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Committee on the Internal Market and Consumer Protection

2004/0240(COD)

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

PA_Leg

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 FEPORT¹. 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

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 world². 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

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

² 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.

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!

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	