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## **Institutional Change through Regulation in Coastal Zone Management in Croatia**

### **Abstract**

The paper presents results of an institutional analysis regarding significance of regulatory changes of Croatian Maritime common good and seaports act in 2023 in relation to the previous state in 2003 and from the perspective of coastal zone management in Croatia and its ability to be harmonised with the international standards of coastal area governance emerging from the Protocol on Integrated Coastal Zone Management in the Mediterranean and Barcelona convention. The IAD framework approach has been utilised to establish the analytical framework with main intervention areas analysed in this research. The results show that although there are always risks associated with switching from an older regulation to the newer one, and although the new regulation from 2023 is far from optimal regarding multiple aspects, and particularly stakeholders' participation, the greater risk would be if the old regulation stayed in force instead of the new regulation.

**Keywords:** institutional change, regulation, institutions, coastal zone management.

### **1. Introduction**

A wide range of theoretical and empirical research dedicated to institutional aspects [ 1], [ 3], [ 22] of common-pool resources governance [ 4], [ 6], [ 7], [ 8], [ 9], [ 10], [ 15], [ 19], [ 22], [ 23], [ 24], [ 25], [ 26], [ 27], [ 28], [ 30], [ 32], [ 34] has been focused on different perspectives important to enable long-term sustainability of the commons, particularly the maritime common good [ 7], [ 8].

Various economies across different historical periods have utilized distinct institutions with varying degrees of success to fulfil their economic roles [ 2]. The area of institutional analysis in the field of economic governance often focuses on a comparative analysis of diverse institutions, encompassing theoretical as well as

empirical perspectives, in order to detect empirical results of different institution sets [ 12], [ 13], [ 14], [ 16], [ 18] within various environmental and social settings [ 5], [ 20] [ 34]. Emphasizing this relationship between institutional change through regulation improvements over time, this research explores how transition between regulatory arrangements in coastal zone management in Croatia has occurred and what are the main fields of institutional intervention relevant for long term protection [ 11] and preservation of maritime common good in Croatia [ 7], [ 8]. In addition, the context of specific economic activities and changing institutional arrangements has also been addressed within this research.

## 2. Literature Review

The coastal areas are beneficial for a wide range of potential uses and from many social aspects [ 6], [ 7]. They are also scarce; therefore, we must pursue the idea to continuously monitor and search the governing solutions able to meet the need for exploitation while simultaneously protecting this vital resource. For the societies that reside there, where the sea greatly influences their way of life as well as economic activity, the integrity of the coastal zones governing approaches is crucial. Those governing efforts always depend on formal as well as informal institutions, and in context of formal institution particularly the regulations that present an overarching governance legislative framework. In light of the well-known Hardin's problem of the "tragedy of the commons" [ 15] and potential solutions provided by contemporary scientific research [ 25], this is essential to provide strong governance and institutional background that will enable achieving economic results while preserving sustainability of the resources.

In the Mediterranean region, the significance of coastal areas is particularly highlighted [ 21]. This is primarily due to a way of life that has emerged there and is closely linked to the Mediterranean Sea. The Barcelona Convention [ 29], [ 31] serves as the legal foundation for the Mediterranean Action Plan [ 21]. Together, the Mediterranean countries and the European Union formed an international framework that aims to protect and improve the Mediterranean in terms of ecological and general development.

The new Action Plan for the Protection of the Marine Environment and the Sustainable Development of the Coastal Areas of the Mediterranean – MAP Phase II – replaced the first Mediterranean Action Plan in 1995 [ 21]. The Barcelona Convention's focus has also been expanded to include the integrated planning and management of the coastal area in accordance with the same developmental goals. The Convention was amended and renamed the Convention for the Protection of the Marine Environment of the Mediterranean in June 1995 [ 21], [ 31].

Despite being the newest of all the protocols and going into effect in March 2011, the seventh protocol, known as the Protocol on Integrated Coastal Zone Management in

the Mediterranean – ICZM protocol [ 29], [ 37], is a significant institutional foundation for the expansion of the actual impact of the Barcelona convention on coastal zone management. Regarding the definition, categorization, allocation, and governance of the coastal zone region, the Barcelona convention and this protocol are significant.

The ICZM Protocol's primary goals are to create a single framework for the Mediterranean's Integrated Coastal Zone Management in compliance with the Barcelona Convention and all of its protocols, as well as to take the required steps to improve regional collaboration [ 29], [ 37].

From the Standpoint of Croatian regulatory framework, the Maritime common good and seaports act from 2003 [ 35] dates almost a decade before the ICZM protocol, but the latest version from 2023 [ 36] dates a decade later to it. In this regard, this analysis covers a two decade period encompassing multiple minor regulatory changes but only two main acts in Croatia, while the international institutional stage has undergone multiple regulatory changes with exceptional contribution to long term sustainability of maritime common good.

### 3. Data and methods

The regulations are constantly changing and in the way that they affect functionality and management of all important systems in society. One of the particularly important systems is the institutional setting. When a regulation is changing from old to a newer version, it is important to analyse new regulation to determine the main differences, their institutional implications and how to adapt to the changes required by the new regulation. Analytical object of this paper are changes between the Maritime common good and seaports act from 2003 (including its subsequent amendments) [ 35] and from 2023 [ 36] which is the new version of the act, unamended up to now. It has passed twenty years between coming in the force of these two versions of the regulation, so it was a long-lasting process during the two decades with big number of simultaneous changes in the environment. This paper is focused on comparative analysis of institutional regulatory changes between those two versions of the regulation, while contextually performing the analysis in correlation with Protocol on Integrated Coastal Zone Management in the Mediterranean [ 29], [ 37] and in line with the IAD framework [ 23], [ 24] approach.

One of the important questions, which is also a part of this analysis, is to detect how the new regulation interprets terms previously established in the old regulation, especially when switching to the completely new regulation in the context of already existing international regulatory institutions. In addition, the question is also related to whether the regulatory or logical structure of a certain aspects been changed and how it is reflected on the usage of the new regulation, and are there certain risks, and for who, if they exist.

We were focused on detection of main institutional intervention areas within the

analysed regulation. For the purpose of performing thorough and consistent analysis, we created the analytical framework presented in the upcoming figure.

We summarised five main regulatory intervention areas that are illustrated above and that can be combined / aggregated as well as logically structured as follows: First legislative intervention area consists of definitions that can be combined with usage aggregately creating first institutional aspect that has been addressed here in the upcoming analysis. Second legislative intervention area consists of maritime ports and presents the second institutional aspect addressed in the analysis, while the thirds legislative intervention area consists of monitoring that is addressed in the analysis as the third institutional aspect. The last, fourth legislative intervention area consists of sea beaches and is the last (fourth) analysed institutional aspect.

Quantitatively comparing old and new regulation, the regulation from 2023 is almost double in volume and content in comparison with the regulation from 2003. The logical question emerges in terms whether the regulation from 2003 was overly simplified or is it the regulation from 2023 perhaps overregulated and potentially complicated and what are the practical consequences, particularly on long term.

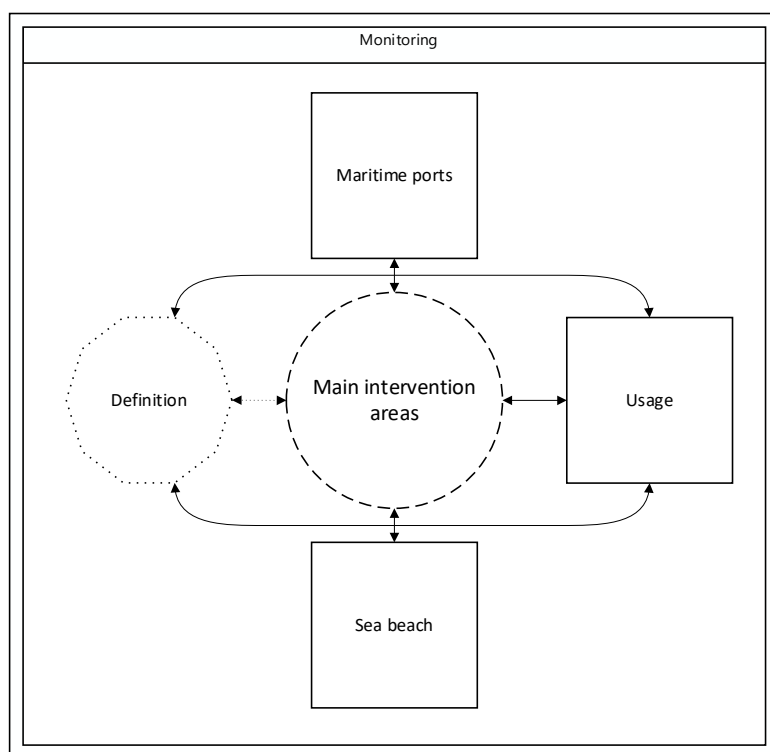


Figure 1 Analytical framework with main regulatory intervention areas

Source: Authors

We detected five main regulatory intervention areas that are illustrated above and that can be combined / aggregated as well as logically structured as follows: First legislative intervention area consists of definitions that can be combined with usage aggregately creating first institutional aspect that has been addressed here in the upcoming analysis; Second legislative intervention area consists of maritime ports and presents the second institutional aspect addressed in the analysis; Third legislative intervention area consists of monitoring that is addressed in the analysis as the third institutional aspect; Forth legislative intervention area consists of sea beaches and is the last (fourth) analysed institutional aspect.

#### 4. Comparative quantitative and qualitative analysis

Quantitatively comparing old and new regulation, the regulation from 2023 is almost double in volume and content in comparison with the regulation from 2003. The logical question emerges in terms whether the regulation from 2003 was overly simplified or is it the regulation from 2023 perhaps overregulated and potentially complicated and what are the practical consequences, particularly on long term.

*Table 1 General quantitative data on the analysed regulation (2003 = 100)*

<b>Regulation</b>	<b>Division / Number of parts</b>	<b>Number of titles</b>	<b>Number of articles</b>	<b>Number of words</b>
<b>2023</b>	130	200	190	310
<b>2003</b>	100	100	100	100

*Source: Authors*

Following the basic quantitative, the qualitative analysis of main similarities and differences between the regulation from 2003 and the regulation from 2023 by its main parts has also been performed. It is analysed what a certain part of the regulations is based of and what's the similarity and differences between same concepts in both regulations. Likewise, important differences between same concepts will be clarified in the continuation of this article. Considering that the regulation from 2003 is divided into seven parts, and regulation from 2023 is divided into nine parts, those parts that share common subject matter in both regulations will be compared, while the other parts that are not shared but are specific to only one of the regulations will be explained subsequently.

##### 4.1. Analysis of definitions and usage institutional aspect

The regulation from 2003 legally defines the main part of maritime common good, specifying its constitution, its general or specifical usage, its governance (management)

and corresponding resources, concessions and concession fees, while it also determines the seashore. Although generally defined, in 2003 these terms were lacking additional provisions, clarifications and specificities from multiple perspectives and aspects. On the other hand, the regulation from 2023 goes into more details in defining main parts of maritime common good, its status, its components, planning, protection, use and prohibited use, and it regulates spatial planning and construction on the maritime common good. In addition, this regulation also mentions maritime lighthouses that were not touched on in the previous regulation.

Although the definitions of main terms between these two regulations have not changed, certain issues are clear in the regulation from 2003 as some of the definitions could be interpreted in multiple ways because there was no specific answer to them in 2003. The regulation from 2023 provides better insight into certain, specific questions that previously were not accurately answered.

Title two in part two in the regulation from 2003 is dedicated to the boundaries of the maritime common good and it consist of only two articles in which first describe the boundary, while the second article describes the registration in the land registry. In the regulation from 2023 the boundaries are defined in the section dedicated to determination of the status of the maritime common good, while the registration in the land registry is defined in section focused on cadastral record and registration of the maritime common good in the land registry.

The reason for these changes is that the issues of boundaries and cadastral records were elaborated and defined much better in 2023 than they were in 2003 and such situation required a more extensive definition in the regulation.

In the regulation from 2023, the governance and special usage are significantly more detailed than the same concepts in 2003, in which they were mentioned only in one short article. Concession and concession provisions are in both regulations described in details, addressing the same fundamental questions and providing similar provisions. Although this topic is in both regulations well covered the regulation from 2023 offers better clarity and more consistent logical structure in specific provision, and multiple provision in this part of the regulation are more detailed than in 2003.

*Table 2 Definition and usage regulatory areas and subareas*

<b>Main regulatory areas</b>	<b>Addressed exclusively in 2023</b>	<b>Main regulatory subareas</b>	<b>Addressed exclusively in 2023</b>
<b>Basic provisions</b>	No	Maritime common good legal definition	-
		Components and boundaries	-
		Governance	-
		Management, planning and protection	-
		Maritime lighthouses	+

<b>Boundaries</b>	No	General definition of boundaries	-
		County commission of boundaries	-
		Creation of boundary proposal	+
		Proposal for boundary	+
		Public inspection for proposal for boundaries	+
		Proposal for boundaries in width less than the regulatory minimum	+
		Port area for port of special purpose	+
<b>Cadastral record and registration in the land registry</b>	No	Records, cadastre	-
		Implementation of geodetic studies in the cadastre	+
		Consent to geodetic studies	+
		Implementation of geodetic studies in the land register	+
		Assumptions for registration of MCG	+
<b>Special usage and economic exploitation</b>	No	Concessions	-
		Institutes for the management of the maritime common good	-
		Special use of the maritime common good	-

*Note: Signs “+” or “-“ are used to note if particular subarea has been exclusively addressed in the regulation from 2023, while it has not been previously addressed. The sign “+” means that it is exclusively addressed in 2023, while the sign “-“ means that it has been addressed in both regulations.*

*Source: Authors*

## 4.2. Analysis of maritime ports institutional aspect

First addressed area in this part is focused on classification of seaports. In terms of content both regulations in their first chapter of this part provide the same classification and provisions, and they do not significantly differ from each other in any way.

In the regulation from 2003 ports open to public traffic of particular (international) economic interest to Republic of Croatia are divided in five sections: the port area, the port authority, the bodies of the port authority, revenues, and port activities, each with its own articles for easier clarity. The regulation from 2023 encompasses the same section as the previous regulatory solution and main provisions remain the same but are explained more clearly and in greater detail.

As one of the illustrative examples, it may be listed many differences between provisions about the director of the port authority. The regulation from 2003 explains who the director is and what her/his rights and obligations are. The regulation from 2023

explains in the same way the same two aspects, but it also addresses other questions concerning the director that are not mentioned in the previous regulation, such as: the educational qualifications and work experiences of the person to be appointed as director, as well as the process for dismissal of the director.

Another valid example are differences between description of revenues in ports open to public traffic of particular economic interest to the Republic of Croatia where in the regulation from 2023 it can be seen how the fees are explained in detail for each fee while in the regulation from 2003 certain fees explanations consists of only one relatively short paragraph.

Area addressing ports open to public traffic of county and local importance in regulation from 2003 is divided in four sections: port area, port administration, bodies of port administration and port activities. As in the case of ports open to public traffic of particular (international) economic interest to the Republic of Croatia, in this part similar regulatory approach is used. providing similar definitions and explanations in both regulations.

In the regulation from 2003 ports of special purpose are described very generally and concisely without much clarification in this specific area, while the regulations from 2023 takes different approach, more precisely listing type of ports of special purpose, and for each of these port types it provides the necessary information relevant for main regulatory questions that concerns that type of port.

*Table 3: Maritime ports regulatory areas and subareas*

<b>Main regulatory areas</b>	<b>Addressed exclusively in 2023</b>	<b>Main regulatory subareas</b>	<b>Addressed exclusively in 2023</b>
<b>Classification of seaports</b>	No	Basic provisions	-
		Determining the scope of the port area of the port open to public traffic	-
<b>Ports open to public traffic</b>	No	Port area	-
		Port authority	-
		Port authority bodies	-
		Revenues	-
		Port activities	-
<b>Ports of special purpose</b>	No	Division of the ports of special purpose	-
		Concession for ports of special purpose	-
<b>Anchorage</b>	Yes	Natural sea anchorage	+
		Nautical anchorage	+
<b>Berth</b>	Yes	Berth	+
		Service berth	+
		Temporary ponton berth	+

*Note: Signs “+” or “-“ are used to note if particular subarea has been exclusively addressed in the regulation from 2023, while it has not been previously addressed. The sign “+” means that it is exclusively addressed in 2023, while the sign “-“ means that it has been addressed in both regulations.*

*Source: Authors*

The regulation from 2023, unlike the previous regulation from 2003, specifically addresses Anchorage and Berth providing consistent response to the meaning of these terms, in order to avoid free interpretations.

### **4.3. Analysis of monitoring institutional aspect**

Regarding the provisions about order, it is interesting how the regulation from 2003 distinguishes two different order areas: order on maritime common good and port order. In this analysis the order on maritime common good and port order are systemically analysed as a whole, particularly as the regulation from 2023 also addresses them in conjunction.

Regulation from 2003 based its provision on the principle that the competent harbour master's office determines the condition for order on the maritime common good and enforce the regulation. It also determined prohibitions and permits on disposal of materials. What was substantially missing in the old regulation was the provision about maintaining order on maritime common good and competent body / bodies within competent port authority or other formal public institution responsible for protected areas of nature or similar, or within a unit of local (self)government. The regulation from 2023, in addition to the provision addressed in the regulation from 2003, also addresses issues related to a person who supervise order on maritime common good, such as wardens and rangers of protected areas of nature, how authorization of these duties are obtained and revoked, what is the number of maritime wardens in a unit of a local self-government. In addition, it also addresses official identification, supervision of the maritime common good, responsibilities and several other similar questions not covered by the previous regulation from 2003.

In the regulation from 2003 the port order deals with the fundamental provisions, such as the provisions on the task of the port authority and the competent bodies that issue provisions on questions related to port order. This way of provisioning regarding port order is very general so it is likely that arbitrary interpretations were emerging, together with multiple direct and indirect unwanted issues. In the regulation from 2023 this problem was aimed to be resolved by a detailed treatment of multiple important questions related to port order such as a specific regulation of port order in ports of special purpose, then regulation on port order in ports open to public traffic, while also addressing the questions about: who are port wardens, how are they professionally trained, how is authorization to perform this job acquired and lost, the number of port wardens in ports, their identification and uniforms, and many other questions. This

way reduces misinterpretation of these provisions by detailly regulating and describing main regulatory aspects.

*Table 4: Monitoring approaches regulatory areas and subareas*

<b>Main regulatory areas</b>	<b>Addressed exclusively in 2023</b>	<b>Main regulatory subareas</b>	<b>Addressed exclusively in 2023</b>
<b>Order on maritime common good</b>	No	Order on maritime common good	-
		Administrative body	-
		Maritime wardens, rangers, and their duties	+
<b>Port order</b>	No	Port order in ports of special purpose	-
		Port order in ports open to public traffic	-
		Port wardens and their duties	-
<b>Administrative supervision</b>	No	Implementation of the administrative supervision	-
<b>Inspection supervision</b>	No	Implementation of the inspection supervision	-
<b>Supervision of the concessioning, permitting and special usage</b>	No	Implementation of the supervision	-

*Note: Signs “+” or “-” are used to note if particular subarea has been exclusively addressed in the regulation from 2023, while it has not been previously addressed. The sign “+” means that it is exclusively addressed in 2023, while the sign “-” means that it has been addressed in both regulations.*

*Source: Authors*

In this regulatory area we observed very different ways for the same topic within the provision to be presented, thus demonstrating different importance given to different aspects of the regulation within the same area of intervention. The regulation from 2003 addressed important provisions regarding administrative and inspection supervision in a relatively short way focusing exclusively to the basics. On the other hand, the regulation from 2023 gives importance to the more precise division into multiple focus areas addressing multiple respective issues with more precision and clarity. This also contributes to significantly stronger transparency.

#### 4.4. Analysis of sea beach institutional aspect

The intervention area of sea beaches is addressed exclusively in the regulation from 2023, while in the regulation from 2003 it is not mentioned at all. Although sea beaches are part of the maritime common good and are generally in open access regime, it is interesting that the regulation from 2003 does not mention them at all. The issue of sea beaches was formally unregulated for decades and this topic was interpreted relatively freely. Practically speaking, there were and are numerous concessions / permits for beaches and beaches related although the regulation from 2003 does not explicitly regulates it. The regulation from 2023 introduced provisions addressing the issue of sea beaches, explaining their classification, the competent authority managing them, their accessibility, and the mater of beach nourishment. It also clarifies natural sea beaches, sea beaches of special purpose and principles for fulfilling the public interest. In this way, the overarching risk of exploiting and appropriating parts of the sea beaches for personal needs and interests has legislatively been reduced. Main regulatory area and its subareas for sea beaches are presented below.

Table 5: Sea beaches regulatory area and subareas

Main regulatory area	Addressed exclusively in 2023	Main regulatory subareas	Addressed exclusively in 2023
Sea beaches	Yes	Division of sea beaches	+
		Beach nourishment	+
		Natural sea beach	+
		Managed beach	+
		Special purpose beach	+
		Principle of serving the public interest	+

Note: Signs “+” or “-“ are used to note if particular subarea has been exclusively addressed in the regulation from 2023, while it has not been previously addressed. The sign “+” means that it is exclusively addressed in 2023, while the sign “-“ means that it has been addressed in both regulations.

Source: Authors

Although there is only one main regulatory area, we detected and analysed six different regulatory subareas which are all exclusively addressed only in the regulation from 2023.

## 5. Results and discussion

When moving from one version of the regulations to a revised version of the same regulation or when switching to a completely new regulation, a potential for new risks to emerge is always present. Often, the main reasons for switching from an old to a new regulation is better explanations of certain practical issues and behaviour. Generally, changes in certain provisions through adaptations to changes in society are an ongoing institutional process. Regarding the regulations from 2003 and 2023, it can be stressed that there are numerous risks that may arise when transitioning from the old version to the new regulation. On the one hand, significant risks can emerge from misinterpretation of the regulation that potentially arises as a result of an insufficiently precise, unclear and superficial regulation (underregulation), while on the other, significant risks of bottlenecks - delay, slowdown and blockage – can emerge from overregulation. Thus, both of this risk groups could significantly contribute to a general risk of institutional inefficiency. The inconsistency of the regulations could lead to significant implementation issues when switching to the new regulation, especially considering multiple types of contracts enforced in relation to the maritime common good.

In numerous cases in the regulation from 2003 all powers and potential solution for emerging practical problems on maritime common good (as well as ports as its part) are determined by national, regional or local government and their port authorities. Although in the regulation from 2003, in most cases, regional and local government and their port authorities perform similar tasks in terms of authority and solving problems on maritime common good, in the regulation from 2023 the public authorities, commissions, directors and wardens on corresponding government levels and in port authorities were clearly defined. Nevertheless, up to know it remains unclear the level of concrete practical benefits in preservation of maritime common good.

Potential for new risks to emerge can also be found when determining the status of maritime common good, its boundaries and cadastral records and registration in land register. The old regulation did not cover all relevant regulations nor define all necessary documentation needed to ensure that all determinations and entries in the cadastral record and land register are carried out properly. The new regulation from 2023 brings new necessary aspects for the proper execution of these provisions. Yet there is further research needed to determine the real intensity of positive contribution to the status of the maritime common good by the county commission, proposition of the boundaries, open access, ports of special purpose, military areas and the costs of implementation. It is also important to mention the procedures for the preparation and implementation of geodetic studies, their approval and the method of entry in the land register for cadastral records, which in last two decades were accompanied with significant administrative and implementation risks.

In previous regulation from 2003 multiple risks emerged from insufficiently described provisions related to ports of special purpose which can lose their status due

to failure to demonstrate achievement of necessary requirements. The regulation in 2023 brings new provisions on that matter, but the results in terms of limiting the misuse of special purpose ports remain to be seen. In the same way, insufficiently described terms and provisions for anchorage and berth were also a significant problem within the regulation from 2003, but the regulation from 2023 defines anchorages and berths relatively clear, so positive results are clearly expected in implementation, but are yet to be fully seen.

The main risks that can be aggregated from this analysis are:

- the risks of free interpretation,
- implementation risks,
- administrative risks, and
- operational risks and financial risks.

We can conclude that the regulation from 2003 lacked more detailed and specifically tailored approach and institutional solutions in its regulatory provision in order to better address presented risks. The area of provisions covered by the regulatory from 2023 is stipulated in more detail, and in this way the detected risks are significantly reduced. When all the similarities and differences are taken into account in the analysis of the regulations from 2003 and 2023, and taking into account all the negative points regarding the new regulation, we conclude that although there are always risks when switching from an older regulation to the new one, and although the new regulation from 2023 is far from optimal regarding governing participation of stakeholders, the greater risk would exist if the old regulation from 2003 stayed in force, than with the new regulation from 2023.

## 6. Conclusion

Comparative analyses of regulation serves as an indicator of the improvement or deterioration of the current institutional settings compared to its old counterpart. New versions of the regulation seek to resolve the uncertainties that existed in previous solution and to better explain them while providing stimulation (positive or negative; effective or not) for stakeholders' behaviour to be in line with the regulatory expectations. The Maritime common good and seaports act from 2003 become outdated in multiple areas in the period of two decades, waiting for its replacement to come in force in 2023. The old regulation from 2003. Significantly lacked depth in explaining its provisions, which is why unwanted situation can more easily occur when interpreting and implementing such a regulation.

The regulation from 2023 brought significant improvement in terms of more detailed explanation of previously unclear provisions while also devoting an entire significant part to sea beaches what was completely unaddressed before. Although there were multiple risks in the procedure of the practical switching to the new regulation, it is evident that there would have been a much greater risk if the regulation from

2003 had remained in force. In such a case those risks could become unbearable for all stakeholders – from employees of port authorities and captaincy, concessionaires etc. to all other legal and natural persons who are in any way connected with maritime common good and seaports.

The intricacy and features of the maritime common good present a potential issue of excessive and unchecked exploitation, usurpation, and general destruction, which is widely acknowledged as a problem of commons governance both theoretically and practically. In order to overcome the “tragedy of the commons,” we are highlighting the necessity of further looking for empirically viable and conceptually sound remedies. Modern governing approaches address a wide range of collective decision-making issues that are closely related to commons allocation issues. The potential of the mechanisms themselves and the information background required for a successful management of the complex commons, as the maritime common good, can be strengthened by using those approaches to provide fruitful background for future advancements of maritime common good governing mechanisms and institutional settings.

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