OPINION OF THE COMMISSION

pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,

on the European Parliament's amendments
to the Council's common position regarding the

proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on Market Access to Port Services

AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 250 (2) of the EC Treaty
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DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Market Access to Port Services

1. INTRODUCTION

Article 251(2), third subparagraph, point (c) of the EC Treaty provides that the Commission is to deliver an opinion on the amendments proposed by the European Parliament at second reading. The Commission sets out its opinion below on the amendments proposed by Parliament.

2. BACKGROUND


b) The European Economic and Social Committee delivered an opinion supporting the Commission’s proposal on 29 November 2001.


d) On 14 November 2001, the European Parliament, at its first reading, delivered its opinion, containing 43 amendments to the Commission proposal.


g) On 11 March 2003, the European Parliament adopted, at the second reading, a resolution containing 39 amendments to the common position.
3. **PURPOSE OF THE PROPOSAL**

The Commission’s proposal for a European Parliament and Council Directive on market access to port services concerns market-opening measures for port services. Its aim is to ensure equitable competitive conditions for all service providers, as well as to establish clear rules, and to set up an open and transparent procedure, for access to these services.

The port services concerned are cargo handling in all its variations, passenger services and technical-nautical services such as towing, mooring and pilotage. They can either be provided inside the port area or on waterway access to and from the port.

4. **OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT**


The Commission can accept 10 amendments in full, 3 in part and 4 in principle, subject to redrafting.

It has nonetheless to reject 22 amendments in full and 3 in part.

4.1. **Amendments accepted by the Commission (10 amendments in full – 3 in part).**

The Commission believes that amendments 1, 2, 5, 7, 9, 11, 14, 27, 31, 32, 28.1st part, 33.1st part and 51.2nd part, constitute welcome and important changes of substance, genuine improvements and useful clarifications in the text.

4.1.1. **Changes of substance (2 amendments – 1 in part).**

Amendment 2 (inserting new text in recital 5) and amendment 14 (creating a new Art. 4a), apply the provisions of the Commission’s Transparency Directive to the ports to which the Ports’ Directive applies and ensure their effective application.

It is recalled that the Commission had always agreed with the principle contained in these amendments, which provide a satisfactory approach.

Amendment 33, 1st part, (on Art 22.3) establishes uniform durations for the authorisations granted in the case of new ports and for other ports.

It is recalled that in the Common Position the durations for the authorisations vary.

The Commission agrees with the Parliament that there is indeed no objective reason to allow different authorisations for new ports and for existing ones.

4.1.2. **Genuine improvements (3 amendments).**

Amendment 11 (on Art. 2.5) aims to align the periodicity of the revision and notification of the list of the seasonal ports, which are excluded by the Directive, with the periodicity of the publication of other relevant lists of ports.
Amendment 5 (on recital 28) and amendment 27 (on Art. 12.2(b)) aim to specify the nature of certain movable assets and specifically enumerate them. Investment in those assets, due to their high cost, should be considered the same as investment in immovable assets, as far as the duration of authorisations is concerned.

4.1.3. Useful clarifications (4 amendments in full – 2 in part).

Amendment 1 (on recital 1) adds new text, which clarifies that, inter alia social protection rules should be cited among the issues which should be respected in the Directive’s implementation.

Amendment 7 and amendment 51 – 2nd part (on recital 32) adds new text, which clarifies that professional qualifications and environmental matters might be among the criteria to authorise self-handling. It is recalled that these issues already are possible criteria for authorising service providers and that the Common Position stipulates that criteria for self-handlers should be the same as criteria for service providers.

Amendment 9 (on Article 1.2) makes environmental protection and public service obligations in a port an integral part of the conditions under which port services may be provided, while respecting the Common Position’s flexibility on the issue.

Amendment 28 – 1st part (on Article 13.2) adds new text, which clarifies that national rules on training requirements and occupational qualifications should not be affected by the Directive’s application.

Amendment 31 (on Article 21.2) and amendment 32 on (Article 21.3) clarify that the rules on transitional periods apply to private ports as well. It is recalled that the Common Position already did not differentiate on the basis of port ownership, in view of Article 295 of the Treaty.

4.2. Amendments accepted in principle, subject to redrafting (4 amendments).

Amendment 12 (on Article 2.8) deletes the clause of the Common Position, which allows the exemption of certain services to which art. 296 of the Treaty applies.

Since such services are already excluded from the scope of the Directive by virtue of Article 2.2, the clause in question appears indeed to be superfluous, unless the full intentions pursued by Council are not adequately reflected in the text. In this latter case a re-drafting may prove appropriate.

Amendment 17 (on Article 6.2.d) clarifies that when environmental requirements are criteria for the granting of authorisations, this means all levels, namely local, national and international. In order to maintain presentational conformity the following redrafting is suggested: “local, national and international environmental requirements”.

Amendment 26 (on Art. 11) and amendment 4 (on recital 26) delete the clause of the Common Position which foresees that if a port is not open to general commercial traffic, its operator can be allowed to provide technical and nautical services therein outside the rules of the Directive.
Whereas deletion of this clause would appear at first glance to be justified because such ports do in any case not fall within the scope of the Directive (see Article 2.2), the full intentions pursued by Council may not be adequately reflected in the text. In this latter case a re-drafting may prove appropriate.

4.3. Amendments rejected by the Commission (22 amendments in full – 3 in part).

The Commission believes that amendments 6, 8, 10, 13, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 29, 30, 34, 49, 53, 56, 57, 62, 28.2nd part, 33.2nd part and 51.1st part are contrary to the basic principles and philosophy of its proposal.

4.3.1. Limitations of self-handling rules to land based personnel (1 amendment).

Amendment 13 (on Article 4.9) limits the application of this Directive to self-handling by seafaring personnel. Whereas such a limitation would, of course, not prevent the Treaty rules to continue to apply to self-handling by land based personnel, the limitation would prevent self-handling by land-based personnel to be governed by specific and clear rules. It would furthermore not contribute towards allowing commercial operators to make better use of existing resources although they would have to respect existing rules in a number of areas, including the social area.

4.3.2. Restrictions on self-handling (4 amendments – 1 in part).

Amendment 6 (on recital 30), amendment 51 - 1st part (on recital 32), amendment 56 (on Article 13.2a) and amendment 57 (on Article 13.3) turn the objective of the Directive, namely to allow self-handling whenever possible, into the exact opposite, namely to attach as many obstacles to it as possible.

Amendment 29 (on Art. 13.2a), limits the benefit of self-handling to EU vessels, restricts the scope of self-handling. Additionally its compatibility with international obligations of the Member States and the Community, need further evaluation.

4.3.3. Pilotage (3 amendments).

Amendment 8 (on recital 33), amendment 30 (on Article 14) and amendment 34 (on the Annex) take pilotage outside the scope of the Directive. The Commission believes that as such pilotage is a commercial service, thereby access to its provision should follow the rules of this Directive. This is why it supported the consensus found in the Common Position, namely to submit authorisations to particularly strict criteria related with public service obligations and maritime safety. This solution allows for port-specific solutions to be adopted.

Moreover, self-handling for pilotage, through the granting of Pilotage Exemption Certificates (PECs), should be allowed, under certain conditions. The amendments do not foresee this option anymore, which is unacceptable.

4.3.4. Restrictions and limitations on port service providers (11 amendments in full – 2 in part).

Amendment 19 (on Article 6.2.2), amendment 20 (on Article 6.3), amendment 22 (on Article 6.6) and amendment 28 – 2nd part (on Article 13.2) attempt to change the objective of the Directive from creating market access rules to creating social legislation. The Directive is based on a full application of existing social rules. The new rules would lead to possible
restrictions and limitations on the Treaty’s freedom to provide services and the freedom of establishment, which are unwanted.

Amendment 21 (on Article 6.5) seriously restricts the right of the service provider to use personnel of his own choice.

Amendment 49 (on recital 16), amendment 18 (on Article 6.2.e), amendment 23 (on Article 7), amendment 24 (on Article 9a), amendment 25 (on Article 11), amendment 33 - 2nd part (on Article 22.3) and amendments 53 and 62 (on Article 6.1) attempt in various ways to narrow and restrict the scope of the freedom to provide services and restrict access to their provision.

4.3.5. Issues dealing with competition between ports (3 amendments).

Amendment 10 (on a new Article 1.3) indicates that the aim of the Directive also is to create fair and transparent competition between Community ports. The Commission does not disagree with this principle, but the amendment promises more than the Directive with its current legal base can hold.

Amendment 15 (on a new Article 4b) addresses the issue of the transparency of State Aid in the context of competition between ports. The Commission appreciates this concern. Its recent “Vademecum on Community rules on State aid and the financing of the construction of seaport infrastructures” proves its willingness to tackle it. It is ready to further pursue its action in this direction.

However, this must be done within the framework of the rules of the Treaty and the Commission’s right of initiative must not be affected. Amendment 15 would affect this right.

Amendment 16 (on a new Article 4c) requires the Commission to have a study carried out on direct and indirect public financing, State support and cost accounting in Community seaports and port systems. The Commission wishes to recall that such a study has already been carried out for the 2001 “Ports Package”. Co-operation by ports was limited. There is no reason to believe that in the future this will change.

5. CONCLUSION

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as set out above.