



EUROPEAN PARLIAMENT

2009 - 2014

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*Committee on Employment and Social Affairs*

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**2013/0157(COD)**

9.1.2014

## **OPINION**

of the Committee on Employment and Social Affairs

for the Committee on Transport and Tourism

on the proposal for a regulation of the European Parliament and of the Council  
establishing a framework on market access to port services and financial  
transparency of ports  
(COM(2013)0296 – C7-0144/2013 – 2013/0157(COD))

Rapporteur: Philippe De Backer

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## SHORT JUSTIFICATION

### *Commission proposal*

With the proposal for a Regulation, the Commission wants to establish a clear framework for access to the market of port services; and insert common rules on the financial transparency and charges to be applied by managing bodies or providers of port services.

The main points in the proposal:

- The freedom to provide services will be applicable to port services.
- Cargo handling services and passengers terminals are exempted from the scope of the Regulation.
- The managing body of a firm can limit the number of service providers, due to space constraints in the port or in case a public service obligation is in place.
- Introducing public service obligations for certain types of port services is still possible.
- Employees' rights should be safeguarded and Member States should have the possibility to further strengthen these rights.
- The introduction of more transparency to help identify misuse of public money or illegal state aid.
- Every port shall set up a port users' advisory committee
- An obligation for the managing body of the port to consult stakeholders is introduced.
- Member States should ensure the existence of an independent supervisory body.

### *EMPL part of the text*

EU ports employ more than 3 million people (directly and indirectly). Growth in port throughput is directly linked with the creation of jobs in surrounding regions.

In the proposal made by the Commission, the parts that are of the competence of the Committee on Employment and Social Affairs (EMPL) are rather limited. There are a few recitals on social rights and a few references in the articles, with Article 10 as the most important article for EMPL.

### *Position of your rapporteur*

The rapporteur welcomes the Commission proposal. The port package saga has been going on for 25 years now, due to the two rejections by the European Parliament in 2001 and 2004. The Communication on the European Port Policy from 2007 was a temporary solution addressing some outstanding issues on the access to the market of port services and financial transparency by means of horizontal instruments and soft measures. There is however a need for European legislation, as the soft measure had little or no impact and the Court of Justice has been consulted regularly. To solve the legal uncertainty that hinders the growth of our ports, your rapporteur believes legislation is necessary.

We need to find a balance between social protection, economic liveability of service providers and competitiveness of the ports. Moreover we have to take into account the international dimension of shipping. Your rapporteur recognizes the difficulties, and thinks that the Commission proposal can be a step in a good direction. As your rapporteur supports the approach of the Commission, he keeps his opinion rather limited.

### Freedom of services

The rapporteur is pleased with the proposal from the Commission to introduce the freedom of services for ports services in a legal text. The sector of port services is one of the few sectors of the EU economy in which monopolies and exclusive rights still exist. Experience in other sectors has proven that market opening does work; it creates efficiency as service providers are obliged to perform better to stay in the market. Opening of markets is not a synonym for a race to the bottom; on the contrary, it improves efficiency and allows better services for customers and end-users. Your rapporteur did not propose any change to the article as he supports the Commission text.

### Safeguarding employees' rights

Your rapporteur recognizes the danger that workers can face when performing their job in the port area. He is of the opinion that ensuring the safety of employees in ports is of great importance.

The Commission's proposal shall not affect the application of the social and labour rules of the Member States. National law stays in place. Concerning the transfer of staff, your rapporteur supports the idea of keeping the transfer of staff voluntary and respecting Directive 2001/23/EC.

### Port labour

The Commission decided not to put forward legislation on port labour regimes in its proposal. However, the Commission will facilitate the sectoral Social Dialogue Committee for ports at Union level by providing technical and administrative support. The negotiations within the Committee have already started. Your rapporteur respects the decision of the Commission and is of the opinion that Social Partners deserve a chance to come up with a solution on port labour related issues. The negotiations should take place in an open and frank atmosphere. The Commission foresees a review in 2016 that will assess the functioning and progress of the European Social Dialogue for the ports sector. Your rapporteur finds that if no agreement is reached by 2016 the Commission should consider whether a legislative proposal on the subject is appropriate, if so, a proposal should be made. It is hereby important to note that the Social Dialogue at Union level supplements the social dialogue at national, local and corporate levels and does not replace those.

## AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a regulation

#### Recital 5

*Text proposed by the Commission*

*Amendment*

(5) The objective of Article 56 of the Treaty on the Functioning of the European

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Union is to eliminate restrictions on freedom to provide services in the Union. In accordance with Article 58 of the Treaty on the Functioning of the European Union should be achieved within the framework of the provisions of the Title relating to transport, more specifically Article 100 (2).

Union is to eliminate restrictions on freedom to provide services in the Union. In accordance with Article 58 of the Treaty on the Functioning of the European Union, **this** should be achieved within the framework of the provisions of the Title relating to transport, more specifically Article 100 (2).

## **Amendment 2**

### **Proposal for a regulation Recital 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***(5a) Establishing the freedom to provide services in ports enhances the legal certainty and will therefore improve the efficiency and working of ports, creating benefits for the ports, the port users and the Member States. Legal certainty for ports will also influence the working conditions of port workers positively.***

## **Amendment 3**

### **Proposal for a regulation Recital 6**

*Text proposed by the Commission*

*Amendment*

(6) The self-provision of service which entails shipping companies or providers of port services to employ staff of their own choice and to provide themselves port services is regulated in a number of Member States for safety or social reasons. The stakeholders consulted by the Commission when preparing its proposal highlighted that imposing a generalised allowance of the self-provision of service at Union level would require additional rules on safety and social issues in order to avoid possible negative impacts in these

(6) The self-provision of service which entails shipping companies or providers of port services to employ staff of their own choice and to provide themselves port services is regulated in a number of Member States for safety or social reasons. The stakeholders consulted by the Commission when preparing its proposal highlighted that imposing a generalised allowance of the self-provision of service at Union level would require additional rules on safety and social issues in order to avoid possible negative impacts in these

areas. It *appears* therefore *appropriate at this stage not* to regulate this issue at Union level and *to leave it* to the Member States to regulate the self-provision of port services or not. Therefore, this Regulation should only cover the provision of port services for remuneration.

#### Amendment 4

##### Proposal for a regulation

##### Recital 7

###### *Text proposed by the Commission*

(7) In the interest of efficient, safe and environmentally sound port management, the managing body of the port should be able to require that port service providers can demonstrate that they meet minimum requirements to perform the service in an appropriate way. These minimum requirements should be *limited to a clearly defined* set of conditions concerning the professional qualifications of the operators, including *in terms of training, and the equipment required insofar as* these requirements are transparent, non-discriminatory, objective and relevant for the provision of the port service.

#### Amendment 5

##### Proposal for a regulation

##### Recital 7 a (new)

areas. It *is* therefore *not appropriate* to regulate this issue at Union level and *it should be left* to the Member States to regulate the self-provision of port services or not. Therefore, this Regulation should only cover the provision of port services for remuneration.

###### *Amendment*

(7) In the interest of efficient, safe and environmentally *and socially* sound port management, the managing body of the port should be able to require that port service providers can demonstrate that they meet minimum requirements to perform the service in an appropriate way. These minimum requirements should be *a* set of conditions concerning the professional qualifications of the operators including *relevant local knowledge essential for safe operations, the equipment needed in order to provide the relevant port service and compliance with maritime safety requirements, including the application of laws and agreements to protect health and safety and in respect of social and labour rights*. These requirements *may only be proposed if they* are transparent, non-discriminatory, objective and relevant for the provision of the port service.

*Text proposed by the Commission*

*Amendment*

***(7a) Each service provider and especially new market entrants should demonstrate their ability to serve a minimum number of vessels with their own staff and equipment. All must comply with the relevant provisions and rules including applicable labour laws, applicable collective agreements and quality requirements of the ports.***

## **Amendment 6**

### **Proposal for a regulation Recital 14**

*Text proposed by the Commission*

*Amendment*

(14) The recourse to public service obligations leading to a limitation in the number of providers of a port service should only be justified for reasons of public interest in order to ensure the accessibility of the port service to all users, the availability of the port service all year long or the affordability of the port service to certain category of users.

(14) The recourse to public service obligations leading to a limitation in the number of providers of a port service should only be justified for reasons of public interest in order to ensure the accessibility of the port service to all users, the availability of the port service all year long or the affordability of the port service to certain category of users, ***and safe and secure port operations.***

## **Amendment 7**

### **Proposal for a regulation Recital 19**

*Text proposed by the Commission*

*Amendment*

(19) Member States should retain the power to ensure an adequate level of social protection for the staff of ***undertaking*** providing port services. This Regulation

(19) Member States should retain the ***full*** power to ensure an adequate level of social protection for the staff of ***undertakings*** providing port services ***in full autonomy***

shall not affect the application of *the* social and labour rules of the Member States. In cases of limitation of the number of port service providers, where the conclusion of a port service contract may entail a change of port service operator, *it should be possible for* the competent authorities *to* ask the chosen service operator to apply the provisions of Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses<sup>11</sup>.

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<sup>11</sup> OJ L 82, 22.3.2001, p. 16.

*and in line with subsidiarity.* This Regulation shall not affect the application of *current or future* social and labour rules of the Member States, *as this will be discussed at Union level in the Social Dialogue Committee for ports in full respect for Article 28 of the Charter of Fundamental Rights of the European Union, and existing case law of the European Court of Justice.* In cases of limitation of the number of port service providers, where the conclusion of a port service contract may entail a change of port service operator, the competent authorities *can ask* the chosen service operator to apply the provisions of Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights *terms and conditions* in the event of transfers of undertakings, businesses or parts of undertakings or businesses<sup>11</sup>.

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<sup>11</sup> OJ L 82, 22.3.2001, p. 16.

## Amendment 8

### Proposal for a regulation Recital 19 a (new)

*Text proposed by the Commission*

*Amendment*

***(19a) Union trade policy should help to reduce poverty worldwide by promoting improved working conditions, health and safety at work and fundamental rights. Public contracts should not be awarded to economic operators that have participated in a criminal organisation, in exploitation of human trafficking and child labour.***



## **Amendment 9**

### **Proposal for a regulation Recital 22 a (new)**

*Text proposed by the Commission*

*Amendment*

***(22a) The Commission should clarify the notion of State aid with regard to the financing of port infrastructure, taking into consideration the non-commercial nature of public access and defence infrastructure. This includes infrastructure for rail and road land access connections to the national transport system, infrastructure necessary for utilities in the port area, and all infrastructure that allows access to a port area, including maritime access, navigable channels and defence works. These types of infrastructure should be accessible to all potential users on equal and non-discriminatory terms and fall within the Member State's responsibility to meet the general needs of the population.***

## **Amendment 10**

### **Proposal for a regulation Recital 31 a (new)**

*Text proposed by the Commission*

*Amendment*

***(31a) Port labour relations have a large influence on the working of the ports. Therefore the sectoral Social Dialogue Committee for ports gives the social partners a framework to establish results regarding working conditions, such as health and safety, training and qualifications, Union policy on low sulphur fuels, improving diversity by increasing attractiveness of the sector to underrepresented groups such as young***

*workers and female workers. The Commission should facilitate the negotiations and monitor them closely. If no clear agreement is reached by 2016, the Commission should consider whether it is appropriate to submit a legislative proposal.*

#### **Amendment 11**

##### **Proposal for a regulation Article 1 – paragraph 2 – point c**

*Text proposed by the Commission*

*Amendment*

**(c) dredging;**

*deleted*

#### **Amendment 12**

##### **Proposal for a regulation Article 1 – paragraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

**(d) mooring;**

*deleted*

#### **Amendment 13**

##### **Proposal for a regulation Article 1 – paragraph 2 – point g**

*Text proposed by the Commission*

*Amendment*

**(g) pilotage and;**

*deleted*

#### **Amendment 14**

##### **Proposal for a regulation Article 1 – paragraph 2 – point h**

*Text proposed by the Commission*

*Amendment*

**(h) towage.**

**deleted**

## **Amendment 15**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 1**

*Text proposed by the Commission*

*Amendment*

1. "bunkering" means the provision of solid, liquid or gaseous fuel or any other energy source used for the propulsion of the waterborne vessel as well as for general and specific energy provision on board of the waterborne vessel **whilst at berth**;

1. "bunkering" means the provision of solid, liquid or gaseous fuel or any other energy source used for the propulsion of the waterborne vessel as well as for general and specific energy provision on board of the waterborne vessel;

*Justification*

*Bunkering may be carried out at sea, not only at berth.*

## **Amendment 16**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 2**

*Text proposed by the Commission*

*Amendment*

2. 'cargo handling services' means the organisation and handling of cargo between the carrying waterborne vessel and the shore be it for import, export or transit of the cargo, including the processing, transporting and temporary storage of the cargo on the relevant cargo handling terminal and directly related to the transporting of the cargo, but excluding warehousing, stripping, repackaging or any other value added services related to the handled cargo;

2. 'cargo handling services' means the organisation and handling of cargo between the carrying waterborne vessel and the shore be it for import, export or transit of the cargo, including the processing, **lashing, unlashng,** transporting and temporary storage of the cargo on the relevant cargo handling terminal and directly related to the transporting of the cargo, but excluding warehousing, stripping, repackaging or any other value added services related to the handled cargo;

## Amendment 17

### Proposal for a regulation Article 2 – paragraph 1 – point 14

*Text proposed by the Commission*

14. "public service obligation" means **a requirement defined or determined in order** to ensure the provision of those port services in the general interest that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions;

*Amendment*

14. "public service obligation" means **an obligation designed** to ensure the provision of those port services in the general interest that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions;

*Justification*

*Reinstatement of the definition from Regulation No. 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway.*

## Amendment 18

### Proposal for a regulation Article 4 – paragraph 1

*Text proposed by the Commission*

1. The managing body of the port **may** require that providers of port services comply with minimum requirements to perform the corresponding port service.

*Amendment*

1. The managing body of the port **shall** require that providers of port services comply with minimum requirements to perform the corresponding port service.

## Amendment 19

### Proposal for a regulation Article 4 – paragraph 2 – introductory part

*Text proposed by the Commission*

2. The minimum requirements provided for

*Amendment*

2. The minimum requirements provided for

in paragraph 1 may **only** relate, where applicable, to:

in paragraph 1 may relate, where applicable, to:

## Amendment 20

### Proposal for a regulation

#### Article 4 – paragraph 2 – point a

*Text proposed by the Commission*

*Amendment*

(a) the professional qualifications of the port service provider, its personnel or the natural persons who effectively **and continuously** are managing the activities of the port service provider;

(a) the professional qualifications of the port service provider, its personnel or the natural persons who effectively are managing the activities of the port service provider;

#### *Justification*

*It could be risky to only request that those persons are qualified who are "continuously" managing the activities. For safety reasons anyone who is managing the activities needs to be professionally qualified*

## Amendment 21

### Proposal for a regulation

#### Article 4 – paragraph 2 – point c

*Text proposed by the Commission*

*Amendment*

(c) the compliance with requirements on the maritime safety or the safety and security of the port or access to it, its installations, equipment and persons;

(c) the compliance with requirements on the maritime safety or the safety and security of the port or access to it, its installations, equipment, **workers** and persons, **including the provisions on health and safety at work which apply to the port concerned**;

## Amendment 22

### Proposal for a regulation

#### Article 4 – paragraph d a (new)

*Text proposed by the Commission*

*Amendment*

***(da) respect for social and labour legislation and collective agreements.***

## **Amendment 23**

### **Proposal for a regulation Article 4 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. The minimum requirements shall be transparent, non-discriminatory, objective and relevant to the category and nature of port services concerned.

3. The minimum requirements shall be transparent, non-discriminatory, objective and relevant to the category and nature of port services concerned ***and must not be used implicitly to introduce market barriers.***

## **Amendment 24**

### **Proposal for a regulation Article 6 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) the need to ensure the provision of safe, secure, environmentally and socially sustainable port operations.***

## **Amendment 25**

### **Proposal for a regulation Article 8 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) the availability of the service without interruption during the day, the night, the week and the year;

(a) the availability ***and quality*** of the service without interruption during the day, the night, the week and the year;

## Amendment 26

### Proposal for a regulation

#### Article 8 – paragraph 1 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***(ca) the safety, security or environmental sustainability of port operations.***

## Amendment 27

### Proposal for a regulation

#### Article 8 – paragraph 6

*Text proposed by the Commission*

*Amendment*

6. In the event of a disruption of port services for which public service obligations are imposed or when an immediate risk of such a situation occurs, the competent authority may take an emergency measure. The emergency measure may take the form of a direct award so as to attribute the service to a different provider for a period up to one year. During that time period, the competent authority shall either launch a new procedure to select a provider of port service in accordance with Article 7 or shall apply Article 9.

6. In the event of a disruption of port services for which public service obligations are imposed or when an immediate risk of such a situation occurs, the competent authority may take an emergency measure. ***Collective actions shall not be considered to constitute disruption of port services.*** The emergency measure may take the form of a direct award so as to attribute the service to a different provider for a period up to one year. During that time period, the competent authority shall either launch a new procedure to select a provider of port service in accordance with Article 7 or shall apply Article 9.

## Amendment 28

### Proposal for a regulation

#### Article 10 – paragraph 1

*Text proposed by the Commission*

1. This Regulation shall not affect **the application of the** social and labour rules of the Member States.

*Amendment*

1. This Regulation shall not affect social and labour rules **applicable in** the Member States.

**Amendment 29**

**Proposal for a regulation  
Article 10 – paragraph 2**

*Text proposed by the Commission*

2. Without prejudice to national and Union law including collective agreements between social partners, the managing bodies of the port **may require** the designated provider of port services appointed in accordance with the procedure established by Article 7, in the case where this provider is different from the incumbent provider of port services, to grant staff previously taken on by the incumbent provider of port services the rights to which they would have been entitled if there had been a transfer within the meaning of Directive 2001/23/EC.

*Amendment*

2. Without prejudice to national and Union law including collective agreements between social partners, **Member States shall ask** the managing bodies of the port **to** require, **if possible**, the designated provider of port services appointed in accordance with the procedure established by Article 7, in the case where this provider is different from the incumbent provider of port services, to grant staff previously taken on by the incumbent provider of port services the rights to which they would have been entitled if there had been a transfer within the meaning of Directive 2001/23/EC.

**Amendment 30**

**Proposal for a regulation  
Article 10 – paragraph 3**

*Text proposed by the Commission*

3. Where managing bodies of the port require providers **of** port services to comply with **certain** social standards **as regards the provision of relevant port services**, tender documents and port service contracts shall list the staff concerned and

*Amendment*

3. Where managing bodies of the port require **all** providers **which are involved in providing** port services to comply with **all the existing** social standards, tender documents and port service contracts shall list the staff concerned and **indicate the**



give transparent details of their contractual rights and the conditions under which employees are deemed to be linked to the port services.

*status* of their contractual rights and the conditions under which employees are deemed to be linked to the port services.

### Amendment 31

#### Proposal for a regulation Article 16 – paragraph 1 – introductory part

*Text proposed by the Commission*

1. The managing body of the port shall regularly consult stakeholders such as undertakings established in the port, providers of port services, operators of waterborne vessels, cargo owners, land transport operators and public administrations operating in the port area on the following:

*Amendment*

1. The managing body of the port shall regularly consult stakeholders such as undertakings established in the port, providers of port services, operators of waterborne vessels, cargo owners, ***representatives of the workforce***, land transport operators and public administrations operating in the port area on the following:

### Amendment 32

#### Proposal for a regulation Article 16 – paragraph 1 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***(ca) compliance with the existing social standards.***

### Amendment 33

#### Proposal for a regulation Article 16 – paragraph 1 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***(ca) the proper application of health and safety requirements and, where appropriate, possible measures to improve these standards.***



## PROCEDURE

|   |  |
|---|--|
| <b>Title</b>  | Market access to port services and financial transparency of ports   |
| <b>References</b>   | COM(2013)0296 – C7-0144/2013 – 2013/0157(COD)  |
| <b>Committee responsible</b><br>Date announced in plenary         | TRAN<br>10.6.2013  |
| <b>Opinion by</b><br>Date announced in plenary                    | EMPL<br>10.6.2013  |
| <b>Rapporteur</b><br>Date appointed                               | Philippe De Backer<br>12.6.2013  |
| <b>Discussed in committee</b>                                     | 14.11.2013   |
| <b>Date adopted</b>   | 17.12.2013   |
| <b>Result of final vote</b>                                       | +: 25<br>–: 14<br>0: 0   |
| <b>Members present for the final vote</b>                         | Regina Bastos, Edit Bauer, Heinz K. Becker, Jean-Luc Bennahmias, Phil Bennion, Pervenche Berès, Milan Cabrnoch, David Casa, Alejandro Cercas, Ole Christensen, Minodora Cliveti, Andrea Cozzolino, Frédéric Daerden, Karima Delli, Sari Essayah, Marian Harkin, Stephen Hughes, Danuta Jazłowiecka, Ádám Kósa, Jean Lambert, Verónica Lope Fontagné, Olle Ludvigsson, Csaba Öry, Siiri Oviir, Konstantinos Poupakis, Elisabeth Schroedter, Traian Ungureanu, Inês Cristina Zuber |
| <b>Substitute(s) present for the final vote</b>                   | Claudette Abela Baldacchino, Jürgen Creutzmann, Philippe De Backer, Edite Estrela, Richard Howitt, Martin Kastler, Anthea McIntyre, Evelyn Regner, Csaba Sógor, Tatjana Ždanoka  |
| <b>Substitute(s) under Rule 187(2) present for the final vote</b> | Vojtěch Mynář  |