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Subject : **Market Access to Port Services**

The Working Party completed its second reading of the draft Directive on the basis of the draft text (doc. 7471/02) presented by the Presidency.

Some modifications are suggested to the text as a result of the debate held in the Working Party and remarks voiced by individual delegations are recorded in footnotes. The modified text is presented in Annex I.

A draft Council statement to the minutes of the Council when agreeing the directive has also been suggested, reading:

"The Council [and the Commission] consider[s] this proposal to be the first part of a package; it [they] stress[es] the need to address the questions of inter-ports competition, safety and security in the ports, harmonisation of professional qualifications for port workers and the promotion of short sea shipping as an important element of intermodality. To this effect, the Council asks the Commission to study the question and present, in the nearest future, proposals for measures concerning matters of competition between ports, public financing of infrastructure and State aids, as well as transparency rules, on the one hand, and matters of security and further promotion of short sea shipping, on the other part, taking into account the work in international fora."

It is recalled that all delegations retain at this stage a general scrutiny reservation on the text, in particular for what concerns new wording, and that there are Parliamentary scrutiny reservations by the DK and UK delegations. Additionally the Dutch delegation has expressed a general reservation on the mere need for such a Directive.

DRAFT DIRECTIVE
ON MARKET ACCESS TO PORT SERVICES

Additions to the preamble:

- (5) **As one of the measures which will enhance the overall competition in and between ports of the Community, facilitating access to the port services market at Community level should remove prevailing restrictions that hamper access for port service operators, improve the quality of service provided to users of the port, increase efficiency and flexibility, help reduce costs and thereby contribute to promoting short sea shipping and combined transport.**
- (9a) **In order to achieve the aim of harmonisation without imposing an additional burden on smaller ports, which would appear disproportionate to the expected results, this Directive should apply to ports with a total annual maritime traffic volume corresponding to that of the "international seaports (category A)" as defined as in Decision n° 1692/96/EC as amended by Decision n° 1346/2001/EC¹, without prejudice, however, to the possibility that Member States decide to apply the Directive to other ports as well.**
- (9b) **Member States should designate a competent authority or competent authorities for the purpose of implementing this Directive. This or these authorities may be public or private and may be responsible for one or more tasks of the Directive and for one or more ports.**

¹ Decision n° 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport networks (JO L 228, 9.9.1996, p. 1), as amended by Decision n° 1346/2001/EC of the European Parliament and of the Council of 22 May 2001 amending Decision n° 1692/96/EC as regards seaports, inland ports and intermodal terminals as well as project n° 8 in Annex III (JO L 185, 6.7.2001, p. 1)

(14a) In order to be open and transparent, a selection procedure should be made public to all interested parties, through a publication in an official journal or a periodical with sufficient circulation among professionals of the sector. New technologies could also be utilised, such as a port's own Internet web-site.

(16a) [former article 12.4] The managing body of a port **should** not discriminate between service providers. It **is** in particular **necessary to avoid** any discrimination in favour of an undertaking or body in which it holds an interest.

~~(18) Commission Directive n° 2000/52 of 26 July 2000~~ **As transparency of financial relations, both between Member States and public undertakings and within certain undertakings, has been considered a key element of equal treatment and competition, specific emphasis should be put on the need to implement Commission Directive 80/723/EEC ¹, which** lays down, for a certain number of undertakings, the obligation to maintain separate accounts ~~which only applies to undertakings whose total annual turnover for each of the last two years exceeded EUR 40 million.~~ ²

In the light of the introduction of the freedom to provide port services in the Community, it is necessary to ensure that the principle of separation of accounts applies to all ports falling within the scope of the present Directive and to impose transparency rules that are not less strict than those laid down in the Commission Directive n° 2000/52.

(20a) Self-handling should not hamper the overall efficiency of port operations.

(20b) Member States may require self-handling to be subject to a prior authorisation to be granted on criteria related to, inter alia, employment and social matters.

(21) Authorisations granted through a selection procedure should be limited in time, **yet they should be granted for periods that allow for a normal depreciation and return on the investments made.** It is reasonable to take into account, when determining the period of authorisation, whether the provider has had to invest assets or not and, where this is the case, whether the assets are moveable or not.

¹ Last amended by Commission Directive 2000/52/EC of 26 July 2000, OJ L 193, 29.07.2000, p. 75.

² Attention of delegations is also called on article 12 of the present draft directive and, in particular, its paragraph 5.

(21a) [former whereas clause 28] The provisions of this Directive **should** in no way affect the rights and obligations of Member States, and of competent authorities appointed by them, in respect of law and order, safety and security at ports as well as environmental protection.

(24a) Although pilotage is a service of commercial value, specific rules should apply to this service in view of the special requirements for training and qualifications that characterise it and the need to preserve high safety standards.

Article 1 – Objective

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1. Freedom to provide port services shall apply to Community providers of port services under the provisions set out in this Directive. ~~Providers of port services shall have access to port installations to the extent necessary for them to carry out their activities.~~
2. The provisions of this Directive set out that the freedom to provide port services may be subject to a port's or port system's constraints relating to available space or capacity, ~~or~~ maritime traffic related safety **or the development policy of the port** and ~~must respect in compliance~~, where applicable, **with** requirements in respect of safety, environmental protection and public service obligations.
3. **Providers of port services, and self handlers, shall have non discriminatory access to port infrastructure that is generally accessible, to the extent necessary for them to carry out their activities.**

Article 1a [suppressed]

¹ D suggestion for a new paragraph 1 reading : "The objective of this Directive is to create fair and transparent conditions of competition between and in seaports in the Community".

Article 2 – Scope

1. This Directive applies to those port services set out in the Annex which are provided for users of the port, either inside the port area or, **insofar maritime traffic related safety can be ensured**, on waterway access to and from the port or port system **covered by this Directive**.
2. This Directive applies to any seaport or port system located in the territory of a Member State and open to general commercial maritime traffic, provided that the **individual** port's average annual ~~throughput~~ **maritime traffic volume** over the last 3 years ~~is has not been~~ less than ~~3 million tonnes or 500.000 passenger movements~~ **1,5 million tonnes of freight or 200 000 passengers**.¹
3. Where a port reaches the freight traffic threshold referred to in paragraph 2 without reaching the corresponding passenger movement threshold, the provisions of this Directive shall not apply to port services reserved exclusively for passengers. Where the passenger movement but not the freight traffic threshold is reached, the provisions of this Directive shall not apply to port services reserved exclusively for freight.

~~[moved to paragraph 3c of this article] The Commission shall publish for information, in the Official Journal of the European Communities and on the basis of information provided by Member States, a list of the ports and port systems referred to in this Article. The list shall first be published within three months following the entry into force of this Directive, and thereafter annually.~~

3a. Member States may also apply this Directive to other ports.

¹ UK suggestion to replace the paragraph with: "This Directive applies to any seaport or port system located in the territory of a Member State **in so far as it is** open to general commercial maritime traffic, provided that the average annual throughput over the last 3 years **of the part of the port which is open to general commercial maritime traffic** has not been less than 3 million tonnes or 500 000 passenger movements."

- 3b. Member States may exclude ports with a high seasonal character from the scope of this Directive, under the condition that they are satisfied that an adequate level of market access for port services is ensured.**¹
- 3c. [former second subparagraph of paragraph 3 of this article]** The Commission shall publish for information, in the Official Journal of the European Communities and on the basis of information provided by Member States, a list of the ports and port systems referred to in this Article. The list shall first be published within three months following the entry into force of this Directive, and thereafter annually.
4. Member States may require that the providers of port services be established within the Community and that vessels used exclusively for the provision of port services shall be registered in, and fly the flag of a Member State.

Article 3

1. This Directive is without prejudice to the obligations for competent authorities, which flow from Directive 92/50/EEC, Directive 93/36/EEC, Directive 93/37/EEC and Directive 93/38/EEC.
2. Where one of the Directives referred to in paragraph 1 makes the tendering of a service contract mandatory, Articles 8 (1, 2, 3, 4 and 5), 12 (1 and 2), and 13 of this Directive shall not apply to the award of that contract. However Member States may include **specific rules** with regard to their ports in the tendering process of such contracts.
3. This Directive is without prejudice, where applicable, to the obligations of competent authorities which flow from Directives 89/48/EEC, 92/51/EEC and 99/42/EC on a mutual recognition among Member States of professional education and training.

¹ A review clause within 5 years will be included.

Article 4 – Definitions

For the purposes of this Directive:

- (1) ‘seaport’ (in this Directive referred to as ‘port’) is an area of land and water made up of such ~~improvement~~ works and equipment as to permit, principally, the reception of ships, their loading and unloading, the storage of goods, the receipt and delivery of these goods ~~by inland transport~~, the embarkation and disembarkation of passengers;
- (2) ‘port system’ means two or more ports in the same **geographical** area and managed by a single managing body;
- (2a) ‘port with a high seasonal character’ means any port that reaches 50% of its total annual traffic volume in three consecutive months;**
- (3) ‘port authority’ or ‘managing body of the port’ (hereafter referred to as ‘managing body of the port’) means a body which, whether or not in conjunction with other activities, has as its objective under national law or regulation the administration and management of the port infrastructures, and the co-ordination and, **where appropriate, the control** of the activities of the different operators present in the port or port system concerned. It may consist of several separate bodies or be responsible for more than one port;
- (3a) ‘port user’ means a maritime operator or a provider of port services;**
- (3aa) ‘maritime operator’ is any undertaking carrying out maritime transport with its own or chartered vessels;**
- (3b) [suppressed]**

- (4) 'port services' means ~~the any services of commercial nature that are normally provided against payment in a port and which are listed in the Annex;~~
- (5) 'provider of port services' means any natural or legal person providing, or wishing to provide, **against remuneration**, one or more categories of port services ¹;
- (6) 'public service requirement' is a requirement adopted by a competent authority in order to secure adequate provision of certain categories of port services;
- (7) 'self-handling' means a situation in which a port user ² using its own personnel and equipment ³ provides for itself one or more categories of port services in accordance with the criteria laid down in this Directive ~~and where normally no contract of any description with a third party is concluded for the provision of such services;~~
- (7a) 'Pilot Exemption Certificate' means a document issued by the competent authority of a port by which an exemption from compulsory pilotage is granted;**
- (8) 'authorisation' means any permission, including a contract, allowing a natural or legal person to provide **one or more categories of** port services or to carry out self-handling.
- (9) 'limitation of the number of providers' means a situation in which the port authority ⁴ does not allow a provider, that fulfils the criteria for authorisation set up in accordance with Article 6, to provide one or more categories of services.**

¹ F suggestion to add the words "to port users", with a definition of port users meaning maritime operators only.

² D/F want to restrict the possibility of self handling to maritime operators only.

³ D/S suggestion to add the words ", on board a vessel," or to replace the word "personnel" with "crew".

⁴ F suggestion to add the words "independently of its strategic development guidelines".

*Article 5 - Competent authorities*¹

Member States shall **ensure that there are** ~~designate the~~ competent authority or authorities **responsible** for ~~the purpose of~~ implementing articles 6, **6a**, 7, 8, **8a**, ~~10~~, 11, **11a**, 12 and 19 of this Directive.

Article 6 – Authorisation

1. Member States **shall ensure that the competent authority shall** ~~may~~² require that a provider of port services obtains prior authorisation under the conditions set out in par. (2), (3), (4) and (5). Authorisation shall be ~~automatically~~ **deemed** granted to service providers selected under Article 8.
2. The criteria for the granting of the authorisation by the competent authority must be transparent, non-discriminatory, objective, relevant and proportional. The criteria may only relate, **where applicable**, to ~~the provider's~~ :
 - (a) the professional qualifications of the provider **and of his personnel**, his sound financial situation³ and sufficient insurance cover,
 - (b) maritime safety or the safety of the port or access to it, its installations, equipment and persons,

¹ UK suggestion to delete the article.

² NL/SF/Cion reserve on replacing "may" with "shall".

³ S suggestion to add "considering the liability to pay compensation that may follow by Article 17".

- (c) employment and social matters, ~~where applicable,~~
- (d) environmental requirements, ~~where applicable,~~
- (e) the development ~~plans~~ **policy** of the port. ¹

The authorisation may include public service requirements relating to safety, regularity, continuity, quality and price and the conditions under which the service may be provided.

3. **Member States may regulate access to the occupation, and the certificates of competency to be acquired by examination.**

Additionally, where the required professional qualifications include specific local knowledge or experience with local conditions, the competent authority must facilitate adequate access to that knowledge and experience ~~provide adequate training~~ for applicant service providers **by ensuring transparent and non discriminatory conditions for said access.** ²

4. Criteria referred to in paragraph (2) shall be made public and providers of port services shall be informed in advance of the procedure for obtaining the authorisation. This requirement applies equally ~~to~~ **if an authorisation links linking** the provision of service to an investment into immobile assets ~~which will revert to the port upon expiry of the authorisation.~~

5. The provider of port **services carrying out the service covered by the authorisation** has the right to employ personnel of his own choice provided he fulfils the criteria set according to paragraph (2) **and in accordance with the legislation of the Member State in which the service provider is providing the services in question.**

¹ D suggestion to replace the indent with "e) the policy and economic interests of the port community and the surrounding region."

² D suggestion to replace with: " Where the required professional qualifications include specific local knowledge or experience with local conditions, **Member States shall regulate access to the occupation, and the certificates of competency to be acquired by examination.**"

6. **Member States may grant an authorisation for a limited period and subject to such conditions as are appropriate to the authorisation, and may vary or revoke an authorisation where those conditions are not complied with, in line with the rules of this Directive.**

Article 6a

The competent authority may determine the range of commercial activities to be carried out in the port or parts of the port, in particular the categories of cargo to be handled, pursuant to the development policy of the port.

Article 7 – Limitations

This article, and articles 8 and 9, only apply to services where there is a limitation of the number of providers in the port or port system.¹

1. Member States **shall ensure that the competent authority** ~~may only~~ limits the number of providers of port services **only** for reasons of constraints relating to available space or capacity, ~~to maritime traffic-related~~ **safety considerations, development policy of the port or requirements** in accordance with environmental regulations^{2 3 4}. **In the case of a limitation of the number of providers**, the competent authority must:

- (a) inform interested parties of the category or categories of port services and, **where appropriate**, the specific part of the port to which the restrictions apply as well as the reasons for such restrictions;

¹ UK original suggestion was to add a sentence reading : "This article, and articles 8 and 9, apply to services where sufficient competition does not exist in the relevant market."
D suggestion to complement this sentence with "Sufficient competition exists if there are at least two service providers for each category of cargo, which shall be completely independent from each other."

² D suggestion, supported by B, to add a reference to "the policy and economic interests of the port community and the surrounding region".

³ UK suggestion to add a reference to "social and public service obligations".

⁴ SF preference to revert to the original Commission proposal, where reference was only made to space, safety and environment criteria.

(b) allow the highest number of service providers [possible] ¹ under the circumstances. [**To this effect, the competent authority may not take any planning or management decisions that could prevent a priori the existence of, at least, two independent service providers for each type of port service or, in the case of cargo handling services, for each category of cargo.**] ²

~~2.—Where constraints relating to available space or capacity exist and, for as long as there are no exceptional circumstances in relation to the volume of traffic and categories of cargoes, the competent authority shall authorise at least two service providers for each category of cargo, which shall be completely independent of each other. ³~~

~~3.—[moved to new art 8a] Where the competent authority deciding on limitations in relation to the port in question is the managing body of that port and where the managing body itself or a service provider over which it has direct or indirect control or is involved in, is, or wishes to become, also a service provider in that port, Member States shall designate a different competent authority and entrust it with the decision, or approval of a decision, on limitations. This newly designated competent authority must be independent of the managing body of the port in question and must not:~~

- ~~(a) provide port services similar to those provided by any of the service providers in the port in question; and~~
- ~~(b) have any direct or indirect control over, or be involved in, any of the service providers in the port in question.~~

¹ UK suggestion to replace "possible" with "appropriate".

² I suggestion to replace the words in bold with : "For justified safety reasons, the number of providers for each service listed in point 1 of the Annex ("Technical-nautical services") may be limited to one provider, subject to the selection procedure under Article 8."

³ Cion reserve on deleting the paragraph.

*Article 8 - Selection procedure*¹

1. Where the number of providers of port services has been limited by the competent authority in application of Article 7, the latter shall take the necessary measures to ensure a transparent and objective selection procedure, ~~through tendering or an equivalent procedure~~, using proportionate, non-discriminatory and relevant criteria.²

¹ UK suggestion to replace this procedure with a procedure similar to the public procurement procedure. The text would consequently read:

- "1. The port authority shall publish in the Official Journal of the European Communities an invitation to interested parties to take part in the selection process. The invitation shall contain the information set out in Annex x.
2. The invitation shall give a latest date for receipt of proposals from service providers of at least 52 days from the dispatch of the notice. If urgency renders this impracticable, the port authority may set a date of at least 36 days, provided that the full documentation is sent to proposed service providers within 6 days of their requesting that documentation and allowance is made for any time required for the supply of bulky documentation or necessary visits to the site on which the service is to be provided.
3. The port authority shall select providers of port services from among those responding to the invitation to take part in the selection procedure which:
 - comply with the minimum criteria contained in the selection procedure documents, including providing all the information required,
 - will provide the service which is economically most advantageous to the persons to whom the service is to be provided and/or to the port authority, as determined in accordance with the selection procedure documents and/or
 - will provide the most advantageous service based on quality, technical merit, aesthetic and functional characteristics, technical assistance and delivery date, delivery period or period of completion, as determined in accordance with the selection procedure documents.
4. Where the information provided by a service provider appears to the port authority to be abnormal in relation to information provided by other service providers, or the economic viability of the proposal appears to the port authority to be in doubt, the port authority shall, before it rejects the proposal, request in writing details of the constituent elements of the proposal which it considers relevant and shall verify those constituent elements taking account of the explanations which are justified on objective grounds including the economy of the method by which the service is provided, or the technical solutions chosen, or the exceptionally favourable conditions available to the provider for the provision of the service, or the originality of the service proposed by the provider.

The rest of the text of the UK suggestion is to be found in Annex II (page 30).

² D suggestion to add the following sentence : "These provisions shall not apply if there are at least two services for each category of cargo, which shall be completely independent of each other."

2. The competent authority shall ~~publish in the Official Journal of the European Communities~~ **make public, for the general knowledge of the sectors concerned,** an invitation to interested parties to participate in the selection process. ¹

This publication **shall be made through** ~~may refer to the competent authority's or the port's own internet web site or, where there is no such web site,~~ any other appropriate manner which makes the necessary information available in a timely way to any person interested in the process.

3. The competent authority shall **ensure that full documentation shall be communicated to interested parties requesting it. The documentation given to potential providers shall include all relevant information the competent authority holds, and at least the following elements, in its publication :**

- (a) authorisation criteria according to article 6(2) as well as selection criteria that define the authority's minimum requirements;
- (b) award criteria that define the grounds on which the authority will choose among offers meeting the selection criteria;
- (c) conditions setting out the service requirements that the contract will cover and identifying any ~~infrastructure and, equipment~~ **tangible and intangible assets** to be placed at the disposal of the successful tenderer together with the relevant terms and applicable rules; ²
- (d) penalties and the terms governing cancellation in the event of non-compliance; and
- (e) the authorisation period.

¹ Cion reserve, would like the publication in the Official Journal of the European Communities to be compulsory.

² NL suggestion to replace with: "(c) the physical, regulatory and organisational conditions under which the service has to be provided."

4. The procedure shall provide for an interval of at least 52 days between the dispatch of the call for proposals and the latest date for receipt of them.
5. **[moved to paragraph 3]** ~~The competent authority shall include in the information it supplies to potential providers all relevant information it holds.~~
6. **[moved to new art 8a]** ~~Where the competent authority carrying out the selection procedure of a specific port service in relation to the port in question is the managing body of that port and where the managing body itself or a service provider over which it has direct or indirect control or is involved in, is, or wishes to become, a provider of the same or a similar service in that port, Member States shall designate a different competent authority and entrust it with the selection procedure in question. This newly designated competent authority must be independent of the managing body of the port in question and must not:
 - (a) provide port services similar to those provided by any of the service providers in the port in question; and
 - (b) have any direct or indirect control over, or be involved in, any of the service providers in the port in question.~~

Article 8a [former art 7.3 and 8.6]

Where the competent authority **deciding on limitations in relation to one or more port services in a specific port or carrying out the selection procedure of that service in the port in question is itself** a provider of the same or a similar service **or services** in that port, Member States shall designate a different **and independent** competent authority and entrust it with the **decision on limitations, or approval of such decision, or with the selection procedure** ^{1. 2}

Article 8b [former art 12.3] ³

Where as a result of a selection procedure under Article 8 no suitable service provider could be found for a specific port service, the **managing body of the port** ~~competent authority~~ may, under the conditions of ~~paragraph (1) of this Article~~ **12.1**, reserve the provision of this service to **itself** ~~the managing body of the port~~ for **an objective and limited** ~~a maximum~~ period, **which shall in any case be inferior to** ~~of 5~~ [x] years. ⁴

¹ S suggestion to add the words "or approval of the selection procedure".

² NL suggestion to replace with "Where the competent authority deciding on limitations in relation to the port in question is **itself the major provider of one or more of the services mentioned in the annex, [...]** Member States shall designate a different competent authority **for the service or services in question** and entrust it with the decision, or approval of a decision, on limitations. This newly designated authority must be independent of the **competent authority deciding on limitations** in question. [...]"

³ S suggestion to replace with: "Where the number of providers of port services is limited in accordance with Article 7, the managing body of the port may itself provide port services without being subject to the selection procedure laid down in article 8. Similarly, it may, without submitting to the said procedure, authorise an undertaking to provide port services at the port in question:

- if it controls that undertaking directly or indirectly or
- if the undertaking controls it directly or indirectly."

⁴ UK suggestion to replace the fixed period of x years with : "**whichever of the following periods is the greater** :

- 5 years,
- **the duration for which the contract was offered under the selection procedure.**"

Article 9 – Duration

Providers of port services shall be selected for a limited period of time to be determined in accordance with the following criteria:

1. In cases where the service provider will make no or insignificant investments in order to carry out the provision of services, the maximum duration of its authorisation shall be [9] years.
2. In cases where the service provider will make significant investments in ¹
 - (a) moveable assets, the maximum period shall be [21 ²] years;
 - (b) immovable assets, the maximum period shall be [33 ²] years, irrespective of whether their ownership will revert to the port. ³

If the investment made by the service provider include both moveable and immovable assets, the maximum period shall be the longest of the maximum periods considered.

¹ F suggestion to aggregate the two indents, with a unique maximum period of 30 years.

² These durations, suggested by the Presidency yet still to be discussed, take into account the average amortisation periods for investment.

The durations were, in the proposal of the Commission, respectively 5/10 and 25 years. SF supports these durations, Cion keeps a reserve on any change to its original proposal.

³ NL suggestion to add "with a possible extension of the authorisation before or at two-third of the duration of the authorisation"

3. **Member States may establish a procedure according to which, in cases where the service provider intends to make significant investments before the end of the existing authorisation and where it can demonstrate that these will entail an improvement of the overall efficiency of the port, it may request the competent authority to launch a selection procedure in accordance with Article 8, for a new authorisation in a period of 5 years before the end of the authorisation in question."**

1 2

Article 10 – [moved to new article 11a]

Article 11 – Self-handling

1. Member States shall take the necessary measures to allow, **wherever possible**, self-handling to be carried out in accordance with this Directive.
- 1a. Member States may apply to self-handling national rules concerning employment and social matters, provided that they are compatible with Community law and international obligations of the Community and the Member States.**

¹ F suggestion to include a paragraph providing for a possible extension of the authorisation for a period of 10 years, once during the last 10 years of duration of the authorisation if significant investments have been made.

² SF suggestion to include a new paragraph, reading: "Any authorisation exceeding the maximum periods defined in this Article shall be possible only in exceptional cases, where a service provider provides a package of several services which form an integrated concept. Whenever deemed appropriate by the competent authority, the maximum duration of authorisation for all services included in the package may be set according to the maximum duration of the longest authorisation."

2. Self-handling may be subject to an authorisation for which the criteria must be [the same]¹ as those applying to providers of the same or a comparable port service, **provided these are relevant.**²

Where self-handling is subject to the payment of a fee as a contribution to public service obligations which cannot be applied by self-handlers, the fee shall be determined according to relevant, objective, transparent and non-discriminatory criteria.

¹ Note for the translators : in the Portuguese version, should be "os mesmos" instead of "idênticos".

² UK suggestion to replace the paragraph with the following:

"2. Where a Member State requires a provider of port services to obtain prior authorisation in accordance with Article 6, the criteria imposed by the Member State for such authorisation shall also be applied to self-handling.

2a. Where a port authority has imposed limits on the numbers of service providers in accordance with Article 7, self-handling of the service so limited shall not be permitted."

B supports the UK suggestion for paragraph 2, subject to the addition of a reference to the importance of safety as a reason for this measure.

Article 11a - Pilotage

- 1. For what concerns the particular service of pilotage, Member States may submit the granting of an authorisation in accordance to article 6 to particularly strict criteria relating to maritime safety.**
- 2. Self-handling may be restricted by the competent authority to delivering Pilotage Exemption Certificates or exempting certain categories of ships from compulsory pilotage. In this case, the conditions for obtaining a Pilotage Exemption Certificate or for being exempted from compulsory pilotage shall be relevant, objective, transparent and non-discriminatory.**

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¹ E suggestion to add a new article, reading: "Where, according to the applicable national legislation, the operator of a dedicated terminal not open to general traffic provides one or several technical-nautical services to the vessels operating in that terminal, those services will not be subject to the provisions of articles 7 and 8 of this Directive."

Article 11b - Accounting provisions [former article 10]

The ~~competent authority shall oblige the~~ selected service providers ~~to~~ **shall** keep separate accounts for each port service in question. The compilation of the accounts must accord with current commercial practice and generally recognised accounting principles.

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Article 12 – Managing body of the port Transparency

1. Where the managing body of the port provides port services, it must fulfil the criteria set out in Article 6 and separate the accounts of each of its port service activities from the accounts of its other activities. The compilation of the accounts must accord with current commercial practice and generally recognised accounting principles to ensure that:
 - (a) the internal accounts corresponding to different activities are separate;
 - (b) all costs and revenues are correctly assigned or allocated on the basis of consistently applied and objectively justifiable cost accounting principles;
 - (c) the cost accounting principles according to which separate accounts are maintained are clearly identified.²
2. The auditor's report on the annual accounts must indicate the existence of any financial flows between the port service activity of the managing body of the port and its other activities. The auditor's report must be kept by the Member States and made available to the Commission upon request.

¹ UK suggestion to add a second paragraph, reading : "The managing body of the port and any selected service provider shall comply with Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between the Member States and public undertakings as well as on financial transparency within certain undertakings."

² It should be noted that this idea has been integrated in whereas clause 18 (p. 4).
The wording of the three indents comes from the Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, Article 1, paragraph 4. (JO L193, 29.07.2000)

3. **[moved to new article 8b]** ~~Where as a result of a selection procedure under Article 8 no suitable service provider could be found for a specific port service, the competent authority may, under the conditions of paragraph (1) of this Article, reserve the provision of this service to the managing body of the port for a maximum period of 5 years.~~
4. **[moved to new whereas clause]** ~~The managing body of the port shall not discriminate between service providers. It shall in particular refrain from any discrimination in favour of an undertaking or body in which it holds an interest.~~
5. The provisions of this Directive in no way affect the rights and obligations of Member States in respect of the Transparency Directive n° 2000/52/EC.

Article 13 – Appeals

1. Member States shall ensure that any party with a legitimate interest has the right to appeal against the decisions or individual measures taken, under this Directive, by competent authorities or the managing body of the port.
2. Where an application for access to provide port services under this Directive is rejected, the applicant(s) shall be informed of the reasons for not having been authorised or selected. Such reasons must be objective, non-discriminatory, well-founded and duly substantiated. Appeal procedures must be made available to the applicant. It must be possible to bring the appeal before a national court or a public authority that is independent in its organisation, funding, legal structure and decision-making of the competent authority or managing body of the port concerned and from any service provider.
3. Member States shall take the necessary measures to ensure that decisions taken by appeal bodies are subject to judicial review.

Article 14 - Safety, security and environmental protection

The provisions of this Directive in no way affect the rights and obligations of Member States and of competent authorities appointed by them in respect of law and order, safety and security at ports as well as environmental protection.

Article 15 – Social protection ¹

Without prejudice to the application of this Directive, and subject to the other provisions of Community law, Member States shall take the necessary measures to ensure the application of their social legislation. Social standards must not be below those laid down by applicable Community legislation.

Article 15a

The provisions of this Directive in no way affect the rights and obligations of the Member States with regard to the international status of ports, waterways and maritime zones.

¹ UK reservation on this article being maintained. If it is maintained, the reservation concerns the legal basis.

*Article 16 – Transitional measures*¹

- 0. This article applies to any authorisation, which is in existence at the date on which this Directive is adopted.**
1. Where the number of providers of port services in a port is not limited **according to article 7 paragraph 1** ~~by constraints relating to available space or capacity or maritime safety~~, existing authorisations may remain in force unchanged until such time as the number becomes limited. ~~New authorisations must comply with the provisions of this Directive.~~
2. Where the number of providers of port services in a port is limited, the **following** rules ~~of points (a) to (e)~~ apply.
- a) Where, **in the context of** an existing authorisation ~~was granted after a public tender or an equivalent procedure and is otherwise in conformity with the rules of this Directive~~, **the service provider has made significant investments in the [10] years preceding the date of entry into force of the Directive**, the authorisation may remain in force unchanged **until its expiration, but within the durations foreseen in article 9 starting from the date of the most recent such investment.**

¹ UK suggestion to replace the article with :

- "1. This Article applies to any legally enforceable arrangements in the nature of licensing arrangements in the nature of licensing arrangements and contracts which are in existence at the date on which this Directive is adopted.
2. Such existing arrangements shall not be extended otherwise than in accordance with the requirements of this Directive.
3. Subject to the following provisions of this Article, such existing arrangements may stay in force.
4. Where either the service provider or the managing body of the port has made significant investment in relation to those arrangements before the date on which this Directive is adopted, those arrangements shall be terminated by the end of the period of [25/35/50] years from the date of the most recent such significant investment.
5. Where neither the service provider nor the managing body of the port has made significant investment in relation to those arrangements, those arrangements shall be terminated by the end of the period of 5 years from the date on which this Directive is adopted.
6. Paragraphs 4 and 5 above shall not operate so as to require a Member State to take any action which would require the State to pay compensation for interference with or deprivation of property in accordance with Article 1 of Protocol 1 of the European Convention on Human Rights."

b) Where an existing authorisation was granted for a period extending for more than [10] years after the date of entry into force of the Directive, the authorisation may remain in force unchanged only until said [10] years have elapsed.

c) Other existing authorisations may remain in force unchanged until their expiration.

~~b) Where an existing authorisation was not granted in conformity with the rules of this Directive and where the service provider has made no or insignificant investments, a new authorisation procedure in conformity with the rules of this Directive must be carried out: within 2 years of the date of transposition of this Directive in the case of a sole service provider and within 4 years in all other cases.~~

~~e) Where in the context of an existing authorisation a service provider has made significant investments in moveable assets, the following shall apply:~~

~~(i) Where the authorisation was not granted in conformity with the rules of this Directive but was preceded by a public tender or an equivalent procedure, the maximum duration of the existing authorisation shall be 10 years;~~

~~(ii) Where the authorisation was not granted in conformity with the rules of this Directive and was not preceded by a public tender or an equivalent procedure, a new authorisation procedure in conformity with the rules of this Directive must be carried out within 3 years of the date of transposition of this Directive in the case of a sole service provider and within 5 years in all other cases.~~

~~d) Where in the context of an existing authorisation a service provider has made significant investments in immovable assets, the following shall apply:~~

~~(i) Where the authorisation was not granted in conformity with the rules of this Directive but was preceded by a public tender or an equivalent procedure, the maximum duration of the existing authorisation shall be 25 years;~~

~~(ii) Where the authorisation was not granted in conformity with the rules of this Directive and was not preceded by a public tender or an equivalent procedure, a new authorisation procedure in conformity with the rules of this Directive must be carried out within 5 years of the date of transposition of this Directive in the case of a sole service provider and within 8 years in all other cases.~~

~~e) Where in the context of an existing authorisation a service provider has made significant investments in moveable and immovable assets, point (d) shall apply.~~

3. Following the expiration of the transitional periods, all authorisations must comply with the provisions of this Directive.

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¹ UK suggestion for a new article 16a, concerning "New ports and new port facilities":
"Where a new port, or part of a port, comes into operation after the date of adoption of this Directive, the Member State may provide that Articles 7 to 9 of this Directive shall not apply to that port or part of a port:

- a) where the managing body of the port has made significant investments in immovable assets in that port or part of a port, for a maximum period of 50 years, and
- b) where the managing body of the port has made significant investments in moveable assets in that port or part of a port, for a maximum period of 5 years."

Article 17 – Compensation¹

When an authorisation is ended prematurely, the newly A selected service provider shall, where relevant ~~appropriate~~, pay compensation **to the previous provider according to the national legislation of the Member State of the port in question** for ~~immovable~~ assets it takes over. The competent authority ~~may~~ **shall** establish their value prior to a selection procedure.

Article 18 – Information report and revision

Member States shall send the Commission a report on the application of this Directive no later than 3 years after the date of transposition.

On the basis of the Member States' reports, the Commission will make an assessment of the implementation by Member States of the Directive accompanied, where appropriate, by a proposal for its revision.

Article 19 – Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than ~~two~~ **one** years from the date of its entrance into force. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

¹ UK suggestion to replace with :

- "1. An **authorised or** selected service provider shall, where appropriate, pay compensation for **any property** or assets it takes over. The **port authority** shall establish their value prior to an authorisation or selection procedure.
2. **This Directive shall not apply where there is no identifiable authorised or selected service provider who can be required to pay compensation for interference with or deprivation of property in accordance with general principles of Community law."**

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 20

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 21 – Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LIST OF PORTS SERVICES CONCERNED BY THIS DIRECTIVE

1. Technical-nautical services
 - a) Pilotage;
 - b) Towage;
 - c) Mooring.
2. Cargo handling including ¹
 - a) Loading and unloading; ²
 - b) Stevedoring, stowage, transhipment and other intra-terminal transport; ³
 - ~~c) Storage, depot and warehousing, depending on cargo categories;~~
 - ~~d) Cargo consolidation.~~
3. Passenger services (including embarkation and disembarkation)

¹ UK suggestion to replace heading 2 and its 4 indents with: "Cargo handling including loading and unloading on the terminal, stevedoring and stowage".

² D suggestion to replace the indent with "**services on the terminal** : loading and unloading;"

³ D suggestion to delete the words "transhipment and other intra-terminal transport".

UK suggestion for replacing Article 8
(rest of the text starting in footnote 1, page 14)

5. Where the service provider intends to sub-contract any part of the service to a third party, the service provider shall indicate the share of the service provision which he intends to sub-contract and shall provide in relation to such sub-contractor the same information required to be provided in relation to the service provider.
6. For each service for which service providers have been selected, the port authority shall within 15 days of the conclusion of the selection procedure draw up a written report which shall include at least the following information:
 - the name and address of the port authority
 - the subject of the selection procedure
 - the names of the service providers selected and rejected and the reasons for their selection or rejection.This report shall be communicated to the Commission and to an applicant service provider on request.
7. The port authority shall also send for publication in the Official Journal of the European Communities a contract award notice.
8. The selection procedure required by this Article shall not apply:
 - (a) to services to which the provisions of article 296 of the Treaty apply,
 - (b) to services which are declared secret or the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic interests of that State's security so requires,
 - (c) to services carried out by the State, regional or local authorities, bodies governed by public law, associations formed by one or more of such authorities or bodies governed by public law, on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision which is compatible with the Treaty,
 - (d) to services the estimated value of which is less than Euros 200000.
9. The calculation of time limits for the purpose of this article shall be made in accordance with Council Regulation no 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits.

Annex x - Information

- to be provided in the notice of selection procedure,
- to be set out in full in the selection procedure documentation, and
- to be provided by persons proposing to become selected service providers

General information

Name, address, telegraphic and electronic address, telephone, telex and fax numbers and, if different, of the persons from which additional relevant information may be obtained.

Dates for the publication of notices, receipt of proposals, and selection and notification of service providers.

Nature of the service

Description of the service for which the procedures are being initiated, including technical specifications required for the provision of the service, defined by reference to legally binding national technical rules compatible where applicable with appropriate Community law.

Place for provision of the service including, where applicable, minimum requirements relating to specific local knowledge or experience with local conditions, including any training in local knowledge to be provided by the port authority and its cost.

Minimum and maximum duration for provision of the service.

Constraints on the provision of the service which relate to available space or capacity.

Where more than one service is to be allowed, an indication of minimum and maximum amounts of service which an individual provider may provide, indication of amounts of service which may be sub-contracted.

Constraints on the provision of the service which relate to the economic development of the port.

Minimum environmental protection obligations for the provision of the service.

Minimum social and public service obligations for the provision of the service, including obligations relating to employment protection and working conditions in force in the member State, region or locality in which the services are to be performed.

Criteria relating to the service provider's ability to perform the services may be evaluated with regard to their skills, efficiency, experience and reliability, including evidence of the service provider's technical capability as respects the educational and professional qualifications of the persons undertaking the service, principal services undertaken by those persons in the past three years, quality control, average annual manpower, tool, plant and technical equipment available to the service provider, measures for ensuring quality, etc.

Requirements relating to use of assets

Criteria relating to the use by the service provider of port authority land and assets, including:

- compensation arrangements for use of port authority assets, and
- investments by the service provider in immovable assets and compensation for such assets at the end of the service period.

Requirements on the service provider

Minimum professional, financial and insurance criteria for the provision of the service, including the requirements as to the proof of the service provider's financial and economic standing which are to be furnished e.g. by:

- appropriate statements from banks or evidence of relevant professional risk indemnity insurance,
- the presentation of the service provider's balance sheets or extracts therefrom, where publication of the balance sheets is required under company law in the country in which the service provider is established,
- a statement of the service provider's overall turnover and its turnover in respect of the services to which the service provision relates for the previous three financial years, or
- any alternative documentation which the port authority may consider appropriate.

Professional, financial and insurance criteria for exclusion of service providers and for choosing between service providers, including bankruptcy or winding-up, arrangement with creditors, etc, convictions for offences or other evidence concerning professional misconduct, failure to fulfil obligations relating to the payment of social security contributions or taxes, misrepresentation in supplying information in the selection procedure.
