



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.10.2004  
COM(2004) 654 final

2004/0240 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on market access to port services**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

### **1. INTRODUCTION**

In the interests of the consumers and of business alike, liberalisation in all transport sectors is explicitly included in the Lisbon Agenda. In fact, in the conclusions of the European Council of Lisbon of 28 March 2000, transport is among the areas where the Commission, the Council and the Member States, each in accordance with their respective powers, were asked to “speed up liberalisation”.

Consequently, on 13 February 2001 the Commission adopted a Communication to the European Parliament and to the Council “Reinforcing Quality Service in Sea Ports: A Key for European Transport” (the so called Ports’ Package). The cornerstone of this Communication was a proposal for a Directive of the European Parliament and of the Council on “Market Access to Port Services”.

This was an ambitious initiative, the principles and basic aims of which were also confirmed by the Commission’s White Paper, later that year.

The proposal has led to an extensive debate, both within the inter-institutional legislative process<sup>1</sup>, but also with and between stakeholders.

However, on 20 November 2003, after almost three years of inter-institutional legislative process, at the end of the Conciliation procedure, the European Parliament in Plenary Session rejected the compromise text by 229 votes against, 209 in favour and 16 abstentions.

### **2. THE NEED TO ESTABLISH A COMMUNITY LEGAL FRAMEWORK.**

The Commission believes that the need to establish a Community legal framework for access to the provision of port services remains necessary and has been made even more acute by events which occurred in the last three years.

#### **1. Keep the EU transport sector functioning**

The Commission wishes to underline the fact that during the inter-Institutional discussions on its previous legislative initiative, its proposal’s doctrine, philosophy and general principles remained intact. This is proof of the fact that most of the arguments and considerations that have been developed in the 2001 Commission proposal to show the need to establish a Community legal framework for access to the provision of port services are today still valid:

Firstly, the European Council, recognizing the need to fulfil the Lisbon Agenda, has twice (Barcelona 2002 and Brussels 2003) explicitly and repeatedly called upon all Institutions to work towards adoption of the Port Services Directive.

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<sup>1</sup> During its Plenary Session on 14 November 2001 the European Parliament approved, subject to a number of amendments, the Commission’s proposal for a European Parliament and Council Directive on Market Access to Port Services.

Moreover, transport statistics, projections and trends repeatedly confirm the Commission's view (expressed in its 2001 White Paper on Transport) that the most efficient way to tackle the EU's ever growing transport needs is to transfer more goods and passengers to maritime transport. Thus, congestion on the road network will be reduced and cohesion with peripheral regions increased.

Short Sea Shipping and the Motorways of the Sea have the capacity to absorb most of the freight increase forecast for 2010 (50% more than 1998). This will bring much more business to ports, which need to improve their performance.

## **2. Completing the Internal Market and creating a level playing field between ports**

Under the Treaty the Commission has the right and duty to examine all possibilities allowed to it by the Treaty, in order to advance with the issue of market opening in the provision of port services. This is particularly true now that the EU has been enlarged to 25 Member States, 20 of which have ports!

The EU Treaty's fundamental freedoms (freedom of establishment, free movement of workers, goods and services) as well as its competition rules apply to this port services sector as well. Some fifty years after the creation of the Community, there still is no specific Community regulatory framework for port services, which almost remain the only transport service sector where problems with the application of these rules, where they arise, have to be dealt with by the Commission on a case by case basis.

This is a market area which is characterised by the complexity and variety of applicable national and other rules and by the heterogeneous nature of the port services and the diversity of the ports (in terms of status, ownership, type of management, size, function and geographical characteristics).

Consequently, the adoption of a Community framework setting down the basic rules applicable in those EU ports would ensure that the competition within and between ports would take place on a level playing field.

A Community framework on port services should not apply to ports of all sizes. Only ports with a total annual maritime traffic volume corresponding to that of "international seaports (category A)" as defined in Decision No 1692/96/EC<sup>2</sup> the Trans-European Transport Network, should be considered. However, Member States have the possibility to decide to apply this Directive to other ports as well.

Two main issues have to be addressed:

- On intra-port competition (competition between providers of a same port service within a port), the efficient provision of services in this market sector is consequently essential for the functioning of the EU's ports and hence for achieving the EU's policy outlined above.

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<sup>2</sup> Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport networks (OJ L 228, 9.9.1996, p. 1). Decision as amended by Decision No 1346/2001/EC (OJ L 185, 6.7.2001, p. 1).

Port services are services of a commercial value which are provided against payment to port users in a port and whose payment is not normally included in the charges collected for being allowed to call at or operate in a port. These are the technical-nautical services of pilotage, towage and mooring, all cargo handling operations (including loading and unloading, stevedoring, stowage, transshipment and other intra-terminal transport) and passenger services (including embarkation and disembarkation). They can be provided either inside the port's area or on waterway access to and from the port.

Appropriate account has to be taken of each port's specificity and its relevance for the port service providers. This may, in particular, be the case where space and capacity constraints exist in a port or where specific maritime safety, security and environmental considerations exist.

- On inter-port competition (between ports), the Commission shares the view of the two co-legislators (European Parliament and Council) that its financial transparency directive should apply to all ports covered by its legislative proposal and that it is necessary to adopt State Aid Guidelines (an exclusive Commission competence) on the financing of port infrastructure and will act accordingly on both fronts.

### **3. In full respect of the existing social and labour acquis, while increasing employment in the sector**

During the previous legislative debate, it has often been argued that market opening in the port services' sector would have negative consequences on employment and social issues of its workers, or would endanger the safety and security in ports.

This is not true. The Commission has always stressed the neutrality of its proposal on EU and national rules concerning employment and social matters, including training requirements and professional qualifications, as well as on environmental, safety and security issues. Consequently the proposal would be without prejudice on the application of relevant rules provided that they are compatible with Community law and the international obligations of the Community and the Member State concerned.

Moreover, the shift of additional, new, volumes through ports will undoubtedly create the need for new operations to be established and this will lead to the enhancement of employment in ports.

Finally and in order to enhance the application of the proposed Community legal framework, the Commission wishes to invite Member States to ratify conventions adopted in international organisations, in particular the relevant ILO conventions<sup>3</sup>.

### **3. THE COMMISSION'S PROPOSAL.**

The Commission consequently believes that it is still necessary, in the interests of operators, authorities and consumers, to introduce specific and clear rules on access to the port services market which will take account of its unique features.

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<sup>3</sup> ILO Convention C 137 of 1973 on Dock Work; ILO Convention C152 of 1979 on Occupational Safety and Health (Dock Work); ILO Convention C145 of 1976 on Continuity of Employment (Seafarers)

Therefore, as sole holder of the power of initiative, the Commission brings forward a new proposal for a Directive on market access to port services.

The key philosophy, principles and objectives the Commission wished to attain with its 2001 Communication remain the same. The Commission, however, recognizes the added value of constructive changes brought forward during the previous legislative process, as well as suggestions by stakeholders and interested parties.

As a result, the Commission's new text is based both on its original 2001 proposal and the 2002 amended proposal, as well as numerous constructive amendments brought forward by the European Parliament's two Readings, the Council's Common Position and Conciliation texts.

*For example, the following points remain the same as in the past:*

- The scope of the Directive, i.e. the thresholds for the ports covered and port services concerned.
  - (a) For ports, only ports in the TEN Transport category A list are considered (see above point II.2, Article 2).
  - (b) The services concerned are defined in Article 3.
- The Directive in no way affects the rights and obligations of Member States in respect of the application of their social legislation, including relevant national rules on health, safety and employment of personnel (Article 4).
- The Directive in no way affects the rights and obligations of Member States in respect of law and order, safety and security at ports as well as environmental protection (Article 5).
- The criteria for granting authorisations should be objective, transparent, non-discriminatory, relevant and proportional, and should be made public (Article 7).
- The reasons for introducing a limitation in the number of service providers for one or more port services must be objective. The highest possible number of service providers must be allowed (Article 9).
- The neutrality of the competent authority regarding decisions on limitations in the number of service providers and on selection procedures must be assured (Articles 8 and 9).
- For pilotage the Commission will propose the text which was approved during the conciliation procedure (Article 14).

Pilotage is therefore included in the scope of the Directive and recognized as a service of a commercial nature. However, particular emphasis is put on the key importance of service specificities it is subject to.

These specificities, in particular public service obligations and maritime safety considerations of pilotage, were acknowledged by European Parliament, Council and Commission during the discussion of the original proposal. This is the reason why

they considered that authorisations for pilotage can be submitted to particularly strict criteria related with public service obligations and maritime safety; especially this could concern explicit knowledge and capacity of navigability for the local areas of operation. For this purpose, competent authorities may, on a case by case basis, either reserve to themselves, or directly grant an exclusive right to an organisation for the provision of pilotage services in a port. Adoption of port-specific solutions is thus allowed.

It should be noted that, self-handling for pilotage is included in the Directive in the form of Pilotage Exemption Certificates (PECs).

- Transparent accounting for the managing body of the port is required.

*The main new elements included in the new Commission proposal are:*

- As a general rule, self-handling for cargo & passengers operations may be provided using the land-based personnel of the self-handler.

Use of land-based personnel to carry out self-handling will increase employment in ports, with the local communities the first beneficiaries. Needless to say that this personnel will have to be employed in full respect of the applicable national and Community rules dealing with employment and social issues, following the same general rules and conditions set for all other personnel involved in cargo handling. .

In addition to using land-based personnel, ships providing an authorised regular shipping service in the context of Short Sea Shipping or operating on Motorways of the Sea may, in addition, carry out self-handling using the ship's regular sea-faring crew.

Authorised regular shipping services, Short Sea Shipping and Motorways of the Sea operations are EU policies whose main aim is to reduce land (road) transport. The latter are defined in Decision no 884/2004/EC of the European Parliament and of the Council of 29 April 2004, amending Decision No 1692/96/EC on Community guidelines for the development of the trans-European transport network. The Directive also covers maritime links between ports of the same Member State (cabotage).

The EU is supporting increased recourse to them in various manners, including financing through Community funds. It would thus only be normal to further encourage them through Community legislation.

It should be noted that an authorisation is needed for self-handling. The criteria for granting such authorisations must be the same as those applying to providers of the same or a comparable port service, provided these are relevant. Competent authorities shall grant such authorisations to self-handlers in an efficient and expedient manner. They shall remain in force so long as the self-handler complies with the criteria for granting them.

- Authorisations for service providers become mandatory (Article 7). The Commission wishes in this way to reconcile the need to allow efficient and effective access of competent port service providers with the need to ensure proper management of a

port with its inherent constraints as well as to ensure a satisfactory level of professional qualifications.

Within a certain time frame following the entry into force of the Directive all providers of port services in a port have to operate on the basis of an authorisation. The method used for granting the authorisation will determine what will happen in the event of a later limitation in the number of service providers of a port service. (Article 10).

- (a) Within a reasonable time frame, authorisations granted prior to the entry into force of the Directive need to be reviewed, since they were not granted in conformity with its rules and stipulations. However, at the same time account has to be taken of legitimate expectations of current service providers. The system will also apply for new authorisations to be granted after the entry into force of the Directive.

The timeframe set is a maximum of 12 months after the latest possible date for transposition of the Directive (12 + 18 months).

The proposed system allows for an authorisation simply to be granted without any further requirements, but it also foresees the possibility for this to be done through a selection procedure (described in Article 11), either if a port authority so decides and/or an existing (or new) service provider so asks.

- (b) If and when a limitation in the number of service providers arises:
  - the authorisation which has been granted through a selection procedure must remain in force unchanged.
  - the authorisation which has been granted without a a selection procedure will have to be terminated and a selection procedure will have to be launched.
  - Compensation is foreseen for the existing service provider if he does not win the selection procedure, in full respect of the competition rules of the Treaty.
  - Provisions for authorisations which include property and ownership rights in a port are somewhat different, as their specificity has been taken into account.
- Durations of authorisations (Article 12) are still linked to the investment made by the service provider. The time frames proposed are in line with real general depreciation rules applied in the EU.
- The Commission shares the point of view of the two co-legislators (European Parliament and Council) that the issue of inter port (between ports) competition has to be addressed as well. Therefore as already agreed in conciliation:
  - (a) The text providing for the application of the financial transparency directive to all ports covered by the legislative proposal is included (Article 16).

- (b) The State Aid Guidelines text agreed is also included. This provides for State Aid guidelines to be adopted by the Commission within a year after the adoption of the Directive (Article 17).

#### 4. COMMENTARY ON THE ARTICLES.

Article 1 sets out the Directive's objectives, i.e. freedom to provide and self-handle port services in sea ports for Community providers of port services, subject to certain objective and relevant constraints.

Article 2 sets out the Directive's scope. It explains, by referring to a definitions article, what port services are covered and introduces various thresholds for ports to which the Directive would apply.

Article 3 defines key terms, and in particular the port services that the Directive applies to.

Article 4 recalls that the Directive in no way affects the rights and obligations of Member States in respect of the application of their social legislation, including relevant rules on health, safety and employment of personnel.

Article 5 recalls that the Directive in no way affects the rights and obligations of Member States in respect of law and order, safety and security at ports as well as environmental protection.

Article 6 explains that the Directive does not replace any of the obligations to which authorities are already subject as a result of the public procurement Directives 92/50, 93/36, 93/37 and 93/38, as well as regulation 3577/92. In addition, where one of those Directives already requires a contract to be tendered, it will be those Directives rather than the proposed Directive that determine the manner in which this should be done. Paragraph 3 furthermore ensures application of Directives 89/48, 92/51 and 99/42 on mutual recognition of professional education and training, in particular where Member States issue authorisations based on a provider's professional qualifications.

Article 7 establishes the basic rule that all providers of port services shall operated on the basis of an authorisation granted by the competent authority. This must happen at the latest 12 months after the latest possible date for transposition of the Directive. A system of selection procedure can be used as an option. The conditions for granting an authorisation must be transparent, non-discriminatory, objective, relevant and proportional. They must be made public, as has to be the procedure for obtaining the authorisation. They have to be granted in an efficient and expedient manner. This article contains a restricted list of criteria on which the authorisation may depend and those criteria may include certain public service obligations. It contains furthermore an obligation for the competent authority to provide adequate training where local knowledge is indispensable for a potential service provider and the right of a service provider to employ the personnel of his choice.

Article 8 describes and defines the selection procedure to be used for granting authorisations. Use of this procedure shall be necessary in cases of limitations of the number of service providers for one or more port services. It also provides for cases when a suitable service provider has not been found through a selection procedure. Finally it ensures the neutrality of the competent authority as a decision making body for the selection procedure for a service in



case it also wishes to provide this service. An independent body has to be appointed for these purposes.

Article 9 sets out the transparent rules to be followed where a limitation in the number of service providers in a port becomes necessary. It requires that the highest possible number of service providers must be allowed.

Article 10 defines the rules to be followed in case the number of providers for a port service becomes limited. Notably it introduces a different treatment on the basis of the way the authorisation was granted (with or without selection procedure). The issue of authorisations which include property and ownership rights in a port is addressed.

Article 11 sets out rules to be followed for past and future authorisations for new ports or part of a port.

Article 12 Maximum duration periods are given: The article introduces the principle of a time limit to authorisations and links its duration to the criterion of investment in assets. The duration varies according to the level of investments made by the service provider and whether the assets in which investments were made are movable or not.

Article 13 sets out that the rules of this Directive equally apply to self-handling. Self-handling for a service can be refused only in exceptional and well defined cases. For authorised regular shipping services in the context of Short Sea Shipping and Motorways of the Sea cargo-handling operations and passenger services, the self handler is allowed to use regular seafaring crew, on top of land-based personnel. Authorisations for self-handling are mandatory and any criteria set should not be stricter than those set for other providers of the same or a comparable port service. Authorisations have to be provided in an expedient and efficient manner and shall remain in force so long as the self-handler complies with the criteria for granting them. National social, employment and training issues should not be affected. Participation from self-handlers to the cost of the public service obligations for that service is possible.

Article 14 sets out a specific regime for pilotage, because of maritime safety and public service requirements. Self-handling for pilotage is possible. A report by the Member States on measures to improve the effectiveness of pilotage services is foreseen. Self-handling for pilotage is included in the Directive in the form of Pilotage Exemption Certificates (PECs).

Article 15 ensures full transparency of the selection process and requires Member States to establish appeal procedures, including a judicial review.

Article 16 ensures the application of the Commission's Directive on financial transparency, 80/723 to the ports covered by the Directive and foresees a reporting system on this issue.

Article 17 foresees that the Commission shall adopt State Aid guidelines on the financing of port infrastructure within a year of the entry into force of this Directive.

Article 18 introduces the requirement that service providers must have separate accounts for port service activities.

Article 19 introduces transparent accounting requirements for the managing body of the port.

Article 20 concerns the international status of ports, waterways and maritime zones.

Article 21 lays down obligations of Member States to report on the application of the Directive and of the Commission to draw up a report on the basis of these reports accompanied, where appropriate, by a proposal for a revision.

Article 22 contains Member States' obligation to implement the Directive.

Article 23 provides for the entry into force of the Directive.

Article 24 contains the addressees of the Directive.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on market access to port services**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80 (2) thereof,

Having regard to the proposal from the Commission<sup>4</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>5</sup>,

Having regard to the opinion of the Committee of the Regions<sup>6</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>7</sup>,

Whereas:

- (1) The objective of Article 49 of the Treaty is to eliminate restrictions on freedom to provide services in the Community. In accordance with Article 51 of the Treaty, that objective is to be achieved within the framework of the common transport policy whilst respecting, inter alia, the Treaty's social and environmental protection rules.
- (2) Through Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries<sup>8</sup> and Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)<sup>9</sup>, that objective has been attained with regard to maritime transport services as such.
- (3) Port services are essential to the proper functioning of maritime transport since they make an essential contribution to the efficient use of maritime transport infrastructure.
- (4) In the Green Paper on Sea Ports and Maritime Infrastructure of December 1997 the Commission indicated its intention of proposing a legislative framework in order to

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<sup>4</sup> OJ C , , p. .

<sup>5</sup> OJ C , , p. .

<sup>6</sup> OJ C , , p. .

<sup>7</sup> OJ C , , p. .

<sup>8</sup> OJ L 378, 31.12.1986, p. 1. Regulation as amended by Regulation (EEC) No 3573/90 (OJ L 353, 17.12.1990, p. 16).

<sup>9</sup> OJ L 364, 12.12.1992, p. 7.

achieve access to the port services market in Community ports with international traffic.

- (5) As one of the measures which will enhance overall competition in and between ports of the Community, facilitating access to the port services market at Community level should remove existing restrictions that hamper access for providers of port services and self-handlers, improve the quality of service provided to users of the port, increase efficiency and flexibility, help reduce costs and thereby contribute to promoting short sea shipping and combined transport. Financial relations between seaports or port systems and providers of port services on the one hand, and public authorities on the other, including State funding for ports, must also be made transparent.
- (6) National legislation and practices have led to disparities in the procedures applied and have created legal uncertainty regarding the rights of providers of port services and the duties of competent authorities. It is in the Community's interest, therefore, to establish a Community legal framework which lays down basic rules on access to the port services market, the rights and obligations of current and prospective service providers and self-handlers, the managing bodies of the ports, as well as on the procedures for authorisation and selection.
- (7) Community legislation on access to port services should not exclude the application of other Community rules, such as competition rules, including those relating to services of general economic interest, in particular to monopoly situations.
- (8) In order to achieve the aim of this Directive without imposing an additional burden on smaller ports, which would appear disproportionate to the expected results, this Directive should apply to ports with a total annual maritime traffic volume corresponding to that of "international seaports (category A)" as defined in Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport networks<sup>10</sup>, without prejudice, however, to the possibility of Member States deciding to apply this Directive to other ports as well. In determining the total annual traffic volume, Member States should have the possibility of not taking into consideration the traffic in parts of a port which are not open to general commercial traffic.
- (9) Member States should equally be able to exclude ports with a high seasonal character from the scope of this Directive, provided that they are satisfied that an adequate level of market access exists for port service operations.
- (10) A port system in the same geographical area as designated by a Member State is faced with the same constraints as an individual port and Member States should be able to treat them in the same way as a single port for the purposes of this Directive.
- (11) Member States should be free to choose the management model of two or more ports in the same geographical area that could be included in a port system.
- (12) Member States should designate a competent authority or competent authorities for the purpose of implementing this Directive. This or these authorities may be public or

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<sup>10</sup> OJ L 228, 9.9.1996, p.1. Decision as amended by Decision No 2004/884/EC (OJ L 167, 30.4.2004, p. 1).

private and may be responsible for one or more tasks covered by this Directive and for one or more ports.

- (13) The application of national social legislation, including relevant rules on health, safety and employment of personnel by service providers and self-handlers, should in no way be affected by this Directive.
- (14) This Directive should in no way affect the rights and obligations of Member States, or of competent authorities appointed by them, in respect of law and order, safety and security at ports, and environmental protection.
- (15) Where the authorisation under this Directive takes the form of a contract falling within the scope of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts<sup>11</sup>, Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts<sup>12</sup> Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts<sup>13</sup> and Council Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors<sup>14</sup>, those Directives should apply. Equally, where the authorisation under this Directive takes the form of a public service contract falling within the scope of Regulation (EEC) No 3577/92, that Regulation should apply. Finally, where applicable, Council Directives 89/48/EEC<sup>15</sup> and 92/51/EEC<sup>16</sup> and European Parliament and Council Directive 1999/42/EC<sup>17</sup> on the mutual recognition of professional education and training should apply.
- (16) Contracts for port services that have been awarded following a tendering procedure on the basis of another instrument of Community law should not be subject to a selection procedure in accordance with this Directive.
- (17) In the interests of efficient and safe port management, Member States should require that providers of port service operations obtain authorisations. The criteria for granting such authorisations should be objective, transparent, non-discriminatory, relevant and proportional, and should be made public. Competent authorities should grant authorisations in an efficient and expedient manner and in accordance with the provisions of this Directive.
- (18) To ensure adequate access to relevant training for applicant service providers where the required technical professional qualifications include specific local knowledge or experience of local conditions, Member States may oblige service providers with such knowledge or experience to offer such relevant training, where appropriate against payment.

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<sup>11</sup> OJ L 209, 24.7.92, p. 1. Directive as last amended by Commission Directive 2001/78/EC (OJ L 285, 29.10.2001, p. 1).

<sup>12</sup> OJ L 199, 9.8.93, p.1. Directive as last amended by the 2003 Act of Accession.

<sup>13</sup> OJ L 199, 9.8.1993, p. 54. Directive as last amended by the 2003 Act of Accession.

<sup>14</sup> OJ L 199, 9.8.1993 p. 84. Directive as last amended by the 2003 Act of Accession.

<sup>15</sup> OJ L 19, 24.1.1989, p. 16. Directive as amended by Directive 2004/108/EC of the European Parliament and of the Council (OJ L 32, 5.2.2004, p. 15).

<sup>16</sup> OJ L 209, 24.7.1992, p. 25. Directive as last amended by Directive 2001/19/EC.

<sup>17</sup> OJ L 201, 31.7.1999, p. 77.

- (19) Providers of port services, and self-handlers, should have the right to employ personnel of their own choice, whilst complying with relevant rules concerning employment, working conditions and other social matters, as well as training and professional competence.
- (20) Since ports are made up of limited geographical areas, access to the market may, in certain cases, be subject to constraints relating to space or capacity, traffic-related safety concerns or requirements in accordance with environmental rules. In such cases and in order to ensure the ports' overall efficiency it may therefore be necessary to limit the number of authorised providers of port services whilst public service obligations of a service provider or the managing body of the port as well as environmental rules are respected. The criteria for any limitation should be objective, transparent, non-discriminatory, relevant and proportional.
- (21) In cases where the competent authority, in accordance with the published development policy of a port, determines the range of commercial activities to be carried out in the port or part of the port, this should not be considered as a limitation of the number of service providers.
- (22) In the case of a limitation of the number of service providers, this number should be the highest appropriate under the circumstances. The service providers should be selected by the competent authority under a transparent, objective, open and fair selection procedure with non-discriminatory rules.
- (23) In order to be open and transparent, the selection procedure should be made public to the sectors concerned and full documentation should be communicated to interested parties. The decision resulting from the selection procedure should also be made public.
- (24) The current situation in the Community ports, with its multitude of authorisation and selection methods and periods and the need for legal certainty requires all existing service providers to be issued with an authorisation within a specific time frame. After the end of this time frame, all authorisations should be granted in accordance with this Directive.
- (25) If the port authority so decides, or if an existing service provider so requests, a selection procedure should take place for the granting of the authorization.
- (26) In case limitations appear after the entry into force of this Directive, those authorisations not granted through a call for tenders should be terminated and a selection should take place.
- (27) Member States should enact provisions whereby an existing service provider which is not selected following a selection procedure shall be compensated by the newly selected service provider for **past investments which have not yet been fully amortised** and which it has made and the newly selected service provider takes over, taking into account the overall economic balance of the service provided during the previous period, according to clear and pre-established criteria.
- (28) It is essential to ensure that decisions and procedural measures under this Directive are taken, and are seen to be taken, on the basis of the principles of transparency and

non-discrimination. Therefore, where the competent authority deciding on limitations concerning one or more port services in a specific port is itself a provider of the same or a similar service in that port, any decision on limitations, or the approval or supervision of such decision, should be entrusted to a different and independent competent authority. Where the competent authority carrying out a selection procedure in a port is itself a provider of the same or a similar service in that port, the procedure, or the approval or supervision of such procedure, should also be entrusted to a different and independent competent authority.

- (29) The managing body of a port should not discriminate between service providers. It is in particular necessary to avoid any discrimination in favour of an undertaking or body in which it holds an interest.
- (30) In cases where no suitable service provider can be found as a result of the selection procedure, the managing body of the port should be given the possibility of reserving the provision of this service for itself for a limited period, provided that it fulfils the criteria established for the granting of an authorisation and observes the criteria for transparency as set out in this Directive. At the end of this period a new selection procedure should be launched. The managing body of the port should be compensated by the newly selected service provider for **past investments which it has made and have not yet been fully amortised** and which the newly selected service provider takes over, taking into account the overall economic balance of the service provided during the previous period, according to clear and pre-established criteria.
- (31) Authorisations granted should be limited in time, yet they should be granted for periods that allow for normal depreciation and return on the investments made. It is reasonable to take into account, when determining the period of authorisation, whether or not the provider has had to invest in assets and, where this is the case, whether or not these assets are movable.
- (32) Investments in comparable movable capital assets, such as container bridges, ship-to-shore gantry cranes, bridge unloaders and specialised tugboats, should be put on an equal footing with investments in immovable assets.
- (33) Member States may establish a procedure which allows a service provider who intends to make or irrevocably contract for significant investments in immovable assets during the last 10 years before the end of the existing authorisation and can demonstrate that these investments will lead to an improvement in the overall efficiency of the service concerned, to request the competent authority to launch a selection procedure in accordance with Article 8 for a new authorisation before the authorisation in question expires.
- (34) Wherever possible, self-handling should be allowed in accordance with the conditions laid down in this Directive, and any criteria set for self-handlers should be the same as those set for providers of port services for the same or a comparable kind of service.
- (35) Concerning cargo handling operations and passenger services for an authorised regular shipping service carried out in the context of Short Sea Shipping and Motorways of

the Seas<sup>18</sup> operations, Member States should recognize the right for undertakings to self-handle using in addition to their land-based personnel, the ship's regular seafaring crew. Self-handling should be subject to a prior authorisation in accordance with criteria relating, inter alia, to employment, professional qualifications and social and environmental matters. Competent authorities should grant authorisations for self-handling in an efficient and expedient manner. Authorisations granted to self-handlers should remain in force for as long as the criteria for granting them are complied with by the self-handler.

- (36) Self-handling should not hamper the overall efficiency of port operations or lower occupational health, social and safety standards or training levels as compared with those applicable to existing personnel.
- (37) The special importance of pilotage services for the safety of maritime traffic and thus for the protection of the environment in particularly vulnerable regions requires specific rules to be applied. Member States should report on progress towards greater effectiveness of pilotage services.
- (38) In this context, the competent authorities should be permitted to recognise the compulsory nature of pilotage and other technical-nautical services.
- (39) Exemption from compulsory pilotage or the exemption of certain categories of vessel from compulsory pilotage, possibly through pilotage exemption certificates, should also constitute self-handling. Where such exemptions are subject to special authorisation, the conditions for this must be appropriate, objective, transparent and non-discriminatory.
- (40) The hiring out of equipment does not constitute a port service. It should nevertheless respect the principles of transparency and non-discrimination.
- (41) It is necessary to impose on the managing bodies of ports covered by this Directive, which are also acting as service providers, an obligation to keep accounts for activities carried out in their capacity as managing body separate from those carried out on a competitive basis.
- (42) The requirement to keep separate accounts for each authorised port service should apply to all undertakings which have been selected to provide such services.
- (43) Procedures for appeals against decisions of the competent authorities should be in place.
- (44) This Directive should in no way affect the rights and obligations of Member States with regard to the international status of ports, waterways and maritime zones.
- (45) It is important to ensure that development of new ports and port facilities is encouraged by this Directive. Any such investment made by a commercial entity in

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<sup>18</sup> As defined in Decision no 884/2004/EC of the European Parliament and of the Council of 29 April 2000, amending Decision No 1692/96/EC on Community guidelines for the development of the trans-European transport network, OJ L 167, 30.04.2004.



accordance with national rules on acquisition of property should be considered to have been generally available.

- (46) This Directive should not require a Member State to take any action which constitutes a deprivation of property or interference with property contrary to the general principles of Community law, unless such deprivation or interference is justified in accordance with such general principles, and an authorised or selected service provider can be required to pay compensation for that deprivation or interference in accordance with those general principles.
- (47) This Directive does not affect the application of the rules of the Treaty. In particular the Commission should continue to ensure compliance with these rules by exercising, when necessary, all the powers granted to it by Article 86 of the Treaty.
- (48) On the basis of Member States' reports on the application of this Directive, the Commission should make an assessment accompanied, if appropriate, by a proposal for the Directive's revision. The Commission should also assess the issues of training, professional qualifications and social conditions of personnel carrying out cargo-handling operations in ports as well as the conditions prevailing for self-handling.
- (49) Since the objective of the action to be taken, which is access for any natural or legal person, established in the Community, to the market for port services, cannot be sufficiently achieved by the Member States, because of the dimension of the action and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*  
*Objective*

- 1. Freedom to provide port services in sea ports shall apply to Community providers of port services under the provisions set out in this Directive.
- 2. Freedom to provide port services may be subject to a port's or port system's constraints relating to available space or capacity, maritime-traffic-related safety, security or the development policy of the port in compliance, with requirements in respect of safety, environmental protection and public service obligations. Services relating to waterway access to and from the port or port system may equally be subject to specific safety constraints.
- 3. Providers of port services, and self handlers, shall have non discriminatory access to port infrastructure that is generally accessible, to the extent necessary for them to carry out their activities.

## *Article 2*

### *Scope*

1. This Directive shall apply to those port service operations set out in Article 3 and which are provided against payment for users of the port.
2. This Directive shall apply to any seaport or port system located in the territory of a Member State and open to general commercial maritime traffic, provided that the individual port's average annual maritime traffic volume over the previous three years is not less than 1,5 million tonnes of freight and/or 200 000 passengers.

For this purpose, and if applicable, Member States may decide that traffic in parts of a port that are not open to general commercial traffic will not be taken into consideration.

3. Where a port reaches only one of the two traffic thresholds referred to in paragraph 2 without reaching the other, this Directive shall only apply to the traffic threshold which is reached.
4. Member States may also apply this Directive to other ports.
5. Member States may exclude ports with a high seasonal character from the scope of this Directive on condition that they are satisfied that an adequate level of market access for port services is ensured.

A list of these ports shall be reviewed regularly, for the first time within five years of the entry into force of this Directive, and thereafter every three years, and any modification shall be notified to the Commission for information.

6. The Commission shall publish for information, in the Official Journal of the European Union and on the basis of information provided by Member States, a list of the ports and port systems referred to in this Article. The list shall be published for the first time within three months following the entry into force of this Directive, and thereafter annually.
7. Member States may require that the vessels used principally for the provision of port services shall be registered in, and fly the flag of, a Member State.
8. Member States may exclude from the scope of this Directive services to which Article 296 of the Treaty applies, or which are declared secret or the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic interests of the State's security so requires.

## *Article 3*

### *Definitions*

For the purposes of this Directive:

1. "seaport" or "port" means an area of land and water made up of such works and equipment as to permit, principally, the reception of ships, their loading and unloading, the storage of goods, the receipt and delivery of these goods, and the embarkation and disembarkation of passengers;
2. "waterway access to and from a port" means water access to the port from the open sea and vice versa, such as fairways, rivers, canals and fjords;
3. "port system" means two or more ports in the same geographical area and managed by a single managing body;
4. "port with a high seasonal character" means any port that reaches 50% of the average total annual maritime traffic volume over the previous three years in any three consecutive months;
5. "managing body of the port" or "port authority" (hereinafter referred to as "managing body of the port") means a body which, whether or not in conjunction with other activities, has as its objective under national law or regulations the administration and management of the port infrastructures, and the coordination and, where appropriate, the control of the activities of the operators present in the port or port system concerned. It may consist of several separate bodies or be responsible for more than one port;
6. "port services" means the technical-nautical services of pilotage (within the limits of Article 14), towage and mooring; all cargo handling operations (including loading and unloading, stevedoring, stowage, transshipment and other intra-terminal transport) and passenger services (including embarkation and disembarkation). They are provided either inside the port area or on waterway access to and from the port or port system covered by this Directive.
7. "provider of port services" or "service provider" means any natural or legal person providing, or wishing to provide, for remuneration, one or more categories of port services;
8. "public service requirement" means a requirement adopted by a competent authority in order to secure adequate provision of certain categories of port services;
9. "self-handling" means a situation in which an undertaking (a self-handler), which normally could buy port services, provides for itself, using its own land-based personnel, with the exception of the situation foreseen in Art. 13.2, and its own equipment, one or more categories of port services in accordance with the criteria set out in this Directive;
10. land-based personnel means persons employed by the self-handler and who are not members of its seafaring crew.
11. "pilot exemption certificate" means a document issued by the competent authority by which an exemption from or modification of compulsory pilotage is granted;
12. "authorisation" means any permission, including a contract, allowing a natural or legal person to provide one or more categories of port services or to carry out self-handling;

13. "limitation of the number of providers" means a situation in which the competent authority does not allow a provider that fulfils the criteria for authorisation laid down in accordance with Article 7 to provide one or more categories of services. This may only be done for reasons or constraints relating to available space or capacity, safety considerations or requirements deriving from environmental regulations.
14. An 'Authorised Regular Shipping Service' is a regular short-sea service, which operates exclusively between ports situated in the Customs territory of the Community. The service may not come from, go to or call at any ports outside the Community Customs territory (e.g. in a third country) or a free zone of a port (where the free zone is principally segregated by a fence) in this territory..
15. "Competent authority or authorities" means a body designated by member States which, whether or not in conjunction with other activities, has as its objective under national law or regulations the implementation of the present Directive. It may consist of several separate bodies or be responsible for more than one port.

#### *Article 4* *Social protection*

This Directive shall in no way affect the application of the social legislation of Member States, including relevant national rules on health, safety and employment of personnel. Social standards must not be below those laid down by applicable Community legislation.

#### *Article 5* *Safety, security and environmental protection*

This Directive shall in no way affect the rights and obligations of Member States or of competent authorities appointed by them in respect of law and order, safety and security at ports or environmental protection.

#### *Article 6* *Other legislation*

1. This Directive shall be without prejudice to the obligations for competent authorities, which flow from Directive 92/50/EEC, Directive 93/36/EEC, Directive 93/37/EEC and Directive 93/38/EEC.

This Directive shall equally be without prejudice to public service contracts concluded on the basis of Regulation (EEC) No 3577/92.

2. Where one of the Directives referred to in paragraph 1 makes the tendering of a service contract mandatory, Articles 11, 17 and 21(1) and (2) of this Directive shall not apply to the award of that contract.
3. This Directive shall be without prejudice, where applicable, to the obligations of competent authorities which flow from Directives 89/48/EEC, 92/51/EEC and 1999/42/EC on mutual recognition among Member States of professional education and training.

*Article 7*  
*Authorisation*

1. No later than eighteen months after the date foreseen in Article 22, all providers of port services in a port shall operate on the basis of an authorisation granted by the competent authority, within the maximum durations foreseen in Article 12.
2. If the competent authority so decides, or if an existing and / or new potential service provider so requests, the procedure laid down in Article 8 shall apply to the granting of the authorization.
3. The criteria for the granting of authorisations by the competent authority must be transparent, non-discriminatory, objective, relevant and proportional. The criteria shall only relate, where applicable, to:
  - (a) the professional qualifications of the service provider and of his personnel, his sound financial situation and sufficient insurance cover,
  - (b) maritime safety or the safety and security of the port or access to it, its installations, equipment and persons,
  - (c) compliance with employment and social rules, including those laid down in collective agreements, provided that they are compatible with Community law, In any case, those minimal rules set out in European social law will be respected.
  - (d) compliance with local, national and international environmental requirements,
  - (e) the development policy of the port.

The authorisation may include public service requirements relating to safety, regularity, continuity, quality and price and the conditions under which the service may be provided.

4. Criteria referred to in paragraph 3 shall be made public and providers of port services shall be informed in advance of the procedure for obtaining the authorisation. This requirement shall apply equally where an authorisation links the provision of service to an investment in immovable assets.
5. Member States may adopt rules on access to the occupation and on the certificates of competence to be acquired by examination.

Additionally, where the required technical professional qualifications include specific local knowledge or experience of local conditions, Member States shall ensure that there exists adequate access to relevant training for applicant service providers under transparent and non-discriminatory conditions, and where appropriate, against payment.

6. The provider of port services carrying out the service covered by the authorisation shall have the right to employ personnel of his own choice provided that he fulfils the criteria laid down in accordance with paragraph 3 and with the legislation of the

Member State in which the service provider is providing the services in question, provided that such legislation is compatible with Community law.

7. The competent authority shall vary or revoke an authorisation where, in a substantial manner, the criteria referred to in paragraph 3 are not, or no longer complied with, or where the Member State's social legislation is not or is no longer complied with.

*Article 8*  
*Procedure for granting the authorisations*

1. Whenever, reference is made to this Article, the competent authority shall take the necessary measures to ensure that a transparent and objective selection procedure, using proportionate, non-discriminatory and relevant criteria.
2. The competent authority shall make public, for the general information of the sectors concerned in the Community, an invitation to interested parties to participate in the selection process.

This publication shall be made in the Official Journal of the European Union for authorisations concerning Article 12(2)(b) and for all other authorisations in any appropriate manner which makes the necessary information available in a timely way to any person interested in the process.

3. The competent authority shall ensure that full documentation is communicated to interested parties requesting it. The documentation given to potential providers shall include at least the following elements:
  - (a) authorisation criteria adopted in accordance with Article 7(3) as well as selection criteria that define the authority's minimum requirements;
  - (b) award criteria that define the grounds on which the authority will make its choice from among the proposals meeting the selection criteria;
  - (c) regulatory and organisational conditions for the provision of the service, including the requirements that the authorisation will cover and identifying any tangible and intangible assets to be placed at the disposal of the selected service provider together with the relevant terms and applicable rules;
  - (d) penalties and the terms governing cancellation in the event of non-compliance; and
  - (e) the authorisation period.
4. The procedure shall provide for an interval of at least 52 days between the dispatch of the call for proposals and the latest date for receiving them.
5. For each procedure, the competent authority shall make public the decision resulting from the selection procedure.
6. Where as a result of a selection procedure for granting an authorisation no suitable service provider could be found for a specific port service, the managing body of the

port may, under the conditions of Article 19, reserve the provision of this service for itself for a period, which may not exceed five years, following which a new selection procedure for granting an authorisation shall be launched. The managing body of the port shall be compensated by the newly selected service provider for all relevant investments it made during this period, which has not yet been fully amortised and which the newly selected service provider takes over, taking into account the overall economic balance of the service provided during the previous period, according to clear and pre-established criteria..

7. Where the competent authority carrying out the selection procedure for one or more port services in a specific port is itself a provider of the same or a similar service or wishes to be one or has direct or indirect control over a provider or potential provider of the same or a similar service or services in that port, Member States shall designate a different and independent competent authority and entrust it with the selection procedure, or approval or supervision of such procedure.
8. When an authorisation as a result of a selection procedure is taken over by another service provider, the relevant rules on employment of the personnel of the previous service provider shall not be affected. Social standards must not be below those laid down by applicable Community legislation.

#### *Article 9*

##### *Limitation of the number of providers of one or more port services*

1. Member States shall ensure that in the case of a limitation of the number of providers, the competent authority must:
  - (a) inform interested parties of the category or categories of port services and, where appropriate, the specific part of the port to which the restrictions apply as well as the reasons for such restrictions;
  - (b) allow the highest number of service providers appropriate under the circumstances.
2. The competent authority may, if appropriate, determine the range of commercial activities to be carried out in the port or parts of the port, in particular the categories of cargo to be handled, and the allocation of port space or capacity to such activities, pursuant to the published development policy of the port, without this constituting a limitation of the number of providers.
3. Where the competent authority deciding on limitations in relation to one or more port services in a specific port is itself a provider of the same or a similar service or services or has direct or indirect control over a provider of the same or a similar service or services in that port, Member States shall designate a different and independent competent authority and entrust it with the decision on limitations, or approval or supervision of such decision.

*Article 10*  
*Granting of authorisations*

1. Where limitations appear after the date foreseen in Article 7 (1), for one or more port services and the condition foreseen in Article 7 (2) has been fulfilled, all existing authorisations for this service or services at the moment these limitations appear, shall remain into force until they expire.
2. Where limitations appear after the date foreseen in Article 7 (1), for one or more port services and the condition foreseen in Article 7 (2) has not been fulfilled, all existing authorisations for this service or services at the moment these limitations appear, shall have to be terminated and the procedure provided for in Article 8 shall be launched within 6 months of the date on which the limitation occurred.

Member States shall enact provisions whereby an existing service provider which is not selected following the application of the present Article shall be compensated by the newly selected service provider for those past investments which it has made and have not yet been fully amortised and which the newly selected service provider takes over, taking into account the overall economic balance of service provided during the previous period, according to clear and pre-established criteria .

3. Existing authorisations, which include rights deriving from ownership of a port or of property in a port, may remain in force unchanged after the date foreseen in Article 7 (1). In this case, the provisions of Article 12 may not apply.

If however limitations appear after the date foreseen in Article 7 (1), for one or more port services existing authorisations for this service or services at the moment these limitations appear, which include rights deriving from ownership of a port or of property in a port, shall remain in force unchanged until they expire, but within the periods provided for in Article 12 starting from the date foreseen in Article 7.1.

*Article 11*  
*New ports or new parts of a port*

1. An investor or investors who commercially financed and jointly built a new port, or a new part of a port, including basic infrastructure prior to the date foreseen in Article 7 (1) and who wish to provide port services, excluding technical-nautical services as defined at Article 3.6, therein, shall be granted a relevant authorisation within the periods provided for in Article 12 reckoned from the date foreseen in Article 7.1.

In case limitations appear after the date foreseen in Article 7.1, for one or more port services and provided the investment opportunity was generally available, all existing authorisations for this service or services at the moment these limitations appear, shall remain into force until they expire.

2. Where after the date foreseen in Article 7 (1), the decision on the construction of a new port or a new part of a port depends on the parallel decision of a future service provider to contract irrevocably for significant investments in that new port or new part of a port, including in basic infrastructure, authorisations are to be granted for a



limited period of time under the provisions of Article 12, without any further requirements on that future service provider.

3. In the event of a later limitation of the number of service providers for one or more port services, all existing authorisations for this service or services at the moment these limitations appear, shall remain in force until they expire, provided that the investment opportunity was generally available.
4. Technical-nautical services as defined at Article 3.6, are excluded by the dispositions of the present article.

### *Article 12* *Duration*

Authorisations shall be granted for a limited period and renewable period of time to be determined in accordance with the following criteria:

1. In cases where no investments which are considered significant by the competent authority in order to carry out the provision of services are involved, the maximum duration of its authorisation shall be 8 years.
2. In cases where investments which are considered significant by the competent authority involve:
  - (a) movable assets, the maximum period shall be 12 years;
  - (b) immovable assets and comparable movable capital assets, such as container bridges, ship-to-shore gantry cranes, bridge unloaders and specialised tugboats, the maximum period shall be 30 years, irrespective of whether or not their ownership will revert to the managing body of the port.

If the investments made by the service provider include both movable and immovable assets, the maximum period shall be the longer of the maximum periods considered.

3. Member States may establish a procedure which allows a service provider who intends to make or irrevocably contract for significant investments in immovable assets during the last 10 years before the end of the existing authorisation and can demonstrate that these investments will lead to an improvement in the overall efficiency of the service concerned, to request the competent authority to launch a selection procedure in accordance with Article 8 for a new authorisation before the authorisation in question expires.
4. Competent authorities shall make public, for the general information of the sectors concerned in the Community the authorisations which are going to expire, at least six months before their date of expiry.

### *Article 13* *Self handling*

1. Member States shall take the necessary measures to allow self-handling to be carried out, wherever possible, in accordance with this Directive.

Member States shall ensure that the competent authority refuses self-handling for one or more categories of port services only where there exist objective reasons or constraints relating to available space or capacity, safety considerations or requirements deriving from environmental regulations.

2. Concerning cargo handling operations and passenger services for an authorised regular shipping service carried out in the context of Short Sea Shipping and Motorways of the Seas operations<sup>19</sup>, Member States shall recognize the right to self-handle using also the vessel's regular sea-faring crew.
3. Self-handling shall be subject to an authorisation. The criteria for such authorisation must be the same as those applying to providers of the same or a comparable port service [and as referred to in Article 7 \(3\)](#), provided these are relevant. Competent authorities shall grant such authorisations to self-handlers in an efficient and expedient manner. They shall remain in force so long as the self-handler complies with the criteria for granting them.
4. This Directive shall in no way affect the application of national rules concerning training requirements and professional qualifications, employment and social matters, including collective agreements, provided that they are compatible with Community law and the international obligations of the Community and the Member State concerned.
5. Where self-handling is subject to the payment of a fee as a contribution to public service obligations for technical-nautical services which cannot be met by self-handlers, the fee shall be determined in accordance with relevant, objective, transparent and non-discriminatory criteria and shall be proportional to the costs of maintaining the public service obligations.

### *Article 14* *Pilotage*

1. With regard to the service of pilotage, Member States may submit the granting of the authorisation referred to in Article 7 to particularly strict criteria relating to maritime safety and public service requirements.

The competent authorities may also recognise the compulsory nature of pilotage and prescribe such organisational rules for the service as they deem appropriate for reasons of safety and of public service requirements, including, when the circumstances in a port or a group of ports and/or its access so require, the possibility

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<sup>19</sup> As defined in Decision no 884/2004/EC of the European Parliament and of the Council of 29 April 2004, amending Decision No 1692/96/EC on Community guidelines for the development of the trans-European transport network, OJ L 167, 30.04.2004.

of reserving for themselves the service in question or assigning it, directly if appropriate, to a single provider. In particular they may require that such service be provided by competent persons meeting equitable and non-discriminatory conditions laid down in national law.

2. Exemption from compulsory pilotage or the exemption of certain categories of vessel from compulsory pilotage, possibly through pilotage exemption certificates, shall constitute self-handling. Where such exemptions are subject to special authorisation, the conditions for this authorisation must be appropriate, objective, transparent and non-discriminatory.

Member States shall report to the Commission no later than five years following the entry into force of this Directive on measures to improve the effectiveness of pilotage services.

#### *Article 15* *Appeals*

1. Member States shall ensure that any party with a legitimate interest has the right to appeal against the decisions or individual measures taken, under this Directive, by competent authorities or the managing body of the port.
2. Where an application for access to provide port services under this Directive is rejected, the applicant(s) shall be informed of the reasons for not having been authorised or selected. Such reasons must be objective, non-discriminatory, well-founded and duly substantiated. Appeal procedures must be made available to the applicant. It must be possible to bring the appeal before a national court or a public authority that is, in its organisation, funding, legal structure and decision-making, independent from the competent authority or managing body of the port concerned and from any service provider.
3. Member States shall take the necessary measures to ensure that decisions taken by appeal bodies are subject to judicial review.

#### *Article 16* *Transparency of financial relations*

1. To establish fair conditions of competition in and between Community ports, every port and port system within the meaning of Article 2 shall be obliged to submit the details required under Commission Directive 80/723/EEC<sup>20</sup> to the Member States and the Commission within the prescribed time limits. The same shall apply to financial relations between Member States and providers of port services, regardless of whether the other provisions of Directive 80/723/EEC apply to them.

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<sup>20</sup> OJ L 195, 29.7.1980, p. 35. Directive as last amended by Directive 2000/52/EC (OJ L 193, 29.7.2000, p. 75).

2. The Commission and the Member States shall use the data submitted by ports and port systems to take the measures required under Community law to establish fair conditions of competition in and between Community ports.
3. Not later than three years from the date of entry into force of this Directive and thereafter every three years, the Commission shall submit to the European Parliament and the Council a report on the transparency of financial relations in ports and port systems and the measures taken in relation thereto by the Member States and the Commission.

*Article 17*  
*Transparency of State funding*

The Commission shall draw up, no later than one year from the date of the entry into force of this Directive, common guidelines for funding given to ports by Member States or out of public funds and shall indicate which funding to ports is compatible with the internal market.

*Article 18*  
*Accounting provisions*

The selected service providers shall keep separate accounts for each port service for which they hold an authorisation. The accounts must be compiled in accordance with current commercial practice and generally recognised accounting principles.

*Article 19*  
*Transparency of the accounts of the managing body of the port*

1. Where the managing body of the port provides port services, it must fulfil the criteria set out in Article 7(3) and keep the accounts of each of its port service activities separate from the accounts of its other activities. The accounts must be compiled in accordance with current commercial practice and generally recognised accounting principles to ensure that:
  - (a) the internal accounts corresponding to different activities are separate;
  - (b) all costs and revenues are correctly assigned or allocated on the basis of consistently applied and objectively justifiable cost accounting principles;
  - (c) the cost accounting principles whereby separate accounts are maintained are clearly identified.
2. The auditor's report on the annual accounts must indicate the existence of any financial flows between the port service activity of the managing body of the port and its other activities. The auditor's report must be kept by the Member States and made available to the Commission upon request.

A separate auditing report may be considered sufficient provided it includes the same information.

3. This Directive shall in no way affect the rights and obligations of Member States under Directive 80/723/EEC.

*Article 20*  
*International status*

This Directive shall in no way affect the rights and obligations of the Member States with regard to the international status of ports, waterways and maritime zones.

*Article 21*  
*Information report and revision*

Member States shall send the Commission a report on the application of this Directive not later than 36 months following its entry into force.

On the basis of the Member States' reports, the Commission shall make an assessment of the implementation by Member States of this Directive accompanied, where appropriate, by a proposal for its revision.

*Article 22*  
*Implementation*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [ 18 months from the date of entry into force of the Directive] at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States .

Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 23*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 24*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

