Port services: market access and financing of maritime ports

2001/0047(COD) - 19/02/2002 - Modified legislative proposal

The European Parliament has formulated a number of amendments on the basis of which the Commission is modifying its original proposal. The Commission is including a considerable number of amendments aimed at improving and clarifying the original text. The modifications concern the following elements of the proposal: - The scope of the Directive should be extended so as to include waterway access to the port which extension will ensure full benefit of the proposed measures. - The definition of "port system" which is modified so as to cover two or more ports which are in the same vicinity and managed by a single entity or port authority and which, therefore, for all practical purposes may be considered as one port. - The listing of criteria for the granting of authorisations should be more precise. These criteria, although still limited so as to avoid abuse, may cover references, where applicable, to employment and social matters as well as environmental requirements. This modification gives the competent authority the opportunity to ensure that future controversy on these matters can be avoided; - The right of a service provider to employ personnel of his own choice may be made subject to the same criteria as those generally fixed by the competent authority for service providers so as to ensure that such criteria are applied without exception. Such clarification will help to avoid misunderstandings. - The number of service providers may be limited not only for reasons of constraints relating to available space or capacity but also in accordance with environmental regulations or maritime traffic-related safety. In the latter case the amendment does not restrict the exception to technical-nautical services any more. This amendment reflects general policies on safety and environmental matters. - A selected service provider may have to pay compensation for immovable assets it takes over from the outgoing service provider. Although such obligation is already the result of existing general legal principles, an explicit mention is considered appropriate. - Unequivocal rules on self-handling ensure that a self-handler may use its own personnel and equipment, but the same criteria apply as to other service providers under the condition, of course, that such criteria are relevant. However, the Commission cannot accept a number of proposed changes to the Directive. More specifically: - The amendments concerning transparency of financial relations between Member States and ports and on the interpretation of the Treaty's state aid rules deal essentially with the aspect of competition between ports whereas the proposed Directive focuses on ensuring freedom to provide port services and the right of establishment for providers of port services within ports. However, the Commission accepts the need for further work on the issue of competition between ports but points out that such work will have to be carried out within the institutional framework and according to the rules of the Treaty. With regard to transparency, the Commission will prepare an amendment to the Transparency Directive so as to cover a considerably higher number of ports than are currently covered. As regards the issue of state aids the Commission is studying the possibility offurther clarifying the application of the Treaty rules in a more refined way than the chapter on state aid to ports. - The amendment deleting the requirement of at least two service providers (unless specific circumstances prevail) and to allow "the highest number of service providers possible under the circumstances" is unsatisfactory. - The amendments excluding pilotage from the scope of the Directive are not acceptable. - The Commission does not believe that extending the scope of the Directive to services other than those of a commercial value is warranted. - A limitation of the right to self-handle to vessels flying the flag of a Member State cannot be accepted because it would not be in line with international rules and obligations. - An extension from 5 to 8 years of the period of authorisation for service providers which have not made any significant investments seems inappropriate, in particular where the same period for those service providers which have made significant investments in movable assets remains 10 years.