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Danube Transnational Programme DAPhNE

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National legal report template –
[Please insert Country Name]

[Template]

Work Package 3

Activity 3.2 Improve & harmonize port legislation

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Table of Contents

Table of Figures	5
Table of Tables	5
1 Scope of the document	6
1.1 General terms	7
1.2 Definitions according to the national legal framework.....	7
2 Description of the current port governance models (if there are more than one).....	8
2.1 Regulatory framework.....	8
2.2 Port owner	9
2.3 Types of ports.....	9
3 Investing in ports, construction and permitting	10
3.1 Port infrastructure in line with the national legal framework in force	10
3.1.1 Responsibilities for infrastructure investments in ports.....	10
3.2 Port superstructure in line with the national legal framework in force	11
3.2.1 Responsibilities for superstructure investments in ports.....	11
3.3 Construction and Permitting of Ports.....	11
3.4 Port financing: Rules & Practices.....	14
3.4.1 Rules and procedures for public funding of port investments	15
4 Port Authority/Administration.....	16
4.1 Port administrations & responsibilities.....	16
4.2 Services provided by the port administrations.....	17
4.3 Finance of services.....	17

4.4	Port fees	17
4.5	Port bylaws	19
4.5.1	Entity issuing the port bylaws	19
4.5.2	Area of application of bylaws	19
4.5.3	Environmental requirements included in the port bylaws.....	20
4.6	Rules and Procedures regarding the Harbormaster	20
5	Rules and regulations to become a port operator	21
6	Rules and regulations for using port locations for economic activities other than port services	22
7	Incentives for the reduction of the port eco-footprint	24
7.1	Incentives for port users & port operators	24
7.2	Incentives for investors in ports.....	25
8	Annexes.....	26

Table of Figures

Figure 1: figure caption exampePogreška! Knjižna oznaka nije definirana.

Table of Tables

Table 1: figure caption exampePogreška! Knjižna oznaka nije definirana.

Thank you for writing a national legal framework report on your jurisdiction for the DAPhNE project. The template contains headings, brief explanations and questions. The questions shall function as guidance only. The final report shall be a continuous text, which neither includes the questions nor direct answer to the questions only (eg not just "yes" or "no"). Please read through the questions below and put your input for the report where indicated. The final report shall be drafted in a way that each heading is followed by a chapter, which includes the answers to the guidance questions plus any information that you deem relevant for the specific chapter.

1 Scope of the document

The project is called DAPhNE – Danube Ports Network – and it is funded in the framework of the Danube Transnational Program (DTP). The overall aim of DAPhNE is to facilitate Danube ports to become key-elements of a more efficient and sustainable transport network in the Danube region. The project consists of different work packages dealing with various topics in line with the main objectives of DAPhNE.

The activities included in work package 3 of the DAPhNE project are linked to the regulatory framework of Danube ports. The legal conditions in force as well as the financing and funding possibilities available for Danube ports are investigated and measures are suggested to improve the current situation. An improved regulatory framework will help eliminate the quality gaps in terms of infra- and superstructure which exist between Upper and Middle & Lower Danube sections. One important objective of the work package is to provide inputs for a more harmonized approach in regards to legal port issues. When tackling the legal framework it is important to start from the national level and then move up to identify solutions applicable at regional level.

Six DAPhNE consortium members have overtaken the obligation to coordinate the elaboration of national reports covering the port legal aspects applicable in Austria, Hungary, Croatia, Slovakia, Bulgaria and Romania. The homogenous structure of these reports will allow an easier comparison between the Danube riparian countries and will facilitate the elaboration of a set of recommendations connected to port legislation (output 3.2).

The legal topics chosen to be investigated under the current report contribute to disclose information that will enable the Danube Ports to reach in the long run the following objectives:

- Untap the potential of Danube ports as centres for economic development that are desirable business locations
- Put in place high-quality infra- & super-structure in place all along the Danube ports
- Facilitate cost-effective and easy-to-use port services
- Ensure lowest possible eco-footprint in the construction and operation of Danube ports

Although the consortium members are aware of the variety of functions that ports have (passenger, military, fishing, leisure activities, etc.) the scope of the current report is to focus

on those legal aspects that are relevant for transport, logistics and cargo-handling. The legal background for other types of businesses using ports as business locations will also be investigated.

1.1 General terms

For the purpose of the current report the definition of a port as included in the Commission Regulation (EU) 2017/1084 of 14 June 2017 shall be considered as starting point. Each of the partners in charge of writing the national reports will further explain how ports are defined based on the legal framework in place in their jurisdiction.

Due to the overlap of the function of inland and maritime waterway the legislation applicable to both inland and maritime ports will be considered for analysis for those countries where this is relevant (e.g. Romania).

(154) **“port”** means an area of land and water made up of such infrastructure and equipment, so as to permit the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods and the embarkation and disembarkation of passengers, crew and other persons and any other infrastructure necessary for transport operators in the port;

(155) **“maritime port”** means a port for, principally, the reception of sea-going vessels;

(156) **“inland port”** means a port other than a maritime port, for the reception of inland waterway vessels

1.2 Definitions according to the national legal framework

How is a port defined in your national jurisdiction?

[Please include here the official definition of a port (inland/maritime, where applicable) in line with the legal framework in force in your jurisdiction. Please also list the legal documents giving the official definitions.]

The goal is to find out if there are differences at national level between riparian countries in the definition of ports especially in relation to the general definitions given at EU level.]

[Please insert input.]

2 Description of the current port governance models (if there are more than one)

2.1 Regulatory framework

Please set out the port legislation in your jurisdiction in general. In particular:

- *Which legal regulations exist?*
- *To which parties from the private and public sector is the legislation applied?*
- *Apart from federal or state laws is there also secondary legislation, which specifies the laws?*
- *How has EU port legislation been implemented into your jurisdiction?*
- *Are there any other types of legal acts and strategic documents specifically relevant for ports?*

[Please do not elaborate on shipping legislation, but focus on the legal regulations specifically relevant for ports. You do not need to elaborate on individual legal regulations in other areas of law (eg labour law, tax law, construction law etc) but focus on codifications specific for ports. Please provide the name of the regulation and a short description of the subject matter.]

[Please insert input.]

Which entities are involved in issuing/updating the port legislation in your jurisdiction?

[Please give a brief overview over the entities involved in issuing/updating port legislation including statutes, secondary legislation and any other types of legal acts or strategic documents specifically relevant for ports.]

[Please insert input.]

Please set out the competent port authorities in your jurisdiction in general. In particular:

- *What is the highest port authority (eg Ministry of Transport) and which other authorities are competent in port matters?*
- *Are there any other entities (eg state owned companies, national companies) that have competences in port matters?*

[Please insert input.]

2.2 Port owner

Who owns the port based on the legal definition in force in your jurisdiction?

[Please insert input.]

2.3 Types of ports

Is there a differentiation made on port legislation between public (state-owned, owned by regional/local public bodies) ports and privately owned ports?

[If yes, please give a definition of public and private ports and set out the different regulations applicable to private and/or public ports. Please explain the different cases valid at national level and provide the legal framework regulating those cases.]

- *Public ports (state-owned): what types of services do they provide and who manages them?*
- *Private ports: what types of services do they provide and who manages them?*
- *Are there any other types of ownership relevant in your jurisdiction, eg public-private ownership, any type of combination between these ownership models etc?*

[Depending on the legal provisions in force, please also list the types of Danube ports in your country.]

[Please insert input.]

Please provide as Annex 1 a list of all Danube ports in your country, grouping them by the different categories/types of ownership they fall under.

3 Investing in ports, construction and permitting

The goal of this chapter is to clarify which legal entity has responsibilities for developing ports and carrying out port investments. In this respect it is also important to find out which permits are required for the construction of new ports as well as for the amendment of existing ports.

In line with Commission Regulation (EU) 2017/1084 of 14 June 2017, the consortium will consider the following definitions as starting points:

(157) **“port infrastructure”** means infrastructure and facilities for the provision of transport related port services, for example berths used for the mooring of ships, quay walls, jetties and floating pontoon ramps in tidal areas, internal basins, backfills and land reclamation, alternative fuel infrastructure and infrastructure for the collection of ship-generated waste and cargo residues;

(158) **“port superstructure”** means surface arrangements (such as for storage), fixed equipment (such as warehouses and terminal buildings) as well as mobile equipment (such as cranes) located in a port for the provision of transport related port services;

3.1 Port infrastructure in line with the national legal framework in force

How is port infrastructure defined in your jurisdiction?

[Please name the types of elements defined as infrastructure and the legal document in force explaining them.]

[Please insert input.]

3.1.1 Responsibilities for infrastructure investments in ports

Which entity is authorized/obliged by law to carry out port infrastructure investments?

[Please provide information on the entities authorized and obliged by law to carry out port infrastructure investments. Please also provide the names of authorities and a list of main contact details.]

[Please insert input.]

3.2 Port superstructure in line with the national legal framework in force

How is port superstructure defined in your jurisdiction?

[Please name the types of elements defined as superstructure and the legal document in force explaining them.]

[Please insert input.]

3.2.1 Responsibilities for superstructure investments in ports

Who is authorized by law to carry out port superstructure investments?

[Please provide information on the entities authorized/obliged by law to carry out port superstructure investments.]

[Please insert input.]

3.3 Construction and Permitting of Ports

Please briefly set out the requirements in order to construct a new port or amend an existing port following your jurisdiction.

[Please include a brief description of the required permits, the competent authorities and the required procedures in order to build or amend a port.]

[Please insert input.]

Are there any restrictions or limitations as to who can construct a new port or amend an existing port in your jurisdiction?

[Please include information on the parties to which the respective legislation is applied from the public and private sector.]

[Please insert input.]

Is there a prohibition or a limitation on the construction or amendment of ports in your jurisdiction?

[Please elaborate on prohibitions or limitations with regard to the area/place/property where a port may be erected. Also include information on prohibitions or limitations with regard to the purpose of the port (eg handling of dangerous substances).]

[Please insert input.]

Is there a requirement for a special construction permit with regard to the construction or the amendment of ports in your jurisdiction?

[Please insert input.]

If yes, please summarize the regulatory regime for construction permits. In particular:

- *What permits or other authorizations (eg use permit) are required and which regulator issues them?*
- *Which are the competent authorities?*
- *What timeframe has to be considered?*
- *What are penalties or consequences for non-compliance?*

[Please insert input.]

Is there a requirement for a special operating license/plant permit/business premises authorization with regard to ports in your jurisdiction?

[Please insert input.]

If yes, please summarize the regulatory regime for operating licenses/plant permits/business premises authorizations. In particular:

- *What permits or other authorizations are required and which regulator issues them?*
- *Which are the competent authorities?*
- *What timeframe has to be considered?*
- *Is there a statute of limitation on operating permits for ports?*
- *What are penalties or consequences for non-compliance?*

[Please insert input.]

Is there a requirement for a special permit under water regulations with regard to the construction, amendment and operation of ports in your jurisdiction?

[Please insert input.]

If yes, please summarize the regulatory regime for permits under water regulations. In particular:

- *What permits or other authorizations are required and which regulator issues them?*
- *Which are the competent authorities?*
- *What timeframe has to be considered?*
- *What are penalties or consequences for non-compliance?*

[Please insert input.]

Is there a specific requirement to carry out an environmental (impact) assessment (EIA) for port construction or amendment projects in your jurisdiction?

[Please include a brief description of the environmental assessments in your jurisdiction, including environmental impact assessments, conformity assessments and strategic environmental assessments.]

[Please insert input.]

If yes, please summarize the regulatory regime for EIA. In particular:

- What types of port projects are covered?
- Are permits or other documents required before the port project can start and which regulator issues them?
- Which are the competent authorities?
- What are penalties or consequences for non-compliance?

[Please insert input.]

Does the relevant public procurement legislation in your jurisdiction foresee any special regulations with regard to port construction or amendment projects?

[Please insert input.]

Is the construction and operation of a port subject to an economic needs test in your jurisdiction?

[Please insert input.]

If yes, please summarize the process of such economic needs test. In particular:

- *What types of ports require an economic needs test?*
- *Which authority is conducting the economic needs test and which other parties/stakeholders are required or allowed to express their opinion?*
- *What factors are taken into consideration when assessing the economic needs?*

[Please insert input.]

Does the legislation applicable to the construction/extension and/or operation of ports provide for expropriation or other forms of coercion rights (eg shared use rights, temporary use of property)?

[Please include a brief description of the expropriation regime in your jurisdiction and elaborate on any other rights that grant the operator of a port construction project access to the required property.]

[Please insert input.]

Is there any special regulation regarding public-private partnerships for port investment projects?

[Please insert input.]

Is the termination of the operation of ports or the demolition of ports specifically regulated in your jurisdiction?

[If yes, please elaborate also on the relevant procedure and whether or not the competent authority can request remediation measures.]

[Please insert input.]

3.4 Port financing: Rules & Practices

This section shall deal with the financial sources available for developing port infrastructure and superstructure needed in the Danube ports. In this respect financing is used as a general term which includes both public and private sources, while the term funding refers to government subsidies or other public funds available via national or European programs.

Please set out the types of financial sources available for port investments in your jurisdiction:

[Please include information on (i) private investments, (ii) public investments and (iii) public-private collaborations for investments and lay down any special rules and practices regarding the different investment types.]

[Please insert input.]

Please provide information on the financial sources and the corresponding duties as they are assigned to the different parties involved.

[Starting from the previous sections where responsibilities were defined in connection to investments, please give an overview linking the financial sources with the duties of the parties assigned as responsible.]

Are there any specific rules regarding how much a port can reinvest from the fees it receives?

[Please insert input.]

3.4.1 Rules and procedures for public funding of port investments

Please set out the public funding system for ports in your jurisdiction. In particular:

- *Are there national programs or case-by-case activities for port investments? If yes, please give an overview of the legal framework, the procedures for applying, the timeframe, overall sums available and the eligibility of candidates.*
- *Are there European programs for port investments available and in use? If yes, please give an overview of the legal framework, the procedures for applying, the timeframe, overall sums available and the eligibility of candidates*
- *Are there any other types of national public funding systems available?, If yes, please elaborate.*
- *Are there national rules and funding programs available that allow the collaboration between the public and the private sectors using public funding?*
- *Are there different eligibility grids that apply to private entities and public entities when competing as a consortium for joint funding?*

[Please give a description of the public funding system for port investments.]

[Please insert input.]

4 Port Authority/Administration

Ports usually have a governing body referred to as the Port Authority, Port Management or Port Administration. "Port Authority" is used widely to indicate any of these three terms.

Therefore, it makes sense to start this section with definitions of the terms:

- port administration
- port authority
- port management

and in contrary to the "port authority" the "port operator" provides logistics services and can be either private or public.

This chapter shall clarify aspects dealing with those responsible for managing Danube ports and their duties in line with the legal framework in force. The distinction between port owners, port administration/port authority/ port managers and port operators shall be clearly made in those countries where this is the case. The analysis of the legal framework will also highlight the services that have to be provided in the Danube ports as well as the applicable fees, how they are calculated, updated and applied.

How are the terms "port administration", "port authority" and "port management" defined in your jurisdiction?

[Please insert input.]

4.1 Port administrations & responsibilities

Name the port administrations that were appointed by law and list their responsibilities

- Is there a difference between port owners and port administrations in your jurisdiction?

[Please list all port administrations in case several scenarios apply to the Danube region in your country.]

[Please insert input.]

Please give a brief outline of the legal requirements regarding port administration. In particular:

- *Who is responsible for the port administration?*
- *What are the main competences of port administrators?*

- *What permits, registrations and other authorizations are required for port administration and what is their term?*

[Please insert input.]

4.2 Services provided by the port administrations

Please give a brief outline of the legal requirements regarding port services. In particular:

- *Which port services are legally required? (eg bunkering, drinking water, bathroom facilities, waste disposal facilities, sewage, disposal of oil)*
- *Which rules apply to moorings?*
- *Which safety requirements apply? (eg fire safety, life belts, ice breakers)*
- *Which legal prohibitions apply (eg no swimming/fishing in the port basin)?*
- *What are the penalties or consequences for non-compliance?*

[Please insert input.]

4.3 Finance of services

Please explain how services are paid for in the Danube ports in your jurisdiction.

- *Are port fees applied and are they paid by the port users or is there a special state finance available to compensate these fees?*
- *Is there a direct or indirect charging system in place in your jurisdiction?*

[In case there are several scenarios applicable to the Danube Ports in your jurisdiction, please describe them on a case by case basis.]

[Please insert input.]

4.4 Port fees

How are the access fees or taxes for the use of ports regulated in your jurisdiction?

[Please describe the general categories of fees applicable to Danube ports in your jurisdiction and how they are linked to the types of services available in those ports.]

- *Which services are included in the fee? (eg use of the port and mooring, use of waste disposal facilities, ice removal in winter)*
- *Describe fees/taxes for port infrastructure and port services.*
- *Who is obliged to pay the fee and when?*
- *What is the mode of payment of the fee?*
- *Who is liable for the fee?*

[Please insert input.]

Who decides on the amount of the fees or taxes for the use of ports and how is it calculated?

[If available, please include the calculation methods that are in force. Specify if there are clear legal rules in force for this or if each port administration has their own calculation method in force. How often are port fees updated and is there an official explanation for this?]

[Please insert input.]

In case secondary fee or port tax legislation or other fee legislation is issued, please elaborate on the respective authority issuing such legislation and provide information on the legal procedure for issuing it.

[Please insert input.]

Is there a special complaint process available for port users with regard to port services and access fees/taxes in your jurisdiction?

[If yes, please indicate whether there is a special complaint body or institution and give a brief overview over the complaint process, the parties involved, the costs and the timeframe.]

[Please insert input.]

Please include as Annex 2 a list of fees applicable in all Danube ports in your jurisdiction, including the link to the website where they are available for consultation online.

4.5 Port bylaws

For the scope of the current document bylaws shall refer to the rules or laws established by an organization or community to regulate itself, as allowed or provided for by some higher authority.

Port bylaws lay down rules in respect of order, safety and environment in the port and its surroundings and the quality of the services in the port. Port bylaws can also be described as port regulations.

Does the relevant port legislation in your jurisdiction foresee the possibility to issue port bylaws?

- *Is there a specific national legislation regulating the elaboration and publication of port bylaws or any other port rules that have an equivalent value?*
- *If yes, please explain if there is a general set of provisions imposed at national level applicable to all Danube ports or if there are specific provisions defined on a case by case basis.*
- *If there is no such rule, please explain this aspect, by stating that bylaws do not apply to your jurisdiction*

[Please insert input.]

4.5.1 Entity issuing the port bylaws

Which entity is in charge of issuing the port bylaws/port rules in your jurisdiction?

[Please insert input.]

Is there a specific procedure in place for updating/revising the port bylaws/rules?

[If yes, please give a brief outline on the procedure for issuing port bylaws.]

[Please insert input.]

Please provide the port bylaws/rules of equivalent value of the Danube core network ports in your jurisdiction as Annex 3.

4.5.2 Area of application of bylaws

To which area do the bylaws apply and which port users should be aware of them?

[Please also elaborate on whether or not some port bylaws limit the third party access rights (eg access to oil ports).]

[Please insert input.]

4.5.3 Environmental requirements included in the port bylaws

Do the port bylaws applicable in your jurisdiction foresee specific requirements for aspects dealing with pollution prevention aspects such as: air emissions, alternative fuels, etc?

[In case there are specific environmental requirements applicable to different port locations in your jurisdiction, please list all of these.]

[Please insert input.]

4.6 Rules and Procedures regarding the Harbormaster

Please give an overview of the legal requirements regarding the harbormaster department in your jurisdiction.

[Please list the duties and responsibilities of the harbormaster departments in the Danube Ports in your jurisdiction.]

[Please insert input.]

5 Rules and regulations to become a port operator

This chapter shall explain the legal framework and the administrative procedures applicable to third parties interested in becoming a port operator in your jurisdiction.

The indicative timeline of the procedures applied as well as the estimated costs shall also be included in this chapter.

Is there a requirement for a specific concession in order to operate a port and/or to provide port services in your jurisdiction?

- *What concession or other authorizations are required and which regulator issues them?*
- *Which are the competent authorities?*
- *What timeframe has to be considered for achieving the right to operate?*
- *What are the penalties or consequences for non-compliance?*

[Please insert input.]

Does the relevant public procurement legislation in your jurisdiction foresee any special regulations with regard to port operation?

[Please insert input.]

Are there any restrictions or limitations as to who can operate a port in your jurisdiction?

[Please include information on the parties to which the respective legislation is applied from the public and private sector.]

[Please insert input.]

Is there an obligation to contract/public service obligation for the port operator?

[If yes, please give a brief outline of the obligation to contract/public service obligation, the specific situations when such obligation to contract/public service obligation would be triggered and the contract partners.]

[Please insert input.]

Are there specific rules for the operation of privately owned ports?

[Please insert input.]

6 Rules and regulations for using port locations for economic activities other than port services

This chapter will address the legal framework applicable to those economic entities that are interested in carrying out economic activities that are not related to port services. The rules and procedures applied will be explained in a comprehensive manner along with the entities involved in each of the stages of these procedures. The port area can be used to carry out activities that are not only related to port operations and services. It is the responsibility of the port administration to manage the port land and to carry out procedures that result in the concession / lease of the port land for different purposes. Since there are specific authorities that have responsibilities according to the legislation applicable to ports we are interested in all types of procurement/ concession procedures they have power over as long as they are related to the port land. Consequently, we also want to know additional details about what it entails starting new types of economic activities in ports, other than those related to port services.

In case there is an economic entity interested in, for instance setting up a manufacturing plant within the port area and thus needs to receive and deliver cargo by water, what are the procedures this company would have to comply with in order to invest in a particular port location?

[Please give an overview on (i) whether economic activities other than port services are allowed within the port area in your jurisdiction, (ii) what procedures the economic entity interested in carrying out such economic activities has to follow and (iii) whether there are any specific rules applicable on such economic activities other than port services carries out in a port area.]

[Please insert input.]

Is there a requirement for a specific concession in order to carry out economic activities other than port services in a port area in your jurisdiction?

- *What concession or other authorizations are required and which regulator issues them?*
- *Which are the competent authorities?*
- *What timeframe has to be considered?*
- *What are the penalties or consequences for non-compliance?*

[Please insert input.]

Does the relevant public procurement legislation in your jurisdiction foresee any special regulations with regard to carrying out economic activities other than port services in a port area?

[Please insert input.]

Are there any restrictions or limitations as to who can carry out economic activities other than port services in a port area in your jurisdiction?

[Please insert input.]

Are there any restrictions or limitations as to what economic activities other than port services may be carried out in a port area in your jurisdiction?

[Please insert input.]

7 Incentives for the reduction of the port eco-footprint

This chapter includes details about rules and regulations in force in the Danube ports in your jurisdiction regarding the reduction of the eco-footprint of the activities carried out in the port area. Many emission-producing sources are directly and indirectly related to port operations. These emission sources include port administration vehicles, power plants providing power for administration offices, tenant buildings, electrified cargo handling equipment, fuel-powered cargo handling equipment, ships, harbor craft, trucks, rail locomotives, etc. These sources produce greenhouse gases and other negative emissions harmful to people and environment. The relationships of these sources to the port administrative bodies vary by source type and between individual ports.

Are there special rules/measures in your jurisdiction that encourage parties working in the port area such as the port administrator or the port tenants (port operators and other economic entities) to reduce the emissions in the port area?

- *Are there special environmental protection programs regarding air, water or soil pollution?*
- *Do "green vessels" (eg LNG powered vessels, vessels with exhaust emission treatment devices, etc) pay a smaller tax fee to access the port just because they pollute less or do they perhaps receive a tax-waiver?*
- *Does a port operator who uses state of the art technology benefit from a certain type of incentive scheme such as reduced port fees, lower rent/concession fees to be paid, etc?*
- *Are there special incentive schemes included in the port bylaws regarding the set-up of LNG refueling points such as simplified procedures for the award of the port land for such refueling stations, reduced port taxes, spatial planning done to accommodate such bunkering stations, etc?*

[Please insert input.]

7.1 Incentives for port users & port operators

[Please provide a list of incentives and briefly describe them. When explaining these incentives, please separate them taking into account the different categories of entities active in the port area. If there is no general legal framework applicable at national level, please explain the different scenarios available for the port locations in your jurisdiction.]

[Please insert input.]

7.2 Incentives for investors in ports

[Please provide a list of incentives and briefly describe them. When explaining these incentives, please separate them taking into account the different categories of entities active in the port area. If there is no general legal framework applicable at national level, please explain the different scenarios available for the port locations in your jurisdiction.]

[Please insert input.]



schönherr

8 Annexes

[Annex 1: List of all Danube ports]

[Annex 2: List of fees applicable in all Danube ports]

[Annex 3: List of port bylaws of the Danube ports]