



NATIONAL AUDIT
OFFICE OF LITHUANIA

MANAGEMENT OF KLAIPĖDA SEAPORT INFRASTRUCTURE

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No VAE-7

SUMMARY

Relevance of the Audit

Klaipėda State Seaport is the most important and largest transport centre of the Republic of Lithuania, connecting sea, land and rail routes from east and west. The port is used for servicing ships and other commercial and economic activities related to shipping. More than 800 companies are directly involved in port activities, generating over 58,000 workplaces and 6.1% of the Lithuania's GDP¹.

The National Transport Development Programme 2014–2022 sets one of the main objectives for the port, i.e., to increase mobility of goods and passengers, improve the core network corridors of the EU Trans-European Transport Networks as well as their connections with national and local transport networks, and increase the efficiency of multimodal transport. To meet this objective, the port handles an average of around 45 million tonnes of cargo per year in 2016–2021.

In order to maximise the benefits to the public, port land and infrastructure must be managed and used efficiently and effectively. Sustainable development and maintenance of port land must also be ensured.

To assess whether the port land and infrastructure is managed and used efficiently and effectively, we carried out an audit of the management of this infrastructure.

¹ Internet access: <https://www.portofklaipeda.lt/klaipedos-uostas> (accessed on 17/05/2022).

Objective and Scope of the Audit

The objective of the audit is to assess whether the port land and infrastructure is managed and used efficiently and effectively.

Key audit questions:

- whether the port land and infrastructure are managed in a targeted way;
- whether the port land is managed in a way that ensures the proper use of it;
- whether the sustainable development of port land is ensured.

Audited entities:

- Ministry of Transport and Communications: formulates, organises, coordinates, and monitors the implementation of State policy in the field of water transport. The Ministry also exercises the rights and duties of the owner of the SE Klaipėda State Seaport Authority.
- SE Klaipėda State Seaport Authority: provides public services by operating the Klaipėda State Seaport and by managing the objects belonging to the State owned by the port, thus ensuring the functioning and competitiveness of the port.

Data and information were collected from the Competition Council, the National Land Service under the Ministry of Agriculture, Klaipėda City Municipality, and the Association of Lithuanian Stevedoring Companies.

The audited period is 2018–2021, however, to assess the changes, we have also used data from previous years and 2022.

The audit has been performed in accordance with International Standards of Supreme Audit Institutions. The scope and methods of the audit are described in greater detail in Annex 2 *Audit Scope and Methods* (p. 40).

Key Results of the Audit:

Port land and infrastructure management is not sufficiently efficient and effective: the condition of the port quays needs to be improved, as well as the management and control of port land; and decisions on the need for, and the feasibility of, reserve areas and the possibility of annexing them to the port area need to be taken without delay.

1. The condition of the infrastructure needs to be improved

- 25.8% (6 out of 23.3 km)² of the port quays were in an unsatisfactory (poor) condition³ and their condition remained unchanged for 3–13 years. Out of them: 24.9% (5.8 out of 23.3 km) of port quays in unsatisfactory (poor) condition are of limited operation and the operation of 0.9% (0.2 out of 23.3 km) of quays was

² Based on 31/12/2021 data.

³ Unsatisfactory (poor) condition of the port quay where the quay does not comply with the essential requirements of the structure and the design of the structure.

suspended. The unsatisfactory (poor) condition of the port quays limits the ability of land lessees to carry out cargo handling, shipbuilding and ship repair activities; as a result, the operation of the quays is suspended and the maximum benefit of them is not achieved (Section 1.1, p. 14).

- More than half (63%)⁴ of the buildings held in trust by the Port Authority were not used for port activities. The Port Authority has not taken decisions on the future use (lease, demolition, etc.) of 3 (out of 10) buildings for 10 years. Although these buildings are not in use, the Port Authority has to allocate resources to the maintenance of these buildings and to take organisational and technical measures to maintain their technical condition (Section 1.2, p. 16).

2. Management of port land and reserve areas needs to be improved

- In 2016–2021, 41 repair works of port quays were carried out, resulting in filling in part of the water area with soil or the excavation of part of the port land. For these reasons, the ratio between the 2 parcels of land and the water area has changed. The total area of these parcels has increased by 1.5 ha. We found that the cadastral surveys and legal registration of these parcels were not carried out. As a result, the land and water areas of the port recorded in the Real Property Register and Cadastre differ from the areas actually used. Due to the change in the land/water area ratio and the failure to register the revised data on these changes in the register, the accuracy of accounting data on public assets is not ensured (Section 2.1, p. 18).
- The Law on the Klaipėda State Seaport stipulates that port users may only carry out commercial and economic activities in the port area that are in accordance with the functional purpose of the port and if a lease agreement has been concluded for the port land needed for their activities. The Law does not define the concept of commercial and economic activities consistent with the functional purpose of the port. 43%⁵ (39 out of 90) of the land lease agreements did not specify the specific commercial and economic activities (e.g., ship repair, cargo handling, etc.) that the lessees undertook to carry out in accordance with the functional purpose of the port. Moreover, 5.6 ha (out of 415.4 ha) of the leased port land area may have been used by the lessees for activities not related to the port activities. When there is no definition in the legislation of the commercial and economic activities consistent with the functional purpose of the port, and the specific activities carried out by the lessees are not determined in the port land lease agreements, it is not ensured that the activities carried out by the lessees on the leased land are related to the port activities and contribute to the achievement of the port's activity indicators (Section 2.2, p. 19).
- The Law on Klaipėda State Seaport stipulates that the port land lease agreement must set out the lessee's minimum volumes (obligations) of cargo handling and other works related to the functional purpose of the port. We found that more than half (57%)⁶ of the land lease agreements contain turnover obligations for the lessees (16% of the total port land leased). Their calculation is not regulated, which makes it difficult to assess whether these obligations are adequate to measure

⁴ Based on 31/12/2021 data.

⁵ Based on 31/12/2021 data.

⁶ Based on 31/12/2021 data.

the lessees' performed works that contribute to the port's activity indicators. When the obligations imposed on lessees do not reflect the extent to which their activities contribute to the achievement of the port's activity indicators, this leads to inefficiencies in the port's activities (Section 2.2, p. 19).

- 56% (35 out of 63) of the selected port land lease agreements were updated in 2016 with a negotiated lease term of 50 years or less. The legislation did not specify the evaluation criteria for the Commission to assess the current and planned port activities of the lessees when negotiating with the port land lessees. We were therefore unable to ascertain whether the Commission's decisions to fix the term of the land lease for these lessees were justified. Without being satisfied that the lessees have the capacity and financial ability to continue to carry out activities directly related to the port and to fulfil the obligations under their land lease agreements, it cannot be ensured that the port's full capacity will be used, that the port's development alternatives and cargo handling projections will be accurately assessed, and that the port's foreseen activity results will be achieved (Section 2.2, p. 19).
- In 2017–2020, the Port Authority has issued a total of 9 consents to the existing 6 lessees for the transfer of their immovable property and granting of land lease to the new 4 lessees. We found that the Port Authority have not assessed the planned activities of the new lessees to whom the existing lessee's immovable property is transferred and the land lease is granted. Therefore, in fact, it gives the existing lessee the right to decide with which new lessee the Port Authority will conclude a port land lease agreement for the remaining term of the lease. This does not ensure that the Port Authority, as the land manager, assesses the activities of the new lessees and, on the basis of this assessment, decides on their compliance with the terms of the land lease agreements (Section 2.2, p. 19).
- Given the limited size of the port area and the lack of available space to expand warehousing area and handle a higher volume of cargoes, it is important to ensure that only lessees with land use lease agreements are allowed to carry out port-related activities on leased port land. The Port Authority, as the manager of public land, is obliged to monitor the lessees' compliance with the terms and conditions of their land lease agreements. We have found that the Port Authority did not establish procedures for controlling the use of port land and did not carry out periodic checks on lessees' use of port land. The Port Authority also did not have information on the lessee's transactions concerning immovable property owned by the lessee on the leased land, as well as transactions concerning rental and lending activities and the activities of other companies in parcels of this land. Due to the failure to monitor the use of leased port land and to keep track of lessees' transactions for the use of leased land and other immovable property owned by them, the timely identification of transactions that would impede the management, use or disposal of the port's state-owned land and infrastructure is not ensured (Section 2.3, p. 29).
- The port's reserve areas have set boundaries and are subject to special land use conditions that limit activities that would interfere with the implementation of the infrastructure development plans set out in the drafts of the port strategy⁷. The Port Authority does not plan to use 5.6% (19.7 out of 353 ha) of reserve areas for

⁷ Law on Special Land Use Conditions, Article 126(2).

the port expansion; nevertheless, these areas have not been removed from the reserve areas list, even though, for example, a proposal to remove one land area (3.7 hectares) from the list was submitted 10 years ago, in 2011. Due to the delay in taking the decisions on the need for reserve areas and on the possibility of annexing them to the port area, the conditions for land and building owners to use their property without limitations are not ensured (Section 2.4, p. 30).

A letter⁸ has been submitted to the Port Authority regarding audit findings on the use of port land without concluded port land lease agreements.

Changes during the audit

The Minister of Transport and Communications approved⁹ a new description of the procedure for calculating the Klaipėda State Seaport's land lease fee, which came into force on 01 January 2022. According to this description, due to the indexation of the minimum lease tariff of 1 square metre by 26% (from EUR 0.91 to 1.15), as well as due to the abolition of the coefficients for the use of railway tracks, piers and docks and the coefficient for the connection to the Curonian Spit, and due the setting of a new rate of return on capital, the newly calculated land lease fee has increased.

Recommendations

To the Ministry of Transport and Communications

1. In order to improve the efficient management of State property, the non-financial expectations for the Port Authority in terms of efficient property management and the maintenance of the port quays, taking into account the simultaneous fulfilment of the return on investment targets, needs to be revised (Key audit result 1).
2. In order to ensure that the activities of port land lessees in the port, the Ministry should contribute to the achievement of the port's activity objectives, formalise the criteria defining activities that are in line with the port's functional purpose (Key audit result 2).
3. In order to ensure that only those lessees of port land that would contribute effectively to the achievement of the port's activity objectives operate in the port area, the Ministry should initiate amendments to the legislation by requiring lessees to provide the Port Authority with the data and supporting documents for obtaining consent for the transfer of lessees' immovable property and the granting of land leases; that assessments of a new lessee's activity are carried out prior to the issuance of a consent, and that consents are only granted when new lessees comply with the established requirements (Key audit result 2).

⁸ National Audit Office's 08/07/2022 Letter N. SD-(230-9.3.1-E-6112)-647 *On the Audit Findings*.

⁹ 21/07/2021 Order No 3-362 of the Minister of Transport and Communications 'On the Amendment to the 21/07/2021 Order No 3-671 On Approval of the Rules for Calculation of the Klaipėda State Seaport's Land Lease Fee'.

To the Port Authority

4. In order to achieve sustainable port development, assess the need for port reserve areas and, taking into account the potential use of these areas, decisions on their necessity should be taken (Key audit result 2).
5. In order to ensure that the data of the Real Property Register and Cadastre is updated in a timely manner in the event of a change in the port land/water area ratio (Key audit result 2):
 - 5.1. to carry out cadastral surveys of the port land parcels and register the newly formed parcels in the Real Property Register and Cadastre;
 - 5.2. to establish criteria (e.g., periodicity, extent of change, etc.) for the registration of changes in the port land parcels and water areas in the Real Property Register and Cadastre;
6. In order to ensure that the activities of lessees of port land contribute to the achievement of the port's activity objectives, new land lease agreements, or amendments thereto by agreement between the parties, should indicate the specific activities for which the lessee undertakes to use the port land in accordance with the port's functional purpose (Key audit result 2).
7. In order to ensure that the minimum volumes (obligations) of other works related to the port's functional purpose in the land lease agreements more accurately reflect the contribution of the lessees' activities to the achievement of the port's activity objectives, the procedure for determining the minimum volumes (obligations) of the other works on the leased port land for which it is not possible to set a cargo handling obligation should be adopted taking into account the leased land parcel's location, size, and market situation, etc. (Key audit result 2).
8. To strengthen internal control and ensure that lessees use port land properly for port activities (2 key audit result), the Authority should:
 - 8.1. establish procedures for controlling the use of port land, including the frequency and selection of inspections, their procedures, responsible persons, etc.;
 - 8.2. at least once a year, carry out inspections on the use of port land for port activities and ensure their traceability.

Measures and deadlines for the implementation of the recommendations, the expected impact of the audit and indicators for measuring change are set out in "Recommendations Implementation Plan" section of the Report (p. 33). Relevant information on the status of implementation of the recommendations, results and developments is published as open data in Lithuanian on the National Audit Office's website <https://www.valstybeskontrole.lt/LT/AtviriDuomenys>.