body) had assets, but could not manage them, while the new entity (newly appointed management company) was established to manage the assets that it did not have. To solve this issue, on the 31st of May 2000, the assets belonging to “the old entities” were incorporated into “the new entities”, pursuant to article 30a of the amended Act on Seaports and Harbours [3].

In accordance with the Act on Seaports and Harbours, the scope of activities of authorities of seaports that are of fundamental importance to the national economy is:

1. managing port real estates and infrastructure;
2. predicting, programming and planning of port development;
3. construction, development, maintenance and modernisation of port infrastructure;
4. acquisition of real estates for the development of port;
5. provision of services related to the use of port infrastructure;
6. ensuring access to port facilities for collection of waste from ships to transfer it to recycling or neutralisation and disposal.

Based on the scope of activities of seaport authorities described by the Act, there is a clear separation of the management sphere of port management from the operational sphere. The port authorities can engage in business activity (limited to points 1, 5 and 6) and use the income for pursuing activities detailed in the Act and to finance its own operational expenses (Table 1).

Table 1. Income sources and expenses of port authorities

Income sources	Expenses
<ul style="list-style-type: none"> - Port charges (tonnage dues, wharfage, passenger fees) - Fees from paid use, rental and lease of port land, buildings, equipment and facilities - Revenue from services provided by the port authority (e.g. provision of utilities) - Other inflows (e.g. privatisation of dependent companies) 	<ul style="list-style-type: none"> - Construction, development, maintenance and modernisation of port infrastructure located in the areas administered by port authorities - Maintenance of port water bodies - Fulfilment of other tasks resulting from the activities of port authorities. - Coverage of current expenses of the port management body

Source: Ustawa o portach i przystaniach morskich z dnia 20 grudnia 1996 r.

Construction, modernisation and maintenance of infrastructure giving access to seaports are financed from the state budget, while maintenance of port infrastructure located within the areas administered by port authorities and port water bodies is a responsibility of the port authorities. Moreover, the Act described the maximum rates of port charges. In general, port authorities should finance their activities themselves, but, according to the Act, they can receive financial subsidies from the state budget. Moreover, the Act defines authorities of seaports of fundamental importance for the national economy as public utility companies.

The organisational-legal characteristics of harbours and seaports considered not of fundamental importance for the national economy are defined by the municipality if the port or harbour areas are owned by the municipality. The principles of operation of the entities established to manage this type of seaports and harbours are analogous to the principles regulating the activities of authorities of major Polish seaports. If the municipality does not appoint the entity responsible for port or harbour management, a part of the duties and responsibilities will belong to the head of the appropriate Maritime Authority. These duties and responsibilities include real estate and infrastructure management and construction, modernisation and maintenance of port infrastructure. Income from tonnage dues is collected by the head of the appropriate Maritime Authority and contributes to the state budget. The remaining part of the duties and responsibilities belongs to the appropriate municipality and the income from wharfage and passenger fees contribute to the municipality's budget.

Since 1996, the Act on Seaports and Harbours has been amended numerous times to clarify some of its contents and introduce minor or major corrections. However, the basic principles of port and harbour organisation and functioning have not changed since 1996. The Act has been considered controversial in a number of respects by port and harbour shareholders. The two major areas of dispute are: 1) port real estate and infrastructure management and 2) shaping the ownership structure of port authorities and privatisation of the operational sphere.

Real estate and infrastructure management in Polish seaports

One of the major and so far unresolved problems is disintegration of management of areas located within the administrative boundaries of ports. Port authorities are only one of many entities with ownership or perpetual usufruct (a form of public ground lease) rights to port areas (Table 2).

Table 2. Share of port authorities in management of real estates located within the administrative boundaries of ports (as of 31st March 2011)

Details	Gdansk	Gdynia	Szczecin and Swinoujscie
Port areas within administrative boundaries of the port [ha]	3294,1	506,8	3063,9
Areas for which port authority is the perpetual usufructuary [ha]	672	261	527

Percentage of areas administered by port authorities [%]	20,4	51,5	17,2
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Source: Informacja o wynikach kontroli warunków rozwoju portów morskich, Najwyższa Izba Kontroli, Warszawa 2012, p. 30.

Port authorities of seaports of fundamental importance for the national economy manage at best only half of all port areas. This situation can be described as “port in port” – there is a seaport delineated by administrative boundaries and a seaport actually managed by the port authority. Apart from the port authorities, land in Gdansk port areas is owned by over 100 other entities, in Gdynia – 29, in Szczecin – 38, and in Swinoujście – 16 [5].

Real estate and port infrastructure management by port authorities is limited only to the part of port areas which was expropriated pursuant to the Act on Land Management and Real Estate Expropriation adopted on the 29th of April 1985 [9]. Another legal cause of this situation is the amendment to the Act on Land Management and Real Estate Expropriation adopted on the 29th of September 1990 [14], which gave state-owned legal entities managing state or municipality-owned lands rights of perpetual usufruct to those lands or even ownership rights to port infrastructure facilities. The right of perpetual usufruct gives wide powers to land management, which are similar to ownership rights. Some of those entities, operating within port boundaries, were subject to liquidation or privatisation and their lands became objects of trade changed owners, perpetuating the disadvantageous state of multiple entities managing port areas.

Work on the Act on Seaports and Harbours legislation began in 1991 and it was adopted in mid-1997. Two actions aimed at gradually eliminating the errors in legislation were introduced in the Act on Seaports and Harbours: a paragraph on Minister of Treasury in consultation with the Ministry of Infrastructure and Development’s Department for Maritime Transport and Shipping Safety expressing consent to real estate transactions and a provision providing pre-emption right to the entity managing the seaport. Seaport authorities use their pre-emption right very rarely, mainly because of lack of funds. It seems that the process of gradual acquisition of port lands by port authorities will last for a long time in the future.

The current state of land management in major Polish seaports could be improved by full implementation of the Port Act provisions regarding making the in-kind contribution in the form of ownership rights to companies managing the ports by respective municipalities. However, municipalities have never given the rights of perpetual usufruct to their lands to port authorities. The transfer of rights would mean that all decisions regarding selling real estates belonging to the municipalities would have had to be made by the Minister of State Treasury. The municipalities were afraid that if they had done so, the lands would eventually have been transferred to objectionable, in their opinion, undesirable entities [5]. Moreover, most of the land in port activity areas was owned by State Treasury. Municipalities tried to, pursuant to article 16 of the Port Act, acquire ownership of those lands for free, to cover their share in the equity of companies. However, their requests were not considered favourably [6].

The disintegration of seaport area management is also evident in the case of major so-called small ports. For example the Kolobrzeg Seaport Authority operates on an area of 4.8 ha, which makes up only 8.3% of all port areas, Darlowo Seaport Authority operates on areas of 27.4 ha, which make up 21% of the port area [1].

The current state of land and port infrastructure management is especially unfavourable for entities managing ports due to lack of opportunity to design and follow an effective strategy for port development and reduced income from port area use fees. Moreover, seaport as a public service facility and an important element of transport infrastructure, should guarantee for all users the freedom to access port areas based on transparent, non-discriminatory rules. To ensure that, port authority should manage all port areas, as well as the infrastructure located within the administrative boundaries of the port.

Ownership structures of Polish seaports

The Act on Seaports and Harbours adopted in 1996 clearly identified the shareholder structure of companies managing seaports of fundamental importance for the national economy. However, so far this law has not been fully implemented by the port municipalities, which are obligated to hold at least 34% of the shares in the entities managing the ports of Gdansk and Gdynia, and 24.5% each (Szczecin and Swinoujscie) of the shares in The Port of Szczecin-Swinoujscie Authority SA (Table 3).

Table 3. Ownership structure of Polish seaport authorities – seaports of fundamental importance for the national economy, in 2012, percentage

Port Authority	State Treasury	Municipality	Other shareholders (employees)
Port of Gdansk Authority SA	85,71	2,08	12,21
Port of Gdynia Authority SA	99,48	0,05	0,47
Szczecin-Swinoujscie Port Authority SA	85,18	1,52	13,30

Source: J. Neider, *Rozwój polskich portów morskich*, op. cit., p.78.

The reason for this situation is respective municipalities not making the in-kind contribution in the form of ownership rights to areas within administrative boundaries of the ports. Moreover, pursuant to the Act on Commercialisation and Privatisation of State Enterprises adopted on the 30th of August 1996 [10], eligible employees had the right to acquire 15% of shares held by the State Treasury free of charge. As a result of the gradual acquisition of shares by port authorities, the shareholder structure is continuously, although slightly, changing.

A characteristic feature of Polish seaports management system is that the ownership structure of companies responsible for port management (both as specified by the law and the actual structure) is not reflected in the membership structure of the supervisory board. The Supervisory Board of the Port of Gdansk Authority SA

consists of five representatives of the State Treasury and three representatives of the city of Gdansk; the Supervisory Board of the Port of Gdynia Authority SA consists of five representatives of the State Treasury and four representatives of the city of Gdynia; while the Supervisory Board of the Port of Szczecin-Swinoujscie Authority SA includes six representatives of the State Treasury, two representatives of the city of Szczecin and two representatives of the city of Swinoujscie [7]. According to the Act on Seaports and Harbours, the representatives of the municipalities are always the chairmen of supervisory boards. This solution was introduced by the legislator to compensate for the weak, in terms of capital, position of the municipalities in port management companies. It was supposed to lead to a limitation of conflicts between the port and the port city, stronger integration of port cities with ports and to increase the influence that local governments have on the development of seaports.

However, the expectations of port municipalities are greater than those specified by the legislator. The Union of Port Cities and Municipalities, which represents 32 coastal municipalities, is striving for communalisation of ports and harbours and transfer of decision-making powers from central to regional and local levels. The essence of the proposed amendment to the Act on Seaports and Harbours would be to form port managing bodies in the form of companies owned by local governments in the ports of fundamental importance for the national economy. They would be established through a free-of-charge transfer of at least 34% of shares to the municipality or to both the municipality and local voivodship. It would give the shareholders the ability to block strategic decisions, and at the same time guarantee for the local government (holding a total of 68% of shares) joint decision-making powers, especially on investment matters [11].

The amendments to the Port Act proposed by the Union of Port Cities and Municipalities are based on the so-called Hanseatic Management Model, characteristic for ports such as Hamburg, Bremen, Rotterdam and Antwerp. However, in Poland, port cities understand their part in management rather one-sidedly, as their right, not noticing the ensuing obligations. They do not fulfil their statutory obligations to transfer their lands to port management entities, did not acquire the required percentage of shares in those companies, but on the other hand, they seek to maximize the benefits at the expense of ports. An example illustrating this approach is the reduction of the administrative boundaries of the port of Gdynia by 25% at the request of Gdynia municipality. Further examples may include: forcing the port to participate in costs of upgrading city streets located beyond port boundaries or investments facilitating access to the port, blocking access to urban areas necessary for the development of the port, excessive fiscal stringency of the local authorities.

It seems that the current state-municipal management system of Polish seaports is effective and efficient. It provides authorities of major Polish seaports extensive autonomy and takes into account the interests of municipalities and other shareholders (through the Port Interests Councils functioning in ports as advisory bodies to port authorities).

Currently, the Polish management model of seaports of fundamental importance for the national economy is most similar to the tool model. Privatization processes,

the result of which was thought to be separation of the management sphere from the operational sphere, were supposed to be finished, pursuant to the Port Act, firstly by the 31st of December 2003, then by the end of 2005. However, this provision of the Act has not yet been fully implemented (as of the day of writing, i.e. December 2013)

As of the end of October 2013, the Port of Gdansk Authority SA still holds the majority of shares in three subsidiaries: Port of Gdansk Cargo Logistics SA, PUP Reserves Ltd and Port Security Guard. Port of Gdansk Cargo Logistics SA is a major handling-storage operator functioning in the inner port, the further development of which requires a substantial capital injection from the prospective buyer. It seems that in order to increase the attractiveness of the offer for potential investors, a thorough restructuring of the company is required. The other two companies are not undertaking any handling-storage activity (one organises sport workers according to the needs of different port operators and the second is responsible for port security).

In the port of Gdynia, port authority owns two operational companies: the Baltic General Cargo Terminal Gdynia BTDG (100% of shares), which is currently for sale and the Baltic Bulk Terminal BBM (50% of shares), which is currently being prepared for sale. Moreover, the Port of Gdynia Authority owns two auxiliary services companies, not considered for sale at this stage, responsible for the installation and repair of technical equipment and operation of port water supply network and electrical grid.

The Port of Szczecin-Swinoujscie Authority SA completed the sale of its shares in the operational companies by the end of 2007. There is only one auxiliary services company left, Infra-Port, which provides services in the fields of energy, communications, water and wastewater management, waste collection, etc., and which, because of its profile, will most likely not be considered for sale. In 2001, the port authority bought a ferry base from the Polish Baltic Shipping company and established an operator Ferry Terminal Swinoujscie, of which it is an indirect owner (through the Polish Terminals SA company).

The management model of Polish seaports is gradually moving towards the landlord model. The process of privatization of operational companies is slowly coming to an end. However, the actual course of privatization and its results cannot be fully satisfactory. The main objective of operational activities privatisation was not only the separation of the sphere of management from the operational sphere, but also to create a competitive market for port services. It was mainly for attracting strategic foreign investors, who would support the ports not only with their capital, but also the know-how. It turned out, however, that the chosen route of privatization through employee-owned companies in the ports of Gdansk, Szczecin and Swinoujscie has practically led to a significant division of port property (suprastructure) and the companies which had formed, being financially weak, did not survive the test of time and were transformed in many ways or acquired by other entities. Only the port of Gdynia had chosen a more rational way of privatization. The shares of established companies listed for sale, particularly employee-owned companies, have not been attractive offers to potential buyers.

The current structure of port operator services has a mixed character. On the one hand, deconcentration of freight forwarding and ship broker services, on the other

hand there is still a high degree of concentration of cargo handling services. The reason for such an organisation structure of the operational sphere was establishing handling-storage companies from port assets based on technological and spatial criteria, which basically allowed these companies to preserve their monopolistic position. In order to create a well-functioning market mechanism, port authorities have to actively acquire new port operators to invest in those port areas that are still undeveloped. Examples of such activities are container terminals in Gdansk (Deepwater Container Terminal), Gdynia (Gdynia Container Terminal) and Szczecin (DB Port Szczecin), newly-built LNG terminal in Swinoujscie, the investments of Sea-Invest in bulk cargo terminals and PERN'sin handling-storage base for crude oil and liquid fuels. Only consistent introduction of new, financially strong port operators can change the market of port services, which has been shaped by the process of privatization, to more competitive one.

Conclusions

The process of Polish seaport management restructuring, that has been ongoing for over 20 years, can be considered as generally appropriate, addressing current market needs of seaport economy and the requirements set by the European Union in terms of organization of markets of services in network industries.

The state-municipality system of management implemented in Polish seaports should, in theory, unite the interests of both the state and municipality. The shareholding structure of port authorities, as specified by the Act on Seaports and Harbors, has not been implemented by port municipalities. The asymmetry between shareholding engagement and involvement of municipality representatives in port authorities increases the willingness to implement actions resulting in fast and direct benefits to the municipalities rather than to pursue long-term, integrated development of ports and cities. Presented by the Union of Port Cities and Municipalities, the concept of communalization of major Polish seaports seems to be, based on financial capacities and the experience gained by local governments, too risky.

Port managing entity, which operates according to the landlord model and as a public utility company, should be supported by public funds. A lack of such funds hinders competition with foreign seaports that receive this type of support. The fact that seaport authorities administer at best only half of all port areas doesn't make the task any easier. Taking into account the current financial capacity and legal status of port authorities, their acquisition of port areas will be a long-term process.

It is hoped that in the next few years the sale of shares of port companies by port authorities will be concluded and the requirements set by the Port Act will be fulfilled. However, the process of shaping of an appropriate structure of port operators will last for a considerably longer period of time. Deconcentration of operational services in a seaport, being the basis for intra-port competition, should be combined with obtaining strong business entities improving the competitive position of Polish seaports on the seaport services market.

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