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THE EUROPEAN PARLIAMENT

THE COUNCIL

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Directive of the European Parliament and of the Council on market access to port services

Joint text

approved by the Conciliation Committee
provided for in Article 251(4) of the EC Treaty

DIRECTIVE 2003/ /EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of

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 proposals from the Commission ¹,

Having regard to the Opinion of the European Economic and Social Committee ²,

Having regard to the Opinion of the Committee of the Regions ³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty in the light of the joint text approved by the Conciliation Committee on 22 October 2003⁴,

¹ OJ C 154 E, 29.5.2001, p. 290 and OJ C 181 E, 30.7.2002, p. 160.

² OJ C 48, 21.2.2002, p. 122.

³ OJ C 19, 22.1.2002, p. 3.

⁴ Opinion of the European Parliament of 14 November 2001 (OJ C 140 E, 13.6.2002, p. 294), Council Common Position of 5 November 2002 (OJ C 299 E, 3.12.2002, p. 1), Position of the European Parliament of 11 March 2003 (not yet published in the Official Journal).
Legislative Resolution of the European Parliament of and Decision of the Council of

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 ¹ 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) ², 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.

¹ 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).

² OJ L 364, 12.12.1992, p. 7.

- (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 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) Where the authorisation under this Directive takes the form of a contract falling within the scope of Directives 92/50/EEC ¹, 93/36/EEC ², 93/37/EEC ³ and 93/38/EEC ⁴, those Directives 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 applies. Finally, where applicable, Directives 89/48/EEC ⁵, 92/51/EEC ⁶ and 1999/42/EC ⁷ on the mutual recognition of professional education and training apply.
- (7) 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.

¹ Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (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).

² Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ L 199, 9.8.93, p.1). Directive as last amended by Directive 2001/78/EC.

³ Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ L 199, 9.8.1993, p. 54). Directive as last amended by Directive 2001/78/EC.

⁴ Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 199, 9.8.1993 p. 84). Directive as last amended by Directive 2001/78/EC.

⁵ Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration (OJ L 19, 24.1.1989, p. 16). Directive as amended by Directive 2001/19/EC of the European Parliament and of the Council (OJ L 206, 31.7.2001, p. 1).

⁶ Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ L 209, 24.7.1992, p. 25). Directive as last amended by Directive 2001/19/EC.

⁷ Directive 1999/42/EC of the European Parliament and of the Council of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications (OJ L 201, 31.7.1999, p. 77).

- (8) 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.
- (9) In accordance with the principle of subsidiarity as set out in Article 5 of the Treaty, the objective of the proposed action, which is access for any natural or legal person, established in the Community, to the market for port services, could be better achieved by establishing common principles for all Member States. 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.
- (10) 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.

- (11) 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 ¹, 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.
- (12) 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.
- (13) 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.

¹ 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).

- (14) 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.
- (15) 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 private and may be responsible for one or more tasks covered by this Directive and for one or more ports.
- (16) In the interests of efficient and safe port management, Member States should be able to require that providers of port service operations and self-handlers obtain authorisations. The criteria for granting such authorisations should be objective, transparent, non-discriminatory, relevant and proportional, and should be made public.
- (17) 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 for payment.

- (18) 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.
- (19) 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 could 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.
- (20) 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.

- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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.

- (25) 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.
- (26) Authorisations granted through a selection procedure 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.
- (27) 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.
- (28) Member States should be allowed to extend an existing authorisation and/or to launch a selection procedure in advance if significant investments have been made or will be made, in order to encourage long-term investment in stable conditions, thereby contributing to the development of ports.
- (29) 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.

- (30) 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, particularly during the transitional periods for existing authorisations, if relevant.
- (31) Member States may require self-handling to be subject to a prior authorisation in accordance with criteria relating, inter alia, to employment, professional qualifications and social and environmental matters.
- (32) 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.
- (33) In this context, the competent authorities should be permitted to recognise the compulsory nature of pilotage and other technical-nautical services.
- (34) The hiring out of equipment does not constitute a port service. It should nevertheless respect the principles of transparency and non-discrimination.
- (35) 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.
- (36) The requirement to keep separate accounts for each port service should apply to all undertakings which have been selected to provide such services.

- (37) Procedures for appeals against decisions of the competent authorities should be in place.
- (38) 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, or with regard to the international status of ports, waterways and maritime zones.
- (39) The application of national social legislation should in no way be affected by this Directive.
- (40) The current situation in the Community ports, with its multitude of authorisation and selection methods and periods and the need for legal certainty require clear transitional measures to be laid down. These measures should distinguish between ports where the number of service providers is limited and those ports where it is not. After the end of the period where such transitional measures apply, all authorisations should be granted in accordance with this Directive.
- (41) Where the number of providers of port services is not limited, there is no reason to change the existing authorisations.
- (42) Existing authorisations and contracts should be put on an equal footing with new authorisations and consequently be submitted, in any case of limitations, to the same maximum periods reckoned from the date of entry into force of this Directive.
- (43) Where the number of service providers is or becomes limited, the duration of existing authorisations should be in line with those applicable to new authorisations.

- (44) 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 accordance with national rules on acquisition of property should be considered to have been generally available.
- (45) 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.
- (46) 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.
- (47) 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,

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 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.
4. It is also the objective of this Directive to achieve fair and transparent conditions of competition both in and between Community ports.

Article 2

Scope

1. This Directive shall apply to those port service operations set out in the Annex which are provided for users of the port, either inside the port area or on waterway access to and from the port or port system covered by this Directive.

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 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 the freight traffic threshold referred to in paragraph 2 without reaching the corresponding passenger movement threshold, this Directive shall not apply to port services reserved exclusively for passengers. Where the passenger movement but not the freight traffic threshold is reached, this Directive shall not apply to port services reserved exclusively for freight.

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 providers of port services be established within the Community and that 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

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, 19(1) and (2) and 20 of this Directive shall not apply to the award of that contract. However, Member States may include specific rules with regard to their ports in the tendering process for such contracts.

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 4

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 a port" means water access to the port from the open sea, 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 any services provided in a port and listed in the Annex;
- 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, which normally could buy port services, provides for itself, using its own seafaring crew and its own equipment, one or more categories of port services in accordance with the criteria set out in this Directive;
- 10) "pilot exemption certificate" means a document issued by the competent authority by which an exemption from or modification of compulsory pilotage is granted;
- 11) "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;
- 12) "limitation of the number of providers" means a situation in which the managing body of the port does not allow a provider that fulfils the criteria for authorisation laid down in accordance with Article 8 to provide one or more categories of services.

Article 5

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 of this Directive shall be obliged to submit the details required under Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings¹ 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 that Directive apply to them.
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 ...^{*}, the Commission shall submit a report to the European Parliament and the Council 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 6

Transparency of State funding

The Commission shall draw up, no later than ...^{**}, 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.

¹ 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).

^{*} Three years from the date of entry into force of this Directive.

^{**} One year from the date of the entry into force of this Directive.

Article 7

Competent authorities

Member States shall ensure that there is a competent authority or authorities responsible for implementing Articles 8, 9, 10, 11, 13, 16, 17, 19 and 27.

Article 8

Authorisation

1. Member States may ensure that the competent authority shall require that a provider of port service operations obtains prior authorisation, possibly for a limited period, under the conditions set out in paragraphs 2 to 5. Authorisation shall be deemed granted to service providers selected under Article 11.

2. The criteria for the granting of authorisations by the competent authority must be transparent, non-discriminatory, objective, relevant and proportional. The criteria may only relate, where applicable, to:

- (a) the professional qualifications of the provider and of his personnel, his sound financial situation and sufficient insurance cover,
- (b) maritime safety or the safety of the port or access to it, its installations, equipment and persons,
- (c) employment and social matters,

- (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.

3. 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, for payment.

4. Criteria referred to in paragraph 2 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. 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 2 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.

6. The competent authority shall vary or revoke an authorisation where, in a substantial manner, the criteria referred to in paragraph 2 are not complied with, or where the Member State's social legislation is not or is no longer complied with.

Article 9

Development policy of the port

The competent authority may, in accordance with transparent, non-discriminatory, objective, relevant and proportionate criteria, 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.

Article 10

Limitations

1. This Article, and Articles 11 and 15, shall apply only to a port service or services where there is a limitation of the number of providers of this or these services in the port or port system.

2. Member States shall ensure that the competent authority limits the number of providers of port services only for reasons of constraints relating to available space or capacity, safety considerations or requirements deriving from environmental regulations. 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.

Article 11

Selection procedure

1. Where the number of providers of port services has been limited by the competent authority in accordance with Article 10, the latter shall take the necessary measures to ensure 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 15(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 8(2) 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.

Article 12

Compensation

Member States shall enact provisions whereby newly authorised service providers are required to compensate appropriately the former service providers, which have had the duration of their authorisation reduced pursuant to Article 24(3). In all other cases, authorised service providers may be required to compensate previous service providers or any other party concerned in accordance with national rules. Article 20(3) shall apply *mutatis mutandis*.

Article 13

Neutrality of selection procedure

Where the competent authority deciding on limitations in relation to one or more port services in a specific port or carrying out the selection procedure for that service in the port in question 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, or with the selection procedure, or approval or supervision of such procedure. Alternatively Member States may designate an existing body to consider any appeals or complaints against the actions of a competent authority in relation to decisions on limitations or the selection of service providers.

Article 14

Unsuccessful selection procedure

Where as a result of a selection procedure under Article 11 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(1), reserve the provision of this service for itself for a period, which may not exceed five years.

Article 15

Duration

Providers of port services shall be selected for a limited 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 ten years.
- 2) In cases where investments which are considered significant by the competent authority involve:
 - (a) movable assets, the maximum period shall be 15 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 36 years, irrespective of whether or not their ownership will revert to the managing body of the port.

Member States may permit a possible extension of an existing authorisation for a period of 10 years once during the last 10 years of validity of the authorisation, if significant investments in immovable assets and/or comparable movable capital assets have been made or irrevocably contracted for.

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 according to which, in cases where the service provider intends to make or irrevocably contract for significant investments before the end of the existing authorisation and where it can demonstrate that these will lead to an improvement in the overall efficiency of the service concerned, it may request the competent authority to launch a selection procedure in accordance with Article 11 for a new authorisation before the end of the authorisation in question.

Article 16

Self-handling

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

Member States shall ensure that the competent authority restricts self-handling only in cases where objective reasons apply that are compatible with, and relevant to, the reasons for limitations under Article 10.

2. This Directive shall in no way affect the application of national rules concerning training requirements and professional qualifications, employment and social matters, provided that they are compatible with Community law and the international obligations of the Community and the Member State concerned.
3. When self-handling is 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, provided these are relevant.

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

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.

Article 17

Pilotage

1. With regard specifically to the service of pilotage, Member States may submit the granting of an authorisation in accordance with Article 8 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 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. Member States shall report to the Commission no later than^{*} on measures to improve the effectiveness of pilotage services.

^{*} Three years after the entry into force of the Directive.

Article 18

Accounting provisions

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

Article 19

Transparency

1. Where the managing body of the port provides port services, it must fulfil the criteria set out in Article 8(2) 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

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 21

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 22

Social protection

This Directive shall in no way affect the application of the social legislation of Member States, including relevant rules on employment of personnel by service providers taking over an authorisation as a result of a selection procedure. Social standards must not be below those laid down by applicable Community legislation.

Article 23

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 24

Transitional measures

1. This Article shall apply to any authorisation in existence on the date on which this Directive enters into force.
2. Where the number of providers of port services in a port is not limited pursuant to Article 10, existing authorisations, including rights deriving from ownership of a port or of property in a port, may remain in force unchanged until such time as the number becomes limited.
3. Where the number of providers of port services in a port is limited, existing authorisations, including rights deriving from ownership of a port or of property in a port, may remain in force unchanged until they expire, but within the periods provided for in Article 15 reckoned from the date of transposition of this Directive.

Where the number of providers of port services in a port becomes limited after the date of entry into force of this Directive, existing authorisations, including rights deriving from ownership of a port or of property in a port, may remain in force unchanged until they expire, but within the periods provided for in Article 15 reckoned from the date of appearance of such limitation.

4. Following the expiry of the transitional periods, all authorisations must comply with this Directive.

Article 25

New port or new part of a port

1. Member States may provide that authorisations are to be granted without any further requirements to an investor or investors which have commercially financed and jointly built a new port, or a new part of a port, including basic infrastructure, and which wish to provide port services, provided that the investment opportunity had been generally available.
2. Where the decision for 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, Member States may provide that authorisations are to be granted without any further requirements to that future service provider. In the event of a limitation of the number of future service providers, Member States shall use an open, non-discriminatory and transparent procedure.
3. Without prejudice to Article 8, the authorisations referred to in paragraphs 1 and 2 shall be granted for a limited period of time under the provisions of Article 15.

Article 26

Information report and revision

Member States shall send the Commission a report on the application of this Directive not later than.....^{*}.

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 27

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than^{**}. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, 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 a reference shall be laid down by the Member States.

2. 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.

^{*} Five years from the date of entry into force of this Directive.

^{**} Two years from the date of entry into force of this Directive.

Article 28

Entry into force

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

Article 29

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LIST OF PORT SERVICE OPERATIONS CONCERNED BY THIS DIRECTIVE

1. Technical-nautical services
 - (a) Pilotage, within the limits of Article 17;
 - (b) Towage;
 - (c) Mooring.
 2. Cargo handling operations including loading and unloading, stevedoring, stowage, transshipment and other intra-terminal transport;
 3. Passenger services (including embarkation and disembarkation)
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