

5.2.17 urgently adopt measures ensuring sustainable development in the outermost regions, particularly in the fields of protection of biodiversity, the Natura 2000 network and waste management;

5.2.18 be imaginative when establishing specific mechanisms and procedures for the outermost regions, to ensure that the benefits of the single market do not pass them by, e.g. encouraging the use of renewable energies and access to broadband networks;

5.2.19 ensure that the outermost regions continue to enjoy special tax arrangements, as these are essential for their economic development;

5.2.20 envisage the active participation of the outermost regions in the negotiation of the EU-ACP economic partnership agreements (EPAs), facilitating the creation of a permanent channel for ongoing dialogue between regional — and/or national — authorities and regional bodies with which the EU is negotiating the EPAs, in order to make the agreements more effective, compatible and consistent.

Brussels, 13 July 2005.

The President  
of the European Economic and Social Committee  
Anne-Marie SIGMUND

### Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on market access to port services

(COM(2004) 654 final — 2004/0240 (COD))

(2005/C 294/06)

On 2 December 2004 the Council decided to consult the European Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 May 2005. The rapporteur was Mr Retureau.

At its 419th plenary session of 13 and 14 July 2005 (meeting of 13 July), the European Economic and Social Committee adopted the following opinion by 91 votes to 49 with 17 abstentions.

#### 1. Introduction

1.1 Following the Green Paper on seaports and maritime infrastructure of 1997, and whilst the White Paper on a common transport policy was still in its drafting phase, the Commission, in its first proposal for a Directive on market access to port services in 2001, reiterated that the key elements of the Ports' package were as follows:

— integration of maritime transport in the TEN-T category;

— regulation of access to port services;

— public financing for seaports and port infrastructure.

1.2 The objectives of the Ports' package were extensively developed in the first proposal for a Directive on the second key issue of market access <sup>(1)</sup>, which was finally rejected after a third reading in Parliament.

1.3 The Commission, exercising its prerogative as the only institution with the right of initiative, has now returned to the issue with a new proposal for a Directive on market access to port services <sup>(2)</sup>. In so doing, the Commission asserted its conviction that, under the Treaty, it has the right and duty to legislate in this matter.

1.4 It affirms at the outset that the philosophy, general principles and objectives outlined in its 2001 Communication remain unchanged. However, specific proposed amendments were taken into account because they enhanced the original proposal.

<sup>(1)</sup> COM(2001) 35 final.

<sup>(2)</sup> COM(2004) 654 final, published on 13 October 2004

1.5 It is appropriate to recall some of the main causes of contention that had obstructed the first proposal before examining the nature and scope of the amendments introduced by the new proposal for a Directive.

- The very need for such a Directive was challenged.
- As far back as 1997, the Green Paper had been criticised by the Committee <sup>(3)</sup> because the proposal failed to take real account of the social dimension of the port sector. The 2001 Proposal for a Directive was also criticised on the same grounds.
- Security and environmental protection requirements, as well as the concept of public service (Article 86 TEC) had not been adequately addressed.
- Pilotage should be excluded from its scope (the Parliament rapporteur had also recommended excluding handling. However, this point did not obtain a majority in the EP committee).
- Self-handling, in its principle and scope, and handling, because for technical reasons it requires a minimum of two providers per port, gave rise to considerable criticism, and even caused a European dockers' strike.
- The durations of authorisations gave rise to lengthy debate, as did compensation for earlier providers by new ones. The aim was to avoid a downturn in investment even towards the end of authorisation, and to safeguard the financial interests of service providers.
- Opening the sector to the greatest possible number of service providers gave rise to criticism on the grounds of financial efficiency and return of investment, in keeping with the real size of the market and other considerations, including compliance with port development strategies and specialisations.

## 2. The Commission's new proposal for a Directive

2.1 The proposal under consideration includes a well-argued explanatory memorandum and a long list of recitals. The Commission confirms that it has retained the initial 2001 proposal, whilst taking into consideration its own 2002 amended proposal, the common position of the Council and the texts resulting from conciliation proceedings after the European Parliament's second Reading.

<sup>(3)</sup> EESC opinion on the Green Paper from the Commission on Seaports and Maritime Infrastructure, OJ C 407 of 28.12.1998 p. 92.

2.2 The reasons for a European initiative are essentially the following:

- the Treaty's four fundamental freedoms;
- the Council's demands;
- growing needs in the transport sector (2001 White Paper) and the need to shift a substantial proportion of this growth to the maritime sector;
- the need to complete the internal market and create conditions for transparent competition within and between ports, based on harmonised rules;
- generating employment and respecting workers' social rights.

2.3 Nevertheless, the original philosophy and principles as well as a considerable number of points have not changed since the original 2001 proposal.

2.4 More specifically, the changes do not affect:

- the scope of application;
- criteria for granting authorisations;
- pilotage, which is considered as a commercial service;
- transparent accounting for the managing body of the port (this issue, unlike the others, was not challenged and is already covered by a directive on financial transparency and State aid guidelines).

2.5 The main new elements included in the new Commission proposal are:

- self-handling for cargo and passenger operations may be provided using the land-based personnel of the self-handler, and, under certain conditions, the seafaring crew;
- authorisations for service providers and self-handling become mandatory. Current providers must obtain new authorisation within a 'reasonable timeframe' to achieve compliance with the rules of the Directive, while taking account of the legitimate expectations of the current services providers up to a maximum of 12 months after the latest possible date for transposition of the Directive;
- the general principle is to create access to the broadly defined port services, for the greatest possible number of service providers, with limitation of numbers being the exception (Article 9);
- the duration of authorisations is finally adjusted according to the level of investments to be made by the service provider and the rules governing the depreciation of immovable or movable property;
- the matter of competition between ports is covered by the Commission's Directive on financial transparency (Article 16) and the Directive on State aid guidelines (Article 17).

### 3. Preliminary comments

3.1 A number of seaports are owned and/or managed by the public authorities (municipalities and other local or regional authorities, public bodies etc.). Their managing bodies are therefore partly or entirely subject to public accountancy rules, and carry out cost accounting. Seaports' practices and accounts should be submitted to their national competition authorities and, if need be, to their regional or national audit offices. The reports of these supervisory bodies should be sent to the Commission's DG Competition.

3.2 In recent years, most new Member States, as well as the old Member States, have adopted seaport privatisation policies. Many ports are now public limited liability companies.

3.3 Europe's most important ports open onto the North Sea and the English Channel. The cargo tonnage and number of containers handled varies widely according to the geographical location of ports in various European seas. The scope of the draft directive includes ports handling cargo tonnages ranging from 1.5 million to tens or hundreds of millions, and in some ports (Rotterdam or Antwerp, for instance) the number of containers handled runs into several million. The EESC believes that applying uniform rules to ports that vary considerably in terms of size, type of activity, ownership and management, may fail to match the realities and effective needs of the affected ports. Competition amongst ports is long-standing. Account should be taken of subsidiarity and proportionality considerations.

3.4 Many ports provide their own infrastructure and basic services for maritime traffic. They do not feel that their responsibilities should be restricted to the administration and maintenance of maritime, land and port space, and the quays. The provision of certain services may reflect general interest exigencies, or the port authority's efforts to achieve overall financial balance, or even a profit to be distributed amongst the shareholders of privately owned ports. Preventing 'cross subsidies' would weaken the capacity for port investment.

3.5 The EESC regrets that important developments since the Green Paper and the first Ports' package have not been taken into consideration and would urge the Commission to review its proposal in the light of an objective impact assessment that takes account of prevailing realities in European ports and their incontrovertible competitive edge on the international market. The EESC notes that, at the EESC hearing held on 31 January 2005, the Commission stated that such a study would be published towards the end of June 2005. The EESC believes that, in the absence of a relevant Social Dialogue Committee, the social partners should also be consulted. The proposal should undergo considerable revision in order to ensure compliance with standard procedures for best practice in legis-

lation (participation, consultation, impact assessments). The second proposal follows swiftly on the first, without sufficient preparatory work.

3.6 A port is a complex logistical platform that is connected to a hinterland that may vary considerably in geographical and economic terms on a regional, national or international scale, and inland waterway, rail, road, pipeline and coastal shipping networks. It must develop strategies that are consistent with the development of the geographical area whose economy it fuels, its employment pool, and emerging or evolving economic needs. The EESC believes in favouring intermodality that enhances maritime transport, cabotage in particular. As currently worded, the arrangements outlined in the proposal for a Directive do not explicitly address this imperative.

3.7 The role of commercial ports, be they specialised or multipurpose, public or private, is not restricted to providing the essential services (means of access, docks, quays and land space) of a multimodal platform. The role they play in spatial organisation and division and providing for infrastructure development must also be rewarded economically. Finally, they must compensate for the possible shortcomings of private operators in certain areas to ensure that the platform remains functional.

3.8 Their development projects and specialisations must be respected. Quite apart from restricted space and material constraints on access, it should be made possible to limit the number of service providers to ensure financial efficiency and feasibility for service providers, operational safety, port management, environmental and social guarantees, and job security. This essentially depends upon subsidiarity. Furthermore, exacerbated competition could lead to a dispersal of resources and skills that would be detrimental to the users' interests.

3.9 The Committee acknowledges that the Commission's new proposal grants port authorities greater flexibility in establishing maximum numbers for operators per category of service provided, depending on the port's character and local conditions.

3.10 Concessions and licenses granted by the competent authority to service providers or commercial agreements between the competent authority and service providers must be concluded for a period which is in relation to the type and scale of the investments made by service providers, allowing a normal period for amortisation and return on capital investment (for instance, 10 years, in case of no significant investments; 15 years, in case of significant investments in movable assets and training; and 45 years in case of significant investments in immovable assets and comparable movable assets).

3.11 The rights and operating conditions of port management bodies which have concluded lease agreements on the port area and have received authorisation to provide port services cannot be changed after the Directive enters into force, as this would amount to the port authorities cancelling the contract, which could entail the State's liability.

3.12 The Committee notes that changes relative to handling and pilotage do not fulfil the expectations already expressed by the Committee, several States, and Parliament (\*).

3.13 As the Commission points out, the number of jobs is not linked to the number of service providers but to the port's real traffic and/or diversification of services. Increasing the number of service providers will not create more employment. Only an increase in traffic and the introduction of non-traditional services will generate employment.

3.14 The provisions concerning handling and self-handling, relevant to motorways of the sea and cabotage in the internal market, could pose a fundamental threat to collective agreements in most countries, since they might sometimes be considered as contrary to Community competition law within the framework of the proposal for a Directive, whilst perfectly tenable under national and international social and labour legislation. The Court of Justice recognises that respecting collective agreements could restrict the application of competition law. At international level, many EU Member States have ratified the ILO's maritime conventions on port handling services, working conditions and crew safety. The EESC notes that the Commission's provisions do not take into consideration these provisions negotiated in a tripartite framework.

3.15 The Committee values the strong competition in the services market and the quality, safety and continuity of port handling services. If, however, port handling services were allowed to engage in self-handling, this would create unequal conditions of competition between the existing port handling operators and self-handling operators. The port handling operators have established themselves in ports through privatisation or competition and have invested in superstructure and infrastructure. Self-handling operators, on the other hand, can enter the port services market without any competition or investment commitments and, in contrast to the handlers, can use infrastructure created by others free of charge and have no time constraints on their operations. There is a heightened risk of accidents in ports and so higher safety-at-work levels need to be respected and monitored. Allowing self-handling is likely

to lead to more accidents. Although the proposal for a Directive is claimed to have a social dimension, its provisions would in fact appear to constitute a rejection of the expectations of dockers, who are worried about exchanging recognised and qualified jobs with negotiated salaries for job insecurity and individual employment contracts, entailing loss of social or pay guarantees in a context of forced competition amongst handlers. Self-handling would result in additional tasks for seafaring crews and greater exposure to accident risk, while crews are often reduced to a minimum. Furthermore, it would result in additional responsibilities and obligations for captains.

3.16 The Committee considers that pilotage cannot simply be classified as a commercial service. It requires complex technical skills, and local knowledge that, in many cases, is continually changing, which are implemented in order to ensure the safety of transport, the surrounding population, and the environment, depending on the goods transported. It is therefore a service of general interest that is not essentially of a commercial nature, even though it is sometimes entrusted to private companies under the supervision of port authorities. As such, it should be excluded from the Directive's scope. This does not prevent ports from continuing to grant pilotage authorisation to captains who have enough experience and local knowledge to pilot their vessels to the quay without assistance. However, it should be borne in mind that many vessels carry substances that are dangerous to other vessels, equipment, port workers and the local population.

3.17 The Committee notes that ports fall within the relevant State's sphere of sovereign powers, which the Directive must not encroach upon. Certain functions (supporting the fight against terrorism, organised crime and irregular migration, which often entails costs and investments that are borne by the port) may be delegated to the port authority.

3.18 The new provisions concerning authorisation are self-evident, sensible measures even though local conditions and specificities must be taken into account when establishing the specifications. The need to apply principles of transparency and separate accounts to seaports cannot be called into question. The Committee acknowledges the need to respect them in compliance with the Transparency Directive.

3.19 The requirements to be met by port-service providers to get their licences extended after eight, 12 or 30 years should be spelt out in the Directive.

(\*) EESC opinion on the Proposal for a Directive of the European Parliament and of the Council on market access to port services, OJ C 48 of 21.2.2002 p. 122.

3.20 Finally, it would appear that the key objective of this proposal is to lower the cost of port services. However, the Committee believes that compliance with safety and environmental standards, as well as social rights, are equally important criteria for ensuring efficient port systems, in the interest of the economics of transport, and safe and reliable services.

3.21 The great diversity of national or local contexts, rules and practices, and of the obligations of managing bodies and public authorities, means that any rules to be implemented must take full account of each port's specific characteristics. Every port has adapted itself over many years and operates in conditions favourable to it in its national context. Any attempt to unify operating conditions could have adverse effects on port activities and their efficiency.

3.22 The Committee believes that applying subsidiarity to the proposed legislation and ensuring coherence of port development policies at a local level is preferable to the uniform provisions outlined in this proposal for a Directive. There are extensive differences in size and type of ports. Excessive competition amongst service providers at a specific port could result in over-investment and waste, not to mention a deterioration of social conditions.

3.23 In line with the principles of subsidiarity and proportionality, national antitrust regulatory bodies and auditing institutions could have the authority to intervene if the port authorities concentrated port services under their own control in cases where no economic benefit or public service requirement can justify such a practice; or they failed to comply with the principles of transparency or with accountancy rules. Thus Community intervention on competition or State aid could be more effectively concentrated on exceptional cases: for instance, if the national competition authorities and the relevant regional or national audit offices did not effectively fulfil their role in enforcing existing Community legislation.

3.24 The matter of shifting part of the cost of certain access and operational improvements (dredging, or construction of channels and docks) to local or national taxpayers is raised by the existing Commission case-law on State aid.

3.25 Local communities should only be taxed in the general interest and not to lower the costs of (national or international) seaport users alone, and primarily for major ones. Services of general interest should be governed by democracy and not by the market.

#### 4. Conclusions

4.1 A far less detailed framework directive providing sufficient scope for subsidiarity would appear preferable to the present draft directive. It should be sufficient to refer to the applicability of legislation relevant to transparency or public procurement without entering into the details of their application to port services. A Community framework should not encroach upon the port management's prerogative to safeguard the general interest entrusted to its authority.

4.1.1 Such a framework directive should not in any way affect the rights and obligations of Member States vis-à-vis their legislation on social and labour issues, public health, the environment, security, public order, or services of general interest. It should not affect collective agreements that comply with applicable national law. It should also take account of the Member States' international obligations, for instance, the ILO Maritime Conventions.

4.1.2 The EESC cannot but regret the fact that the draft directive lacks an impact assessment, which runs counter to the commitment to legislate better undertaken by the Commission since its White Paper on governance. All draft legislation subject to the co-decision procedure should include an impact assessment and information on consultations held with social partners.

Brussels, 13 July 2005

The President  
of the European Economic and Social Committee  
Anne-Marie SIGMUND

## APPENDIX

**to the opinion of the European Economic and Social Committee**

The following amendments, which received more than a quarter of the votes cast, were rejected in the debate:

**Point 1.5**

Amend as follows:

'It is appropriate to recall some of the main causes of contention for the European Economic and Social Committee ~~that had obstructed~~ in the first proposal before examining the nature and scope of the amendments introduced by the new proposal for a Directive.'

**Reason**

In the interests of clarity it should be made quite clear who felt there were causes of contention in the first proposal. This is not clear from the subsequent paragraphs, which mention the Council and the European Parliament.

**Outcome of the vote**

For 42

Against 63

Abstentions 3

**Point 3.1**

Amend as follows:

*'Without prejudice to the European Commission's own powers, seaports' practices and accounts should be submitted ...'*

**Reason**

The proposed procedure may not place any restriction on the existing powers of the Commission.

**Outcome of the vote**

For 54

Against 71

Abstentions 5

**Point 3.1**

Move the whole paragraph and place it between the present points 3.17 and 3.18, and re-number the other points in section 3 accordingly.

**Reason**

The point is too technical for an opening comment. It would be better to place it with the paragraphs mentioned, which cover financial matters.

**Outcome of the vote**

For 50

Against 74

Abstentions 10

**Point 3.4**

Delete the final sentence, as follows:

*'Many ports provide their own infrastructure and basic services for maritime traffic. They do not feel that their responsibilities should be restricted to the administration and maintenance of maritime, land and port space, and the quays. The provision of certain services may reflect general interest exigencies, or the port authority's efforts to achieve overall financial balance, or even a profit to be distributed amongst the shareholders of privately owned ports. Preventing "cross subsidies" would weaken the capacity for port investment.'*

**Reason**

Cross subsidies are not compatible with fair competition between ports. These subsidies obscure cost prices, which have to be charged at the very least; there is consequently no transparency.

**Outcome of the vote**

For 61

Against 80

Abstentions 6

**Point 3.6**

Delete the last two sentences, as follows:

*'A port is a complex logistical platform that is connected to a hinterland that may vary considerably in geographical and economic terms on a regional, national or international scale, and to land transport networks. It must develop strategies that are consistent with the development of the geographical area whose economy it fuels, its employment pool, and emerging or evolving economic needs. The EESC believes in favouring intermodality that enhances maritime transport, cabotage in particular. As currently worded, the arrangements outlined in the proposal for a Directive do not explicitly address this imperative.'*

**Reason**

Most hinterland is not accessible by sea. It is therefore not advisable to give priority to this sector, not to mention according it absolute priority. A similar plea could be made — with greater justification — on behalf of inland waterway transport. Furthermore, coastal navigation is promoted in, inter alia, the motorways of the sea programme.

**Outcome of the vote**

For 59

Against 83

Abstentions 9

**Point 3.17**

Delete this point.

*~~'The Committee notes that ports fall within the relevant State's sphere of sovereign powers, which the Directive must not encroach upon. Certain functions (supporting the fight against terrorism, organised crime and irregular migration, which often entails costs and investments that are borne by the port) may be delegated to the port authority.'~~*

**Reason**

In its proposal, the Commission already states this in so many words. In point 3.17 it is, however, also suggested that, in the event of the delegation of certain functions, without the payment of compensation by the State, the port is not obliged to pass on the costs involved to customers, which may give rise to unfair competition with other ports.

**Outcome of the vote**

For 55

Against 84

Abstentions 13

**Delete points 3.23 and 3.24**

- 3.23 ~~The matter of shifting part of the cost of certain access and operational improvements (dredging, or construction of channels and docks) to local or national taxpayers is raised by the existing Commission case law on State aid.~~
- 3.24 ~~Local communities should only be taxed in the general interest and not to lower the costs of (national or international) seaport users alone, and primarily for major ones. Services of general interest should be governed by democracy and not by the market.~~

**Reason**

Costs incurred by port authorities for the benefit of ports must be charged to users or to the port's own stakeholders. The current text suggests that the general interest can be used as a reason not to do so.

**Outcome of the vote**

For 55

Against 82

Abstentions 17

**Add new point (3.25)**

'To be able to establish whether future port investment is compatible with European law at the beginning of the planning stage, the Committee calls on the European Commission to supplement its proposal as soon as possible with proposals for Community guidelines on public funding for ports and the type of funding that is compatible with the internal market, as discussed at the hearing of 31 January 2005.'

**Reason**

Self-explanatory.

**Outcome of the vote**

For 59

Against 85

Abstentions 14

**Amend point 4.1 to read as follows:**

'Although the Committee supports the liberalisation of transport-related port services, like other transport services, it believes that a far less detailed framework directive providing sufficient scope for subsidiarity would ~~appear~~ be preferable to the present draft directive. It should be sufficient to refer to the applicability of legislation relevant to transparency or public procurement without entering into the details of their application to port services. A Community framework should not encroach upon the port management's prerogative to safeguard the general interest entrusted to its authority, but this must not affect fair competition and transparency.'

**Reason**

There was no disagreement in the study group on this point, and the amendment makes clear the context in which our comments and conclusions should be read. The general interest must not be an excuse for failing to apply these two basic principles of the EU.

**Outcome of the vote**

For 61

Against 86

Abstentions 12

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