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REPORT

on the proposal for a directive of the European Parliament and of the Council on market access to port services
(COM(2004) 0654 – C6-0147/2004 – 2004/0240(COD))

Committee on Transport and Tourism

Rapporteur: Georg Jarzembowski

PR_COD_1am

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.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on market access to port services
(COM(2004)0654 – C6-0147/2004 – 2004/0240(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0654)[1],

– having regard to Article 251(2) and Article 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0147/2004),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Transport and Tourism and the opinions of the Committee on Employment and Social Affairs and the Committee on the Internal Market and Consumer Protection (A6-0410/2005),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

[1] OJ C ... / Not yet published in OJ.

EXPLANATORY STATEMENT

Introduction

The present proposal for a directive on market access to port services seeks to establish the fundamental freedoms guaranteed by the EU Treaty and the competition rules laid down by the EU Treaty in individual sea ports as well as between sea ports and, by so doing, also to boost the efficiency of sea ports. Sea ports are complex nodal points - for different modes of transport and with different players from both the state and the private sectors - and, as such, of particular importance for the performance and efficiency of the trans-European transport network as well as for the Union's internal and external trade.

I. Legislative procedure relating to the Commission proposal from 2001

The present proposal for a directive follows on from an initial proposal for a directive on market access to port services tabled by the Commission on 13 February 2001 as part of the Communication entitled 'Reinforcing quality service in sea ports: a key for European transport' (known as the Ports' Package)[1]. However, this previous proposal for a directive did not contain any provisions on competition between ports which were only proposed and inserted by Parliament during the legislative procedure.

The previous proposal for a directive was the subject of controversial and heated debate in two readings and a subsequent conciliation procedure between Parliament and the Council. At no stage of the legislative procedure did Parliament and the Council contest the necessity for the directive, but simply begged to differ on the following points in particular: applicability also to pilotage services, authorisation requirement for port services, duration of authorisations, compensation for previous service providers, self-handling, transitional measures and transparency rules for competition between sea ports.

On 29 September 2003 the representatives of Parliament (by a narrow majority) and of the Council (unanimously) finally reached agreement in the Conciliation Committee by way of compromise on a joint draft text for the directive[2]. The main points of the agreement were:

- Authorisation requirement: Parliament accepted that it should be left to Member States to decide whether to make authorisation a statutory requirement.

- Self-handling: the Council accepted that self-handling should be allowed only in cases where shipping companies deploy their own seafaring personnel.

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[1] Communication entitled 'Reinforcing quality service in sea ports: a key for European transport' and proposal for a directive of the European Parliament and of the Council on market access to port services - COM(2001)0035 - COD 2001/0047.

[2] Joint text 3670/2003 - C5-0461/2003 and report on the joint text approved by the Conciliation Committee for a European Parliament and Council directive on market access to port services - European Parliament delegation to the Conciliation Committee - A5-0364/2003.

- Pilotage services: Parliament agreed to pilotage remaining within the scope of the directive with emphasis being placed on its special importance for the safety of shipping and environmental protection.

- Competition between ports and transparency of financial relations: the Council agreed to expand the objectives of the directive to include these issues.

- Type and duration of authorisations and transitional measures/compensation payments to former service providers: agreement was also reached on these points.

However, at the sitting of 20 November 2003 Parliament rejected this compromise by a narrow majority (by 209 votes to 229 with 16 abstentions). This concluded the first legislative procedure once and for all.

II. New Commission proposal from 2004

On 13 October 2004 the Commission submitted the current proposal for a directive on market access to port services which, in its basic structure and provisions, is identical with the compromise text that emerged from the previous conciliation procedure. The Commission emphasises that a Community legal framework is still essential and that most of the arguments and views expressed about the old proposal from 2001 were also still valid today.

Nevertheless, on important individual issues the new Commission proposal departs from the conciliation draft, for example, regarding a now compulsory authorisation for all port services, shorter duration of authorisations, still rudimentary arrangements for compensation for previous service providers, the extension of self-handling to new circumstances and the actual abandonment of transitional arrangements for existing service providers.

III. Deliberations in the Committee on Transport and Tourism

It was from the outset the intention of your rapporteur to give the committee the opportunity to examine the Commission proposal as comprehensively as possible and to discuss its various aspects thoroughly.

1. Working document

By way of preparation for the discussions in committee your rapporteur first submitted to the committee a working document[1] dealing with the key issues concerning the Commission proposal. An initial extensive debate was then held at which committee members were informed of the controversial points in the proposal.

2. Hearing

On a proposal from your rapporteur a public hearing was organised by the committee on 14 June 2005 in Parliament to which representatives of all organisations concerned by the

[1] Working document PE 355.765.

proposal were invited in order to state their position, especially on the issues raised in the working document.

Representatives of the following organisations attended the hearing:

- European Sea Ports Organisation (ESPO)
- Federation of European Private Port Operators (FEPORT)
- European Freight Forwarders (CLECAT)
- European Maritime Pilots' Association (EMPA)
- European Boatmen's Association (EBA)
- European Tugowners' Association (ETA)
- European Shippers Council (ESC)
- European Community Shipowners Association (ECSA)
- European Transportworkers Federation (ETF)

Mr François Lamoureux, Director-General of the DG for Energy and Transport at the Commission, also took the opportunity at the hearing to present the Commission proposal and answer questions from committee members.

IV. Rapporteur's position on Commission proposal

In the light of the hearing in the Committee on Transport and Tourism and negotiations with members of other groups on compromise amendments, your rapporteur has adopted the following position on the Commission proposal together with major structural changes.

1. Provisions on competition between ports

The need for a European regulatory framework for transparency rules and aid guidelines in order to achieve fair conditions of competition between ports in the Union has been unanimously acknowledged by all parties.

No major amendments have been put forward to the proposed individual provisions in these areas.

For this reason and in the light of individual evaluation, the need for this regulatory framework has been clearly affirmed and no substantial amendments have been tabled to the detailed provisions. On account of its major importance it is proposed to incorporate this set of rules for achieving fair and transparent conditions of competition into the objective of the directive *expressis verbis* and to amend the title of the directive to 'Directive on sea ports'.

2. Provisions concerning competition and market access in individual ports

The need for a European regulatory framework for market access to port services is - depending on their interests at stake - supported by the users of port services such as shipping companies, freight forwarders and freight handlers and rejected by the providers of port services such as trans-shipment undertakings and trade unions. Yet even the European Sea Ports Organisation (ESPO) was able to agree to rules governing market access as such, as long as their content was properly regulated from their point of view.

Having weighed up the interests of the relevant economic and trade union circles, your rapporteur is of the conviction in the overriding interest of the Union - growth and jobs as well as fair competition in individual ports too - that European regulatory provisions are urgently necessary for market access to port services in individual ports as well. This fundamental position was adopted by the Commission, Parliament and Council alike during the previous legislative procedure[1].

As for the detailed provisions in the Commission proposal on market access, the hearing and subsequent discussions have revealed that many provisions in the joint text of the conciliation procedure under the previous legislative procedure[2] contained better solutions in objective terms for all parties. Your rapporteur has accordingly proposed that these provisions be taken over in the following areas in particular:

- mandatory authorisation to be left up to the Member States according to the subsidiarity principle, though a compromise amendment has stipulated that service providers would in every case need a contract with the competent authority that fulfils the conditions for an authorisation;

- longer duration of authorisations;

- clear definition of the selection procedure where the number of providers of port services is limited, though a compromise amendment has stipulated that a selection procedure must in any case take place if a service provider receives or will receive, either directly or indirectly, State aid;

- separate rules – extended by a compromise amendment – on compensation;

- separate rules on longer-term transitional measures.

The reminder from the mooring and towage organisations that, alongside pilotage services, their activities are also of special importance for the safety of maritime and port transport was accommodated by your rapporteur through the proposed changes to Recital 38 and Article 14. Your rapporteur was unable to follow the demand of the pilots that their activity be excluded from the scope of the directive since pilotage services are of central importance for maritime and port transport and the distinctive features of pilotage services are already properly regulated in Article 14 (this was also the majority view of the European organisations that attended the hearing).

As for European rules on self-handling, your rapporteur has become convinced, particularly after the concurring opinions of the European Sea Ports Organisation and of the European Shipowners Association, that this is not essential in objective terms. It was accordingly

[1] And by the heads of state and government of the European Union at the meetings of the European Council on 15-16 March 2002 (paragraph 38 of the conclusions) and of 21-22 March 2003 (paragraph 29 of the conclusions).

[2] Joint text 3670/2003 - C5-0461/2003 and report on the joint text approved by the Conciliation Committee for a European Parliament and Council directive on market access to port services - European Parliament delegation to the Conciliation Committee - A5-0364/2003.

proposed to delete the relevant passages. At the same time it was proposed to make clear in a recital that the rules on self-handling remain a matter for the Member States.

As a result of the negotiations on compromises with members of the Committee on Transport it was further proposed that Articles 7 to 12 of the proposal – thus particularly on requiring an invitation to tender – should not apply:

(a) to service providers who have gained or are gaining access to the market through the acquisition of a right of ownership or an equivalent title of land within a port, provided that such a right or title is generally available and that the acquirer does not benefit from State aid within the meaning of the Treaty for the financing of the acquisition, and/or

(b) in cases where on a sufficiently justified request by a Member State the European Commission decides that anti-competitive state aids are being given or other discriminatory measures are being taken by non-EU Member States in favour of ports in the relevant market.

It was also proposed that the directive should not apply to ports or parts of ports which exclusively serve special purposes such as the unloading of oil.

Finally, as a result of the negotiations on compromises between members of the Transport Committee, several amendments have tightened up the importance and powers of the port management authority.

V. Vote in the Committee on Transport

At its meeting of 22 November 2005 the Committee on Transport took the following decisions:

1. The amendments seeking to reject the Commission proposal were rejected by a majority vote (22 in favour, 26 against and one abstention);

2. The 13 compromise amendments set out below (with the exception of Letter b in the first amendment), and a number of other amendments, were adopted by a majority;

3. The final vote on the report as amended did not secure a majority (23 in favour, 24 against and 2 abstentions);

4. The legislative resolution (‘Approves the Commission proposal as amended’) was adopted by a majority (26 in favour, 24 against and 0 abstentions).

As a result of these votes, this report does not include the 56 amendments adopted separately. It must therefore be left to the political groups to create the alternatives for consultation and voting in plenary on the Commission proposal, by tabling amendments.

Annex: 13 compromise amendments

Compromise 1
Article 2, paragraph 3 b (new)

3 b. The articles 7 to 12 of this directive shall not apply

a. to service providers who gained or are gaining access to the market through the acquisition of a right of ownership or an equivalent title of land within a port provided that such a right or title is generally available and that the acquirer does not benefit from State aid within the meaning of the Treaty for the financing of the acquisition and/or

b. in cases where on a sufficiently justified request of a Member State the European Commission decides that anti-competitive state aid are given or other discriminatory measures are taken by non EU Member States in favour of ports in the relevant geographical market.

Compromise 2
Article 3, paragraph 5

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 and responsibility 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. The managing body of the port shall also act as the competent authority for services provided on maritime access routes to and from the port, unless Member States appoint a different competent authority;

Compromise 3
Article 3, paragraph 12

12. “authorisation” means any permission from the competent authority, including a licence or a contract, allowing a natural or legal person to provide one or more categories of port services; whereby a contract means any agreement, whether a lease or a concession, concluded between the competent authority and a natural or legal person;

Compromise 4
Article 3, paragraph 13

13. “limitation of the number of providers” means a situation in which the competent authority is limiting the number of providers for port services for reasons of available space or capacity, maritime safety, security or port development policy. The situation whereby the competent authority, if appropriate, determines 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, does not constitute a "limitation of the number of providers".

Compromise 5
Article 7

General principles on market access for service providers

1. Member States may ensure that the competent authority shall require that a provider of port service operations obtains prior authorisation under the conditions set out in paragraphs 2 to 4. Service providers need in any case a contract that has to fulfil these conditions. Authorisation shall be deemed granted to service providers selected under Article 8.

2. The criteria for the granting of authorisations by the competent authority must be transparent, non-discriminatory, objective, relevant and proportional. Apart from any commercial elements involved, the criteria shall only relate, where applicable, to:
the professional qualifications of the service provider and of his personnel, an adequate business plan containing clear commitments related to the provision of the service, his sound financial situation and sufficient insurance cover,
maritime safety or the safety and security of the port or access to it, its installations, equipment and persons,
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,
compliance with relevant local, national and international requirements in the field of safety, security and environment,
the development and investment policy of the port.

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

3. Criteria referred to in paragraph 2 shall be made public and providers as well as candidate-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.

4. 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 the requisite information and to relevant training for applicant service providers under transparent and non-discriminatory conditions, and where appropriate, against payment.

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, or no longer complied with, or where the Member State's social legislation is not or is no longer complied with.

Compromise 6
Article 8

Selection procedure

1. Where the number of providers of port services has to be limited by the competent authority for reasons of available space or capacity, maritime safety, security or port development policy, a selection procedure shall take place in accordance with the following principles. A selection procedure shall in any case take place if a service provider receives or will receive, either directly or indirectly, State aid within the meaning of the Treaty. The selection procedure must be transparent and objective and be based on proportional, non-discriminatory and relevant criteria.

2. 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.

3. 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.

4. 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 without any delay designate a different and independent competent authority to decide on any appeal or complaint against the actions and decisions of the managing body of the port in relation to third service providers.

5. 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.

6. 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:
authorisation criteria adopted in accordance with Article 7(2) as well as selection criteria;
award criteria that define the grounds on which the authority will make its choice from among the proposals meeting the selection criteria;
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;
penalties and the terms governing cancellation in the event of non-compliance; and
the authorisation period.

7. 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.

8. For each procedure, the competent authority shall make public the decision resulting from the selection procedure.

9. Where as a result of a selection procedure 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.

Compromise 7
Article 9

Compensation

Member States shall enact provisions whereby newly authorised service providers are required to pay compensation to the former service provider, corresponding to the fair market value of the former service provider's port undertaking, or at least to the current market value of the immovable assets and the comparable movable capital assets, if this is higher than the market value of the undertaking. If the newly authorised service provider takes on none or only some of the previous service provider's personnel, he shall participate in the costs of the social plan of the previous service provider. Article 15(3) shall apply mutatis mutandis.

Compromise 8

Article 10

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 8, existing authorisations 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 may remain in force unchanged until they expire, but within the periods provided for in Article 12 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 may remain in force unchanged until they expire, but within the periods provided for in Article 12 reckoned from the date of appearance of such limitation.

4. The competent authority shall, within a period of one year following transposition of the Directive, complete an assessment of all existing authorisations within the port and on the maritime access routes under its jurisdiction.

Compromise 9
Article 11 paragraph 4

Technical-nautical services as defined in Article 3 paragraph 6 are excluded from the provisions of this article for reasons of port security and safety and public service requirements.

Compromise 10
Article 12

Duration

Authorisations shall be granted and concluded for a limited but renewable period of time which is in proportion to the investments made by the service providers, allowing a normal return on these investments. The following maximum durations shall apply:

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 10 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 and bridge unloaders, the maximum period shall be 36 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 or to extend the existing authorisation for a period of 10 years once during the last 10 years of validity of the authorisation.

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 one year before their date of expiry.

Compromise 11
Article 14

Technical-nautical services

1. With regard to the technical-nautical services, 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.

2. 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.

Where exemption from compulsory pilotage or the exemption of certain categories of vessel from compulsory pilotage, possibly through pilotage exemption certificates, is subject to special authorisation, the conditions for this authorisation must be appropriate, objective, transparent and non-discriminatory, taking account of the various special conditions and constraints of the different ports on the basis of which the authorisations are given.

3. 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 technical-nautical services.

Compromise 12
Article 17

Transparency of State funding

The Commission shall draw up, no later than one month 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.

The guidelines shall be subject to evaluation 3 years after entry into force of this directive.

Compromise 13
Recital 34
Regulation of self-handling should be left to national rules and arrangements. In cases where a Member State has already thought fit or thinks fit to authorise it, self-handling should not serve to undermine the degree of protection afforded under the rules on health and safety at work or lower the standard of worker training.

19.9.2005

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Transport and Tourism

on the proposal for a directive of the European Parliament and of the Council on market access to port services
(COM(2004)0654 – C6-0147/2005 – 2004/0240(COD))

Draftsman: Stephen Hughes

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Transport and Tourism, as the committee responsible, to recommend rejection of the proposal for a directive and to request the Commission, in accordance with Rule 39, to submit a proposal for a directive on transparency and equal market conditions between ports.

Justification

The European Commission does not make clear that there is insufficient access to the market of port services. The Commission proposal undermines national rules and brings more legal insecurity for all concerned. The proposal shall not lead to more equal competition conditions between ports.

Furthermore, the Commission reintroduces this new proposal for a Port Services Directive without taking into account the reasons why the Parliament on November 20, 2003 rejected the result of the conciliation committee on the former Commission proposal. The Parliament expressed serious concerns about the possible social and environmental consequences of the proposals on self handling and pilotage. As the Commission has not taken into account these concerns and has not organised a consultation with the most important stakeholders, we propose to reject this new proposal giving a clear signal to the Commission that serious consultation with all stakeholders has to be organised before adopting a proposal.

As stated by the European Parliament the main objective of the Directive should concentrate on competition between the ports rather than within ports.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on market access to port services
References	COM(2004)0654 – C6-0147/2005 – 2004/0240(COD)
Committee responsible	TRAN
Committee asked for its opinion Date announced in plenary	EMPL 1.12.2004
Enhanced cooperation	
Draftsman Date appointed	Stephen Hughes 15.3.2005
Discussed in committee	14.6.2005 12.7.2005 14.9.2005
Date amendments adopted	15.9.2005
Result of final vote	for: 18 against: 10 abstentions: 1
Members present for the final vote	Jan Andersson, Iles Braghetto, Philip Bushill-Matthews, Milan Cabrnoch, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Luigi Cocilovo, Proinsias De Rossa, Harald Ettl, Richard Falbr, Carlo Fatuzzo, Joel Hasse Ferreira, Roger Helmer, Stephen Hughes, Karin Jöns, Sepp Kusstatscher, Thomas Mann, Mario Mantovani, Ana Mato Adrover, Ria Oomen-Ruijten, Anne Van Lancker
Substitutes present for the final vote	Mihael Brejc, Udo Bullmann, Gintaras Didžiokas, Marian Harkin, Leopold Józef Rutowicz, Elisabeth Schroedter, Marc Tarabella, Georgios Toussas
Substitutes under Rule 178(2) present for the final vote	Vittorio Agnoletto, Bairbre de Brún, Eva Lichtenberger, Erik Meijer

16.9.2005

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Transport and Tourism

On the proposal for a directive of the European Parliament and of the Council on market access to port services
(COM(2004)0654 – C6-0147/2004 – 2004/0240(COD))

Draftswoman: Eva-Britt Svensson

EXPLANATORY STATEMENT

Your draftswoman calls for the rejection/withdrawal of the Commission's proposal on market access to port services. *The central argument is that the Commission's purpose is not achieved with this proposal.* A fairly unusual situation has also arisen in terms of the opposition to the ports directive. Opposition/scepticism is to be found across the political parties and among the various parties affected by port services - ranging from ESPO to the IDC and FEPORT[1]. In common with Mr Stephen Hughes, the draftsman for the Committee on Employment and Social Affairs, your draftswoman would express her disappointment at the fact that the Commission's new proposal is essentially based on the conciliation text which was rejected that the proposal was also drawn up without any social dialogue, which is contrary to Articles 136, 138 and 140 of the EU Treaty. It is also extremely remarkable that the Commission has returned with a new proposal so quickly after the previous rejection. There is a risk of tarnishing the democratic process if rejected proposals are resubmitted in a new guise. The Commission says it has discerned 'a need' within the EU and hence the proposal(s) on market access to port services. Your draftswoman strongly questions this 'need', and the arguments on which the views of the Committee on the Internal Market and Consumer Protection are based will be set out under the following three headings: Deregulation, Common legal framework and Labour law.

1. Deregulation

[1] ESPO: 'European Sea Ports Organisation', IDC: 'International Dockworkers Council', FEPORT: 'Federation of European Private Port Operators'.

Focus on competition

One of the Commission's main arguments for a ports directive is that competition within and between European ports must be intensified in order to benefit customers to a greater extent. It should be borne in mind, however, that Europe's ports are among the most efficient in the world[1]. Competition already takes place between individual ports within the EU with the result that only those ports which are sufficiently efficient and give value for money hold their own in competition. It would therefore be counterproductive to apply a common set of rules when the present diversity has already proved to be beneficial in terms of port profitability and efficiency. Investors and port companies also reject the present proposal as the transitional periods are far too short. No port company or investor can fully reorganise their business operations within the proposed five-year period. Likewise, the period for leasing contracts is too short. Investors want to be able to take the long-term view in order to consider any major investment in a business. Ports are no exception. This investment risk creates an unfavourable climate for investors which would be disastrous for European ports and, ultimately, their customers. Intra-port competition, in your draftswoman's view, is not a key issue determining the port's role as an intermodal transport centre. It is affected by which goods streams the port handles and which types of goods are to be handled. Goods streams are decided by geographical location and infrastructure in the form of waterways, railways and roads to and from the port. Intra-port infrastructure obviously plays a major role once the vessel has docked, but the choice of port is not made primarily on the basis of the internal qualities of the port. This means that the decisive factor is not intra-port competition but inter-port competition.

Articles 13 and 14 should be examined in greater detail in relation to the deregulation and exposure to competition to which the Commission wishes to subject those services. Underlying these controversial articles are self-handling and pilotage. The idea of self-handling in ports is taken from the directive on self-handling at airports. It may be considered unnecessary to point out that sea ports are completely different from airports and yet the Commission has still applied self-handling designed for airports to sea-port services. Self-handling means that every customer using a port should be able to handle his own goods. If self-handling were allowed without restriction, there is a high risk that operational chaos would erupt. It is impossible to regulate who has priority for using common areas, common cranes and quays, loading trains, etc. As regards pilotage, the pilot's knowledge of the waters and experience of manoeuvring many types of vessel contribute towards maintaining marine and environmental safety, and accessibility, when vessels are negotiating inner/outer waters/waterways. Pilotage should/must not be treated as a commercial service. In other words, safety should not be subject to competition!

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[1] According to the European Transport Worker's Federation, the standard tariff for unloading and loading a 40-foot container for example is:

- US$ 100 in European ports
- US$ 200 in North American ports
- US$ 300 in Asian ports

In addition, European port companies can expect substantial claims for damages if vessels are not unloaded and loaded within the shortest conceivable period, whereas long waiting times are more the rule than the exception for vessels docked in Asian or American ports.

2. Common legal framework

Absence of a convincing justification

On a number of occasions, the Commission's representatives have launched their argument for a ports directive by saying that port services are the only services in the transport sector which are not deregulated. This is not a convincing argument in the light of the situation described above concerning the position of European ports vis-à-vis non-European ports. The Commission displays a dogmatic attitude to deregulation 'for the sake of it' instead of taking account of actual needs. The Commission has still not carried out the impact analysis that many of the parties involved had called for. There is therefore no analysis indicating specific needs and problems within the EU's port sector to consult. A set of 'one size fits all' provisions will also be contrary to the EC Treaty's subsidiarity principle. The Commission should resolve any problems with market access on a case by case basis in consultation with all players in the industry. Likewise, the Commission's text is difficult to interpret from a legal viewpoint and includes a number of vague and downright diffuse concepts which will create future difficulties of interpretation - and by extension - legal disputes. In its present form, there is a risk that the ports directive will create more legal problems than it will solve, which leads to the conclusion that it should be withdrawn. A minimum requirement, however, is that substantial parts of the directive should be changed/amended.

3. Labour law

People at the centre -not numbers?

Your draftswoman has noted that the present proposal for a directive - to a greater extent than previously - emphasises that collective agreements already concluded may not be circumvented or set aside and that the term 'social protection' has been given a greater prominence than previously. However, there remains much to be desired from a labour law point of view. The controversial proposal for 'self-handling', i.e. that port owners can employ their own staff to load and unload instead of using traditional dockworkers, is also included in this proposal, this time with broader terms of reference. It is important to stress that self-handling is not desirable either from the trade union's or the employer's point of view. It is a unique situation that employers and employees have taken a common stance, i.e. wish to remove it from the proposal, as does your draftswoman. It is worth noting that Parliament's rapporteur, Mr Georg Jarzembowski, at the Transport Committee's hearing on 14 June said that Article 13 concerning self-handling may be removed from the proposal in its final version. From the trade union viewpoint, there has been no social dialogue as enshrined in Articles 136, 138 and 140 of the EC Treaty. The Commission has reportedly not made contact, for example, with the IDC, on this issue at all. Article 7, paragraph 6, concerning authorisation states that providers of port services have the right freely to choose the personnel to be employed. The question arises - why set out this obvious right? What is the underlying purpose? The trade unions fear that the purpose is to take jobs away from the present port workforce for the benefit of others. The Commission should clarify the purpose of Article 7, paragraph 6.

In conclusion, your draftswoman stresses that ports may compete in terms of price and quality

but subjecting working conditions for employees, environmental legislation, state financing and safety provisions to competition and deregulation is out of the question.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Transport and Tourism, as the committee responsible, to reject the Commission proposal.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on Market Access to Port Services
References	COM(2004)0654 – C6-0147/2004 – 2004/0240(COD)
Committee responsible	TRAN
Committee asked for its opinion Date announced in plenary	IMCO 1.12.2004
Enhanced cooperation	No
Draftsman Date appointed	Eva-Britt Svensson 30.11.2004
Discussed in committee	19.4.2005 13.6.2005 13.7.2005
Date amendments adopted	14.9.2005
Result of final vote	for: 23 against: 3 abstentions: 0
Members present for the final vote	Bert Doorn, Janelly Fourtou, Evelyne Gebhardt, Małgorzata Handzlik, Malcolm Harbour, Christopher Heaton-Harris, Anna Hedh, Anneli Jäätteenmäki, Pierre Jonckheer, Henrik Dam Kristensen, Kurt Lechner, Toine Manders, Zita Pleštinská, Guido Podestà, Zuzana Roithová, Heide Rühle, Luisa Fernanda Rudi Ubeda, Leopold Józef Rutowicz, Eva-Britt Svensson, Marianne Thyssen, Jacques Toubon, Bernadette Vergnaud, Barbara Weiler, Phillip Whitehead, Joachim Wuermeling
Substitutes present for the final vote	Charlotte Cederschiöld
Substitutes under Rule 178(2) present for the final vote	

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on market access to port services
References	COM(2004)0654 – C6-0147/2004 – 2004/0240(COD)
Date submitted to Parliament	1.12.2004
Committee responsible Date announced in plenary	TRAN 1.12.2004
Committee(s) asked for opinion(s) Date announced in plenary	ECON EMPL IMCO 1.12.2004 1.12.2004 1.12.2004
Not delivering opinion(s) Date of decision	ECON 10.11.2004
Enhanced cooperation Date announced in plenary	
Rapporteur(s) Date appointed	Georg Jarzembowski 22.11.2004
Previous rapporteur(s)	
Simplified procedure – date of decision	
Legal basis disputed Date of JURI opinion	/
Financial endowment amended Date of BUDG opinion	/
European Economic and Social Committee consulted – date of decision in plenary	
Committee of the Regions consulted – date of decision in plenary	
Discussed in committee	19.4.2005 14.6.2005 29.8.2005 11.10.2005
Date adopted	22.11.2005
Result of final vote	+: 23 –: 24 0: 2
Members present for the final vote	Inés Ayala Sender, Etelka Barsi-Pataky, Philip Bradbourn, Michael Cramer, Arūnas Degutis, Christine De Veyrac, Armando Dionisi, Petr Duchoň, Saïd El Khadraoui, Robert Evans, Roland Gewalt, Mathieu Grosch, Ewa Hedkvist Petersen, Jeanine Hennis-Plasschaert, Georg Jarzembowski, Dieter-Lebrecht Koch, Jaromír Kohlíček, Jörg Leichtfried, Fernand Le Rachinel, Bogusław Liberadzki, Eva Lichtenberger, Patrick Louis, Erik Meijer, Ashley Mote, Michael Henry Nattrass, Seán Ó Neachtain, Janusz Onyszkiewicz, Josu Ortuondo Larrea, Willi Piecyk, Luís Queiró, Reinhard Rack, Luca Romagnoli, Gilles Savary, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Gary Titley, Georgios Toussas, Marta Vincenzi, Corien Wortmann-Kool, Roberts Zīle
Substitute(s) present for the final vote	Markus Ferber, Jas Gawronski, Zita Gurmai, Elisabeth Jeggle, Joost Lagendijk, Rosa Miguélez Ramos, Willem Schuth
Substitute(s) under Rule 178(2) present for the final vote	Ioannis Gklavakis
Date tabled	15.12.2005
Comments (available in one language only)	Vote on the legislative resolution in TRAN Committee: 26:24.