European Community Shipowners' Associations

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EUROPEAN PARLIAMENT WORKING DOCUMENT ON MARKET ACCESS TO PORT SERVICES

Introduction

After the rejection by the European Parliament in November 2003 of the compromise agreement, the Commission approved on 13 October 2004 a new proposal for a Directive on market access to port services, notably cargo handling, towage, pilotage, and mooring services.

Following the rejection of the previous proposal by the European Parliament, ECSA stressed that it is essential that, one way or another, further steps be taken to ensure the necessary liberalisation process and apply free market principles. Such liberalisation remains an essential step to further improve the position of maritime transport in the supply chain and in particular for the promotion of short sea services; it will increase efficiency and contribute to make the EU economy more competitive as agreed in the Lisbon Declaration and reconfirmed continuously by the EU Institutions.

Whilst insisting on a further liberalisation of port services, ECSA feels that the proposed Directive II, needs further study and analysis particularly on five critical points notably: authorisation, duration, compensation, transitional periods and self-handling.

ECSA appreciates that the Rapporteur has included these points in the Working document of 31 March 2005. The ECSA replies to the questions brought forward by the Rapporteur are mentioned below.

ECSA looks forward to a constructive exchange of views with the EU Institutions and with stakeholders aiming at a framework enhancing efficiency and competitiveness of port services.

REPLIES TO QUESTIONS BROUGHT FORWARD BY THE RAPPORTEUR OF THE EP TRAN COMMITTEE Mr GEORG JARZEMBOWSKI

(a) Scope of the directive
According to Article 2, the directive should only cover the major ports in the Union.

> *(aa) Thresholds*
> *It is debatable whether the proposed thresholds and the additional restrictive criteria are appropriate and rational.*

(bb) Ports in public and private ownership
It is debatable from the point of view of the protection of property under constitutional law whether ports or parts of ports in private ownership may be subject to regulation at all and if so, in what way.

(cc) Waterway access
It is debatable whether waterway access routes should in general be included in the scope under Article 2 and in the objective under Article 1.

ECSA Comments

ECSA would like to stick to the scope as mentioned in the conciliation text which was accepted in conciliation between the Council and the EP without much debate. The principles of market access should apply to both public (landlord) and private ports in the appropriate way. Possibly some more consideration should be given to the position of private ports especially taking into account the issue of "property rights". It was ECSA who first suggested to define the threshold of this Directive in connection with the definition of ports in the TEN Transport category A, because it seems to us fully consistent.

(b) Fields of application of the directive

According to Article 2, paragraph 1, the directive applies to those port service operations set out in Article 3.

(aa) Technical-nautical services
Of the technical-nautical services - 1. pilotage, 2. towage and 3. mooring – Parliament called at second reading in the previous legislative procedure for pilotage to be removed from the field of application of the directive. Council consistently rejected this but proposed by way of compromise with Parliament to allow the responsible national authorities, inter alia on security grounds, to operate pilotage themselves or to assign it to another service provider, i.e. to be able to restrict freedom to provide services.

It is debatable whether these special provisions restricting freedom to provide services in respect of pilotage are admissible or whether pilotage should be removed entirely from the field of application of the directive and be left as a matter for the Member States.

ECSA Comments

ECSA strongly feels that all techno-nautical services should be full part of the Directive. This is also valid for pilotage. The compromise text on pilotage as mentioned in the conciliation paper is the absolute minimum. It obliges Member States to report to the Commission no later than 3 years after the entry into force of the Directive, on measures to improve the effectiveness of pilotage services. After this reporting, the position should be reviewed. It is essential that this requirement is maintained.

Taking into account the very special treatment given at this stage to the regulation of this service, it is essential that the possibility to obtain PEC's is clearly included in the Directive under the article on Pilotage. The process to obtain PECs should not include protectionist elements as is the case now and should be based on the requirement of having English as Bridge/Pilotage language.

PECs should be a full part of Article 14 on Pilotage and should not be linked to "self-handling". The basic premise of Pilotage is that the pilot "advises" the master of the vessel on the basis of his specific knowledge of the relevant area. However the master retains total command of the vessel at all times and can question or reject the pilot's advice at any time. PECs are gained through relevant examinations. The PEC proves that the PEC holder has sufficient local knowledge and experience and also demonstrates that the PEC holder can substitute the local pilot whilst ensuring that the vessel can safely proceed into and out of the area.

(bb) Cargo handling operations

Your rapporteur proposed at first reading in the previous legislative procedure that these operations - loading and unloading, stevedoring, stowage, transhipment and other intra-terminal transport - should be removed from the field of application of the directive as there was no need for regulation in the light of the current terms of competition. Parliament and the Council, however, have consistently and unequivocally insisted that there is a need for regulation.

It could be debated once again whether terminal handling operations should remain within the field of application of the directive.

ECSA Comments

ECSA strongly feels that terminal/cargo handling should be full part of the Directive. In general cases, cargo handling is the most (or one of the most) expensive services. It is also generally considered a service where very significant cost/efficiency improvements can be made. Suggestions to exclude terminal/cargo handling would take the essence out of the Directive and are consequently unacceptable for ECSA. It would clearly be preferable not to have any Directive at all (and apply general Treaty rules) than to adopt a Directive that supposedly regulates port services without including cargo handling.

(cc) Passenger services

The same debate and issues surrounding cargo handling operations also apply to passenger services, including embarkation and disembarkation.

ECSA comments

Idem.

(c) Mandatory authorisations for port services
According to Article 7, all port service providers must in future be in possession of a government authorisation.

It is debatable whether
- firstly, such a general mandatory authorisation is necessary at all or whether, in accordance with the subsidiarity principle, its use should be left to the Member States as their responsibility (see Article 8, paragraph 1 of the Conciliation Committee's joint text),
- secondly, if the authorisation remains mandatory, how the authorisations can be issued at minimum administrative cost and - thirdly, through which simplified procedure authorisations can be issued for service providers already in operation.

ECSA comments

The article on Authorisation should be approached in a practical way. In most EU ports some kind of authorisation already exists. In this context practical procedures should be considered to check that port services' providers have the necessary qualifications and other appropriate requirements provided of course that these are relevant and that the procedure is straightforward and transparent, but unnecessary bureaucracy should be avoided by all means.

The "new" suggestions on Authorisation as mentioned in article 7 that were not mentioned in the Conciliation text are introducing undesirable and unnecessary bureaucracy which is not acceptable to ECSA and should be reviewed completely.

(d) Durations of authorisations
The various limited periods of time for authorisations are laid down in Article 12; these periods are shorter compared with those set out in Article 15 of the Conciliation Committee's joint text.

It is debatable whether the durations should be extended again in line with the Conciliation Committee's proposals in order to ensure economically viable conditions for the investment actually needed in ports.

ECSA comments

Appropriate duration periods are essential to attract the private initiative in these port services that require important investments. But, at the same time, in services that do not require important investments (e.g. mooring), there is no justification for long authorisations, moreover, shorter periods would promote more frequent competition even in small ports with a limited number of providers. Duration periods must be especially short in the case, that should be very exceptional, where only ONE provider is allowed.

The conciliation text was a good basis, however, to better reflect the above philosophy the following amendment would be appropriate.

- **No significant investments: previous 10 years to be reduced to 5 years in line with rules for other industries.**
- **Significant investments in movable assets: previously 15 years. Possibly a limit of between 10 – 15 years could be considered.**
- **Significant investments in immovable assets: previous 36 years to be maintained. "Specialised tugboats" must be changed into "tugboats built for a specific purpose that cannot be used elsewhere".**
- **Additional 10 years in case of significant investments during the last 10 years as mentioned in the previous proposal.**

(e) Tendering requirement
In the case of a limitation of the number of providers of one or more port services, the competent national authority must, in accordance with Articles 8 and 9, carry out a selection procedure from among current and new service providers.

It is debatable whether a selection procedure by the competent authority could be dispensed with if
- firstly, two or three providers of a port service were already operating in a port and/or
- secondly, in one port category, competition already exists between two or three ports for a port service (the relevant market being not the individual port but a category of port which would have to be defined exactly).

ECSA comments

Since we are dealing with the principle of free market access of services a selection/tendering procedure should be applied if there is a limitation of service providers. We would, therefore, suggest sticking to the text as mentioned in the Conciliation paper.

(f) Compensatory payments for excluded service providers
Article 10, paragraph 2, second subparagraph, imposes a requirement on the Member States, in a very vague and rudimentary manner, to ensure that excluded service providers receive compensatory payment.

It is debatable whether detailed and substantial compensation arrangements for hitherto service providers should be included (compare Article 12 of the Conciliation Committee's joint text and Amendment 24 for an Article 9aat Parliament's second reading in the previous legislative procedure[1]) , in order to ensure economically viable conditions for the investments actually ports.

ECSA comments

The Wording as agreed in the Conciliation Committee should be maintained.

(g) Self- handling

[1] Legislative resolution of the European Parliament on the common position of the Council with a view to the adoption of a directive of the European Parliament and of the Council on market access to port services - T5-0078/2003

The provisions of Article 3, paragraphs 9 and 10, and Article 13 govern self-handling.

It is debatable whether
- firstly, the definition of self-handling should again be confined to seafaring personnel (compare Article 4, paragraph 9,of the Conciliation Committee's joint text) and
- secondly, the new special provision concerning regular shipping services carried out in the context of short sea shipping and motorways of the seas, in accordance with Article 13, paragraph 2, is necessary at all or should be regulated in another way.

ECSA comments

Self-handling became for some the single most important point in the previous discussions. This is not the case for ECSA. Primo it should be realised that within the concept of liberalising port services it is not and cannot be the intention to introduce non EU and non qualified labour force to take over the jobs of European workers at "social dumping" conditions. Both the different national legislations and the proposed Directive include clear safeguards in this respect.

Secundo it should be analysed what one is talking about in real terms. As far as we can assess one is mainly aiming at the ability to provide services on the ship by the crew that are of key importance to the safety of the ship. It is evident that such activities should not be subject to authorisation.

ECSA, therefore feels that the article on self-handling should be approached from a completely different angle. As mentioned under point (b)(aa) PECs should be covered under the article on Pilotage (art.14).

ECSA feels that the introduction of a different regime for dedicated services, notably for motorways of the sea projects and for regular authorised liner services unnaceptable.

(h) Transitional provisions
Article 10, paragraph 3, of the Commission proposal contains only rudimentary provisions for transitional measures of behalf of existing service providers.

It is debatable whether detailed and substantial transitional arrangements for hitherto service providers should be included (compare Article 24 of the Conciliation Committee's joint text) in order to ensure economically viable conditions for the employers of workers and for the investments actually needed in ports.

ECSA comments

A transitional regime is necessary and ECSA feels that the text agreed in conciliation should be reintroduced.

(i) Social protection, safety, security and environmental protection, training and social requirements, and international status of ports

Article 4 - social protection - Article 5 - safety, security and environmental protection - , Article 13, paragraph 4 - training and social requirements for self-handling - and Article 20 - international status - expressly state that the new directive does not affect these areas. In this context, see Article 7, paragraph 3, point (c), second sentence, Article 7, paragraph 7, Article 8, paragraph 8 and Article 13, paragraph 3.

It is debatable whether more detailed provisions on these areas are necessary.

ECSA comments

ECSA would reiterate that the text agreed in conciliation includes clear and sufficient social/safety/security and environmental protection elements. A weakening of the Directive by introducing more restrictions would make an nonsense of the Directive and/or act as a negative factor on the necessary liberalisation of port services. Such a step is unacceptable to the shipping industry. Therefore no changes should be made.

II. Provisions on competition between ports

1. Need for a European regulatory framework
As evidenced by the strong inter-port competition within individual port categories, there is an urgent need for clear and port-related Community provisions on State financial aid for ports and port enterprises, as well as aid guidelines, in order for fair competition to duly operate on the internal market. This was Parliament's original position and was not a matter of contention in the conciliation procedure during the previous legislative procedure and has therefore been reinstated in the Commission's new proposal.

2. Examination of the proposed individual provisions
(a) Transparency provisions
It is debatable whether the provisions on the transparency of financial relations in Article 16 (compare the almost identically worded Article 5 of the Conciliation Committee's joint text) are sufficient or should be further expanded.

ECSA comments

ECSA feels that the present wording on transparency and financial relations is sufficient but has an open mind for further discussions with other stakeholders on it.

(b) Aid guidelines
It is debatable whether the provisions on aid guidelines in Article 17 (compare the almost
identically worded Article 6 of the Conciliation Committee's joint text) are sufficient or should be further expanded.

ECSA comments

Idem.

(c) Title of the Directive
Neither the title of the proposal for the a directive - Market Access to Port Services - nor
Article 1 - Objective of the Directive - indicate that this directive is also intended to regulate the financial transparency of State financial aid and inter-port competition, which is of crucial importance for European transport policy. It is legislative practice, however, clearly to indicate the regulatory content of a directive, and it is also in the interests of the citizens and enterprises affected. From this point of view, the restriction of the title of the directive to port services alone is inadequate and confusing.

It is debatable whether,
- firstly, the title of the directive should be changed to 'Directive on Ports' and
- secondly, to include in Article 1 of the directive the objective of achieving fairer competition among sea ports.

ECSA comments

ECSA has an open mind on the title of the Directive. However, the accent should be on the liberalisation of port services.

C. Final remark

This working document is also intended to inform the parties concerned - in particular for the hearing procedure - about the important issues from the rapporteur's point of view, and to invite them to take a position on these and other questions.

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