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**A5-0364/2003**

4 November 2003

## **\*\*\*III REPORT**

on the joint text approved by the Conciliation Committee for a European Parliament and Council directive on market access to port services  
(PE-CONS 3670/2003 – C5-0461/2003 – 2001/0047(COD))

European Parliament delegation to the Conciliation Committee

Rapporteur: Georg Jarzembowski

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position*  
*majority of Parliament's component Members, to reject or amend*  
*the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases*  
*covered by Articles 105, 107, 161 and 300 of the EC Treaty and*  
*Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position*  
*majority of Parliament's component Members, to reject or amend*  
*the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

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## PROCEDURAL PAGE

At its sitting of 14 November 2001 Parliament adopted its position at first reading on the proposal for a European Parliament and Council directive on market access to port services (COM(2001) 35 – 2001/0047(COD)).

At the sitting of 20 November 2002 the President of Parliament announced that the common position had been received and referred to the Committee on Regional Policy, Transport and Tourism (11146/1/2002 – C5-0533/2002).

At the sitting of 11 March 2003 Parliament adopted amendments to the common position.

By letter of 22 July 2003 the Council stated that it was unable to approve all Parliament's amendments.

By letter of 2 September 2003 the President of the Parliament informed the Council that it was necessary to extend the period for the work in committee, as laid down in Article 251(7) of the EC Treaty.

The President of the Council, in agreement with the President of Parliament, convened a meeting of the Conciliation Committee on 9 September 2003.

At its meeting of 29 September 2003 the Conciliation Committee considered the common position on the basis of the amendments proposed by Parliament.

At the latter meeting, it reached agreement on a joint text.

At its meeting of 29 September 2003 the Parliament delegation approved the results of the conciliation by eight votes to seven.

The following took part in the vote: Renzo Imbeni (Vice-President and chairman of the delegation), Paolo Costa (chairman of the Committee on Regional Policy, Transport and Tourism), Georg Jarzembowski, (rapporteur), Theodorus J.J. Bouwman, Luigi Cocilovo, Konstantinos Hatzidakis (for Charlotte Cederschiöld), Dieter-Lebrecht Koch (for Giorgos Dimitrakopoulos), Giorgio Lisi (for Françoise Grossetête), Erik Meijer, Ewa Hedkvist Petersen (for Juan de Dios Izquierdo Collado) Wilhelm Ernst Piecyk, Gilles Savary, Brian Simpson, Rijk van Dam and Brigitte Wenzel-Perillo (for Carlos Ripoll y Martínez de Bedoya).

On 22 October 2003 the co-chairmen of the Conciliation Committee established that the joint text had been approved, pursuant to paragraph III.8 of the Joint declaration on practical arrangements for the new co-decision procedure<sup>1</sup>, and forwarded it to Parliament and the Council in all the official languages.

The report was tabled on 4 November 2003.

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<sup>1</sup> OJ C 148, 28.5.1999, p. 1.

## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the joint text by the Conciliation Committee for a European Parliament and Council directive on market access to port services  
(PE-CONS 3670/2003 – C5-0461/2003 – 2001/0047(COD))**

**(Codecision procedure: third reading)**

*The European Parliament,*

- having regard to the joint text approved by the Conciliation Committee and the relevant Commission statement (PE-CONS 3670/2003 – C5-0461/2003),
  - having regard to its position at first reading<sup>1</sup> on the Commission proposal to Parliament and the Council (COM(2001) 35)<sup>2</sup>
  - having regard to the amended proposal (COM(2002) 101)<sup>3</sup>
  - having regard to its position at second reading<sup>4</sup> on the Council common position<sup>5</sup>,
  - having regard to the Commission's opinion on Parliament's amendments to the common position (COM(2003) 208 - C5-0182/2003)<sup>6</sup>,
  - having regard to Article 251(5) of the EC Treaty,
  - having regard to Rule 83 of its Rules of Procedure,
  - having regard to the report of its delegation to the Conciliation Committee (A5-0364/2003),
1. Approves the joint text and draws attention to the Commission statement thereon;
  2. Instructs its President to sign the act with the President of the Council pursuant to Article 254(1) of the EC Treaty;
  3. Instructs its Secretary-General duly to sign the act and, in agreement with the Secretary-General of the Council, to have it published, together with the Commission statement thereon, in the Official Journal of the European Union;
  4. Instructs its President to forward this legislative resolution to the Council and Commission.

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<sup>1</sup> OJ C 140 (E) 13.6.2002, p. 294

<sup>2</sup> OJ C 154 (E), 29.5.2001, p. 290.

<sup>3</sup> OJ C 181 (E), 30.7.2002, p. 160.

<sup>4</sup> Texts Adopted, 11.3.2003 P5\_TA-(2003)0078.

<sup>5</sup> OJ C 299 (E), 3.12.2002, p. 1.

<sup>6</sup> Not yet published in OJ.

## EXPLANATORY STATEMENT

### Background

The aim of the Commission proposal for a directive presented on 13 February 2001 is to create a clear, open and transparent Community legal framework within which to open up the market in port services in accordance with the Treaty provisions, while allowing the Member States to supplement this framework with specific arrangements that take account of the characteristics of their harbours and of local, regional and national needs. The proposal refers to services with commercial value provided in return for payment in a port as defined in Community law.

On 14 November 2001 Parliament adopted 41 amendments at first reading. Following the Commission's amended proposal, on 5 November 2002 the Council established its Common Position by a qualified majority. The Council considered it important to take account of the complexity and diversity of the port industry. The Common Position made some modifications to the Commission's amended proposal without changing the main aim of the directive.

On 11 March 2003 Parliament adopted 39 amendments to the Common Position at second reading. They concerned, in particular, the aim and scope of the directive, self-handling, limitation of authorisations to provide port services, type and duration of authorisations and transitional measures, payment of compensation, pilotage services, competition between ports and transparency of financial relations, development policy for ports, and the selection procedure for service providers.

### *Conciliation procedure*

The constituent meeting of Parliament's delegation was held on 27 March 2003. The delegation instructed its chairman, Renzo Imbeni, Luciano Caveri, chairman of the Committee on Regional Policy, Transport and Tourism, and Georg Jarzembowski, rapporteur, to begin negotiations with the Council. Mr Costa took over the chair of the committee on 8 September and participated in the negotiations with the Council from then on.

In the first trilogue on 7 July the Council indicated that it was not in a position to adopt any of Parliament's amendments. The conciliation procedure was formally opened on 9 September 2003 as an agenda item without debate. On 26 September 2003 COREPER established the Council's position for the start of negotiations. During the night of 29 September the Conciliation Committee reached agreement. Parliament's delegation approved the compromise package that had been negotiated by 8 votes to 7.

The main points of the agreement reached in the conciliation procedure can be summarised as follows:

#### 1. Self-handling

The Council accepted Parliament's definition of self-handling, which will only be allowed in cases where shipping companies deploy their own seamen and equipment. Where a Member State makes self-handling dependent upon prior authorisation, the criteria for the issuing of such authorisation are not to relate only to employment and social aspects, but also to professional

qualifications and environmental considerations.

## 2. Limiting the number of authorisations to provide port services

Parliament stated that it would agree to a compromise on the question of limiting the number of authorisations to provide port services. In accordance with the subsidiarity principle, it is left to individual Member States to decide whether they will impose a compulsory limitation on authorisations. However, the Member States must ensure that the competent authorities can require prior authorisation to provide port services.

## 3. Type and duration of authorisations and transitional measures

The Council accepted Parliament's amendments on periods and conditions for authorisations and transitional arrangements. On the requirement to vary or revoke authorisation, a compromise was reached to the effect that this would become necessary when the criteria for authorisation or social legislation are no longer complied with.

## 4. Compensation payments to former service providers

It was agreed by way of compromise that the Member States would introduce legislative arrangements governing appropriate compensation payments to former service providers, but only where the period of validity of their authorisations was reduced as a result of the new directive. In the case of contracts concluded after the entry into force of the directive, authorised former service providers can be compensated in accordance with the legislation of the individual States.

## 5. Pilotage services

Parliament agreed to pilotage remaining within the scope of the directive. But the special importance of pilotage services for the safety of shipping and environmental protection, especially in particularly sensitive regions, was emphasised. The provision that the competent authorities may for reasons of public safety limit the activity of pilots to a single provider has therefore been retained. The limited duration of authorisation for pilotage services which the Council had provided for is, in accordance with Parliament's wish, being dropped. In addition, the Member States are required to report to the Commission after three years on measures to improve the efficiency of pilotage services.

## 6. Competition between ports and transparency of financial relations

The Council agreed to extend the objectives of the directive to include that of establishing fair competition between and within the Community's ports. To this end, every port or port system and the port service providers are required to disclose to the Member States and Commission the financial relations between themselves and public undertakings. The Commission is to draw the necessary conclusions from this with regard to establishing fair competitive conditions, and to report to Parliament and the Council after three years. The Commission is also required, likewise in accordance with Parliament's wish, to enact guidelines governing public funding of ports or port systems. The Commission undertook in a statement to draw up a study of direct and indirect public funding, State subsidies and cost accounting in ports and port systems.

## 7. Other matters

The Council also adopted several other amendments by Parliament concerning development policy for ports, the selection procedure for service providers and investments in moveable

assets.

All in all the Council adopted sixteen of Parliament's amendments, and Parliament declared its willingness to withdraw eleven amendments. Compromise was reached on twelve amendments.

## **Conclusion**

In view of the considerable political difficulty experienced by the Council in making any concessions to Parliament over the six-month period after Parliament's second reading, the outcome of the conciliation procedure can be regarded as satisfactory. The agreement reached represents a favourable outcome for Parliament, particularly as regards the limitation of self-handling to seafaring personnel and equipment, and the introduction of provisions on transparency and conditions of fair competition between and in ports. It was regrettable that the Member States insisted on maintaining their prerogative with regard to authorisations and leaving pilotage services within the scope of the directive. However, compromises were achieved in these areas also, as well as in that of compensation payments to former service providers. It was for these reasons that a majority of the Parliament delegation supported the view of its chief negotiator that this outcome was the best possible one in the context of overall compromise, bearing in mind that the majority of the Member States refused to come any nearer to Parliament's point of view.

The agreement reached has components that relate to economic, social and safety aspects – see in particular Articles 21, 22 and 23 on safety and environmental protection, social security and the international status of ports – and also promotes better use of maritime transport, and of combined transport, as alternative modes of transport, which will relieve the strain on the European Union's transport network.

The delegation therefore recommends to Parliament meeting in plenary that it accept the text at third reading.