Basic information

2001/0047(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure rejected
Port services: market access and financing of maritime ports **Subject** 3.20.09 Ports policy	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
DELE EP Delegation to Conciliation Committee	JARZEMBOWSKI Georg (PPE-DE)	25/03/2003

Former committee responsible	Former rapporteur	Appointed
RETT Regional Policy, Transport and Tourism	JARZEMBOWSKI Georg (PPE-DE)	20/03/2001
RETT Regional Policy, Transport and Tourism	JARZEMBOWSKI Georg (PPE-DE)	20/03/2001

Former committee for opinion	Former rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs	The committee decided not to give an opinion.	
JURI Legal Affairs and Internal Market	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	2460	2002-11-05
Transport, Telecommunications and Energy	2420	2002-03-25
Transport, Telecommunications and Energy	2438	2002-06-17
Agriculture and Fisheries	2524	2003-07-22

European Commission

Commission DG	Commissioner
Energy and Transport	

Key events

Date	Event	Reference	Summary
13/02/2001	Legislative proposal published	COM(2001)0035	Summary
28/02/2001	Committee referral announced in Parliament, 1st reading		
10/10/2001	Vote in committee, 1st reading		Summary
10/10/2001	Committee report tabled for plenary, 1st reading	A5-0354/2001	
13/11/2001	Debate in Parliament		
14/11/2001	Decision by Parliament, 1st reading	T5-0598/2001	Summary
19/02/2002	Modified legislative proposal published	COM(2002)0101	Summary
25/03/2002	Debate in Council		
05/11/2002	Council position published	11146/1/2002	Summary
20/11/2002	Committee referral announced in Parliament, 2nd reading		
18/02/2003	Vote in committee, 2nd reading		Summary
18/02/2003	Committee recommendation tabled for plenary, 2nd reading	A5-0050/2003	
10/03/2003	Debate in Parliament		
11/03/2003	Decision by Parliament, 2nd reading	T5-0078/2003	Summary
22/07/2003	Parliament's amendments rejected by Council		
09/09/2003	Formal meeting of Conciliation Committee		
29/09/2003	Final decision by Conciliation Committee		Summary
29/09/2003	Report tabled for plenary, 3rd reading	A5-0364/2003	
22/10/2003	Joint text approved by Conciliation Committee co-chairs	3670/2003	
18/11/2003	Debate in Parliament		
20/11/2003	Decision by Parliament, 3rd reading	T5-0510/2003	Summary
06/08/2004	Additional information		Summary

Technical information

Procedure reference	2001/0047(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (after Amsterdam) EC 080-p2
Stage reached in procedure	Procedure rejected
Committee dossier	CODE/5/19384

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0354/2001	10/10/2001	
Text adopted by Parliament, 1st reading/single reading		T5-0598/2001 OJ C 140 13.06.2002, p. 0166-0294 E	14/11/2001	Summary
Committee recommendation tabled for plenary, 2nd reading		A5-0050/2003	18/02/2003	
Text adopted by Parliament, 2nd reading		T5-0078/2003 OJ C 061 10.03.2004, p. 0026-0111 E	11/03/2003	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		A5-0364/2003	29/09/2003	
Text adopted by Parliament, 3rd reading		T5-0510/2003 OJ C 087 07.04.2004, p. 0407-0471 E	20/11/2003	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	11146/1/2002 OJ C 299 03.12.2002, p. 0001 E	05/11/2002	Summary
Council statement on its position	12895/2002	05/11/2002	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2001)0035 OJ C 154 29.05.2001, p. 0290 E	13/02/2001	Summary
Document attached to the procedure	SEC(2001)0234	14/02/2001	Summary
Modified legislative proposal	COM(2002)0101 OJ C 181 30.07.2002, p. 0160 E	19/02/2002	Summary
Commission communication on Council's position	SEC(2002)1225	14/11/2002	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2003)0208	15/04/2003	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0161/2001 OJ C 019 22.01.2002, p. 0003	20/09/2001	

EESC	Economic and Social Committee: opinion, report	CES1495/2001 OJ C 048 21.02.2002, p. 0122	29/11/2001	
CSL/EP	Joint text approved by Conciliation Committee co-chairs	3670/2003	22/10/2003	

Additional information		
Source	Document	Date
European Commission	EUR-Lex	

Port services: market access and financing of maritime ports

2001/0047(COD) - 15/04/2003 - Commission opinion on Parliament's position at 2nd reading

The European Parliament adopted at second reading 39 amendments to the Common Position of the Council. 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. The amendments accepted by the Commission concern : - applying the provisions of the Commission's Transparency Directive to the ports to which the Ports' Directive applies and ensure their effective application; - establishing 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; - aligning 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; - specifying the nature of certain movable assets and specifically enumerate them; - adding 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; - adding new text, which clarifies that professional qualifications and environmental matters might be among the criteria to authorise self-handling; - making 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; - adding new text, which clarifies that national rules on training requirements and occupational qualifications should not be affected by the Directive's application; - clarifying 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. Concerning the amendments accepted in principle, these amendments: - delete the clause of the Common Position, which allows the exemption of certain services to which art. 296 of the Treaty applies;. - clarify that when environmental requirements are criteria for the granting of authorisations, this means all levels, namely local, national and international; - 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. The amendments rejected by the Commission refer to : - limiting the application of this Directive to self-handling by seafaring personnel; - turning 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; - limiting the benefit of self-handling to EU vessels, restrictsthe scope of self-handling; - taking pilotage outside the scope of the Directive.

Port services: market access and financing of maritime ports

2001/0047(COD) - 20/11/2003 - Text adopted by Parliament, 3rd reading

The European Parliament rejected, at third reading, the joint text that had been approved by the Conciliation Committee. This was only the third time in ten years that Parliament had overturned an agreement reached in conciliation.

229 MEPs (chiefly members of the PSE, Greens/EFA and GUE/NGL groups) voted against the joint text, with 209 MEPs in favour and 16 abstaining. Most Members of the EPP-ED and ELDR groups were in favour of the agreement.

The most contested element of the agreement was the definition of "self-handling". A majority of MEPs argued that the directive would allow workers from boats in harbour to carry out unrestricted loading in European ports and that this would significantly degrade safety conditions in EU docks. Under current regulations only professional dockers employed by port authorities were allowed to do this type of work. The opponents of the agreement said that professional dockers were more qualified and could ensure higher safety levels. They felt that, under the proposed directive, competent workers risked losing their jobs to cheaper and less qualified people and that the conciliation result had not brought about a satisfactory solution to this problem.

Under the rules governing codecision, Parliament's failure to approve the joint text meant that the legislative procedure would automatically come to an end.

Port services: market access and financing of maritime ports

2001/0047(COD) - 11/03/2003 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a resolution based on the report by Georg JARZEMBOWSKI (EPP-ED, Germany) making several amendments to the Council's common position. (Please refer to the document dated 18/02/03.) On the question of transparency of financial relations, Parliament inserted a clause stating that every port and port system must submit details required by Directive 80/723/EEC within the time limits laid down. The same applies to financial relations between Member States and providers of port services, regardless of whether the other provisions of that Directive apply to them. The Commission and Member States will then use the data submitted to take the measures required under Community law to establish fair conditions of competition in and between Community ports. Within three years of entry into force of the directive, the Commission must submit a report on the transparency of financial relations in port and port systems and measures taken in relation to them by Member States and the Commission. On the question of transparency of State aids, the Commission must submit proposals necessary to bring about transparency in state funding of Community ports. The Commission must draw up common guidelines for aid given to ports by Member States or out of public funds for investment in port infrastructure, and will indicate which aids to ports are compatible with the common market. Parliament also required a study by an independent research consortium into direct and indirect public financing, State aids and cost accounting in Community ports and port systems. The study will focus on the costs of port infrastructure and superstructure, port services, port undertakings and port-related business. With regard to self-handlers, Parliament felt that they should be treated in the same way as other port services providers, meeting the same social standards and holding the same professional qualifications as other providers of the same or comparable port service.

Port services: market access and financing of maritime ports

2001/0047(COD) - 14/02/2001 - Document attached to the procedure

The Commission has drawn up a working document (linked to the "port package") on the financing of and charges at European sea ports. In the follow-up to the Green Paper relating to ports and maritime infrastructures (see COS/1997/2299), the Commission suggested collecting information on this issue, with the help of the Member States. The initiative took the form of an inventory of the financing of and charges at Community ports. The results of this survey show that: - public financing plays and important role in the Community sea ports sector; - public investment in the ports has a considerable impact on competitivity of Community ports; - the transparency of the flow of public financing in the Community sea ports is essential to ensure - in the context of the common transport policy - equality between the actors within the ports and between different ports which is currently insufficient; - the charging and recovery of costs which vary considerably from one port to another; - the port service sector is always characterised by procedures which limit access to new services.

Port services: market access and financing of maritime ports

2001/0047(COD) - 13/02/2001 - Legislative proposal

PURPOSE : to establish a Community legal framework ensuring, on the one hand, access to the port services market in application of the Treaty rules, whilst, on the other hand, allowing Member States and their competent authorities to fill in this framework with specific rules which take due account of the ports' geographic and other characteristics as well as of local, regional or national specificities. CONTENT : the port service market covers services of a commerical value which are provided against payment to port users in a seaport and whose payment is not normally included in the charges collected for being allowed to call at or operate in a port. Although this service sector is essential for the functioning of the Community regulatory framework for port services. However, national port services regimes have to be in conformity with the freedoms guaranteed by the Treaty (freedom of establishment, free movement of workers, goods and services) as well as the Treaty's competition rules. Problems with the application of these rules, where they arose, have been dealt with by the Commission on a case by case basis. The liberalisation of the Community's internal maritime transport market took place over the last decade. In fact, transitional rules continue to allow restrictions in the Greek islands cabotage market. The situation in port services varies considerably. Therefore, it is necessary, in the interests of operators, authorities and consumers, to introduce specific and clear rules on access to the port services market which will take account of its unique features. Therefore, the overall aim of this proposal is to ensure a more systematic application of Treaty rules in the port sector. It introduces procedural rules guaranteeing that all service providers, actual and potential, have a fair chance of entering the port service market. This will in turn lead to improved port services and encourage better use of shipping as an alternative transport mode and of combined transport, both reducing the strain on Community's transport network. The Directive shall concern all coastal Member States. Although in recent years Member States have generally made considerable progress in ensuring free access to port services, there is presently a wide divergence of practice with regard to both the coverage of port services and the procedures followed to implement the Treaty rights. In order to ensure access to port services market and, in doing so, avoid distortion of competition, it is necessary to improve and harmonise, to the extent necessary, national rules, regulations and practices.

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.

Port services: market access and financing of maritime ports

2001/0047(COD) - 17/06/2002

The Council reached political agreement by a qualified majority, with the Swedish delegation voting against, on the draft Directive. The compromise achieved in the Council relates in particular to the maximum duration of authorisations granted to service providers, and more specifically to: - the maximum duration of authorisations for providers of port services (10, 15 or 36 years, depending on whether the services to be supplied involve either no significant investment, or investment in moveable or immovable assets, with the possibility of extending an existing authorisation for ten years under certain circumstances); - transitional measures, including the possibility of restricting existing authorisations for new ports or parts of ports to a maximum of 40 years. It should also be noted that the draft Directive does not in any way affect the application of national legislation, in particular social and employment legislation.

Port services: market access and financing of maritime ports

2001/0047(COD) - 05/11/2002 - Council position

The Council, with a qualified majority, has introduced a number of amendments to the Commission's amended proposal without, however, changing its main objective of establishing clear rules and setting up an open and transparent procedure for access to port services. The common position also takes largely into account the views of the European Parliament in its first reading. The main elements of the common position are the following: - the freedom to provide port services : as a rule, the freedom to provide port services should prevail and restrictions that hamper access to this market should be removed. In the view of the Council, no specific service should be excluded from the scope of the directive. However, a common legislative framework should also be compatible with the differing situations of ports in the Community, with respect to, inter alia, their location, size and public service obligations. Equally, it is important, in the opinion of the Council, that the freedom to provide services does not jeopardise maritime safety and the protection of the environment, nor reduce social standards and conditions of employment; - the access to provide port services may therefore be subject to constraints related to the capacity of a port or its available space, the safety of maritime traffic and requirements relating to safety, environmental protection and/or public service obligations. Where such constraints exist, providers of port services should be selected through a transparent and non-discriminatory procedure; - the application of common rules : the Council believes that the application of common rules regulating the freedom to provide port services should be proportionate and not impose undue administrative burdens on the sector. It therefore agrees that the obligatory application of the directive should be limited to ports of a certain size, whilst allowing Member States to apply the directive to other ports as well; - in order to clarify the scope of the Directive and with a view to the coherence of Community legislation in the field of transport, the scope has been defined with reference to the ports categorised as "international seaports (category A)" in the Community guidelines for the trans-European networks. It is also made clear that the traffic taking place in parts of a port which are not open to general commercial traffic should not have to be taken into consideration. However, Member States are free to apply the directive to ports below this category. Finally, in order not to put disproportionate burdens on some ports, Member States are given the possibility to exclude ports with significant seasonal traffic from the scope of the directive; - pursuant to the general objective of the directive, the Council shares the view that self-handling should be allowed, whenever possible, on the same conditions as port services in general and should not be subject to other limitations than those prevailing for the same or comparable port services. However, as stressed in the common position, self-handling should not hamper the overall efficiency of the port or lead to lower occupational, social and health standards; - the Council finds it important that Member States are allowed to submit the granting of an authorisation to provide port services, including self-handling, to a number of criteria concerning the service provider's professional qualifications and economic situation, safety, environmental and social and employment considerations and public service requirements. Equally, Member States should be able to regulate access to the occupation, for instance by means of certificates to be acquired by examination. In this respect, it should be noted that the common position enables Member States to establish particularly strict criteria as regards the granting of an authorisation to provide pilotage services; - with respect to employment, working conditions and social protection, the Council's common position stresses that the freedom to provide port services must in no way affect the application of national legislation or lead to lower social standards; - the Council shares Parliament's view that the duration of an authorisation granted to a service provider in accordance with the selection procedure should allow for a commercially viable period of operation. Therefore, it wishes to prolong the duration of the authorisation period to 10 years in cases where no significant investments are involved. Similarly, in cases where significant investments in moveable assets are involved, the authorisations can run up to 15 years, and for the significant investments in

immovable assets (and expensive investments in movable assets) the maximum duration of the authorisation has been set at 36 years. In a similar way, the Council wishes to establish transitional measures for existing authorisations which ensure maximum legal certainty and do not disturb investment policies in the sector.

Port services: market access and financing of maritime ports

2001/0047(COD) - 14/11/2001 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the report by Mr Georg JARZEMBOWSKI (EPP-ED, D) subject to substantial amendments. This proposal is designed to open up access to port services, in two key areas: the transparency of public funding in European seaports and the range of port services to be covered by the directive. (Please refer to the previous text). In addition to the recommendations by the committee responsible, the Parliament has introduced an amendment which states that in cases where the service provider will make no or insignificant investments in order to carry out the provisions of services, the maximum duration of its authorisation shall be 8 years as opposed the Commission's 5 years. Parliament also emphasised the point that care must be taken not to discriminate against publicly-owned seaports or seaport systems and port undertakings, therefore Parliament introduces a new article formulating the principles for state aid applying specifically to seaports.

Port services: market access and financing of maritime ports

2001/0047(COD) - 14/11/2002 - Commission communication on Council's position

The Commission agrees with and supports the common position, adopted by the Council, as it respects the key principles, doctrine and structure of its proposal. Moreover, as explained above the common position takes largely into account the European Parliament's first reading. At the moment of the adoption of the Common Position the Commission made the following statement to the minutes of the Council: The Commission points out that it will address the issue of competition between ports, in the nearest future, by introducing an amendment to the Transparency Directive so that ports covered by this Directive will equally fall under the Transparency Directive and by issuing a document on public financing of infrastructure and State aids. The Commission will continue to work on maritime safety, recalls in particular the recently published package in safety of passenger vessels and will take the appropriate measures on security. It will continue to take appropriate initiatives in short sea shipping and intermodality, recalls the recent Marco Polo proposal and the guide on Customs procedures in ports for Short Sea Shipping. The Commission recalls its recent Communication on Training and Recruitment of Seafarers and will look into other social aspects of the industry on the basis of information from Member States and industry.