



Committee of the Regions

COTER-034

Brussels, 27 April 2005

**OPINION**  
of the  
Committee of the Regions  
of 13 April 2005  
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)  
and the  
**White Paper on the review of Regulation 4056/86,  
applying the EC competition rules to maritime transport**  
COM(2004) 675 final

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THE COMMITTEE OF THE REGIONS,

Having regard to 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)) and the White Paper on the review of Regulation 4056/86 applying the EC competition rules to maritime transport (COM(2004) 675 final);

Having regard to the decision of the Council of 2 December 2004, to consult it on this subject, under the first paragraph of Article 265 and Article 80 of the Treaty establishing the European Community;

Having regard to the decision of its president of 3 November 2004 to instruct its Commission for Territorial Cohesion Policy to draw up an opinion on this subject;

Having regard to the Communication from the Commission to the European Parliament and the Council on Reinforcing quality service in sea ports: A key for European transport and the Proposal for a Directive of the European Parliament and of the Council on Market access to port services (COM(2001) 35 final) and the Amended Proposal for a Directive of the European Parliament and of the Council on Market access to port services (presented by the Commission pursuant to Article 250 (2) of the EC Treaty (COM(2002) 101 final));

Having regard to its opinion of 20 September 2001 on the Communication from the Commission to the European Parliament and the Council on Reinforcing quality service in sea ports: A key for European transport (CdR 161/2001 fin)<sup>1</sup>;

Having regard to the opinion of the European Economic and Social Committee of 29 September 2001 on the Proposal for a Directive of the European Parliament and of the Council on Market access to port services (CES 1495/2001);

Having regard to the Report of the Standing Committee of the EFTA States of 2 May 2002 on the Proposal for a Directive of the European Parliament and of the Council on market access to port services;

Having regard to the Joint text of 22 October 2003, approved by the Conciliation Committee provided for in Article 251(4) of the EC Treaty, on the Directive of the European Parliament and of the Council on market access to port services (PE-CONS 3670/03 – C5-0461/2003 – 2001/0047 (COD));

Having regard to the Report, of 4 November 2003, of the European Parliament Delegation in the Conciliation Committee on the Joint text approved by the Conciliation Committee on the Directive of the European Parliament and of the Council on Market access to port services (A5-0364/2003);

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<sup>1</sup>

OJ C 19 of 22.1.2002, p. 3

Having regard to its opinion of 29 September 2004 (CdR 163/2004 fin)<sup>2</sup> on the Proposal for a Directive of the European Parliament and of the Council on Enhancing port security (COM(2004) 76 final);

Having regard to 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;

Having regard to Council Regulation (EEC) No. 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 [now Articles 81 and 82] of the Treaty to maritime transport, last amended by Regulation 1/2003 of 16 December 2002;

Having regard to the Presidency Conclusions of the Lisbon European Council, held on 23 and 24 March 2000, in which the Commission is urged to "speed up liberalisation in areas such as gas, electricity, postal services and transport";

Having regard to the White Paper of 12 September 2001 on European transport policy for 2010: Time to decide (COM(2001) 370 final);

Having regard to Commission Regulation No. 823/2000 of 19 April 2000 on the Application of Article 81(3) of the EC Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia);

Having regard to Council Regulation (EC) No. 1/2003 of 16 December 2002 on the Implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty;

Having regard to the Report of the OECD Secretariat of 16 April 2002 on Competition policy in liner shipping;

Having regard to the European Commission's consultation paper of March 2003 on the Review of Regulation 4056/86 on the detailed application of Articles 81 and 82 of the Treaty to maritime transport;

Having regard to the comments received in respect of the European Commission's consultation paper on the review of Regulation 4056/86;

Having regard to the Report of the Erasmus University in Rotterdam, dated 12 November 2003, on the assistance which it provided in processing the comments received by the Commission in respect of its consultation paper on the review of Regulation 4056/86;

Having regard to the European Commission's discussion paper, drawn up in December 2003, on the review of Regulation 4056/86;

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<sup>2</sup> OJ C 43 of 18.2.2005, p. 26

Having regard to the European Liner Affairs Association (ELAA) Paper on the Review of Regulation 4056/86: Proposals for a new regulatory structure, dated 6 August 2004;

Having regard to the draft opinion (CdR 485/2004 rev.1) adopted by its Commission for Territorial Cohesion Policy on 4 February 2005 (Rapporteur: **Mr Rolf Harlinghausen**, Member of the Europe Committee of the Hamburg Parliament (DE/EPP);

**Whereas:**

- 1) liberalisation of the transport sector has been one of the key objectives of the EU and its Member States, particularly since the adoption of the Lisbon Agenda in 2000;
- 2) transport policy, in particular, is one of the priority areas of the Commission for Territorial Cohesion Policy and also of the Committee of the Regions, as a whole, as has been demonstrated by a large number of its opinions on this subject, in particular the opinion prepared by Mr Lamberti on the initial draft of the Directive on port services. The CoR thus underlines the fundamental contribution made by EU transport policy to the achievement of cohesion in an enlarged and even more diverse European Union;
- 3) in the next few years the EU will have to contend with a considerable growth in demand for transport services. This increase, arising, inter alia, as a result of economic growth, the enlargement of the EU and the stepping-up of trade relations, will, moreover, affect freight traffic to a considerable extent;
- 4) in view of the fact that capacity is likely to be overloaded, above all as regards road transport infrastructure, it is therefore essential that considerable efforts be made to channel traffic flows and to extend transport infrastructure. The environmentally friendly maritime transport sector will play a key role in this respect as, in view of its potential capacity, it can help to transfer freight transport from the roads and to bring about more sustainable transport development. The establishment and extension of an effective intermodal transport network will have a decisive impact on coastal regions, port regions and hinterland areas and consequently also on port industries in these areas and the enterprises involved in maritime transport. It may be assumed that this positive impact on the internal market as a whole will also be clearly visible in areas such as the Baltic region;
- 5) the establishment of efficient transport systems is a prerequisite for the achievement of the goal of making the EU competitive at international level. Reliable basic conditions have to be established in order to provide incentives for a further bolstering of investment in the transport sector. With this aim in view, EU law will have to comply with the principles of effective competition and free access to markets and also meet requirements in respect of security of investment, adequate safety provisions, socially acceptable working conditions and a high level of environmental standards;

- 6) cargo handling costs in EU ports are substantially lower than the equivalent costs in North America and Asia; it is thus vital for the measures to be taken to help bring about an improvement in the competitiveness and the efficiency of EU ports to be discussed, on the basis of an analysis of the shortcomings of the current situation. No such analysis is however as yet available;
- 7) attention should also be drawn to the fact that effective complex structures have been established in recent decades, particularly in ports but also in the field of maritime transport. This development has helped to ensure that many of the enterprises established or operating in the EU and its ports are already amongst the most profitable and most competitive in the world. Changes to the basic legal conditions should therefore take adequate account of their impact on structural interdependences within the transport sector and interdependence between this sector and the other branches of the economy. The Commission has also recognised the complex nature of these structures by making provision for considerable financial outlay in order to establish effective, competitive transport systems, such as "short sea shipping" and the "motorways of the sea";
- 8) it is essential to adopt a sensitive approach when organising deregulation – which is indisputably necessary – in the field of maritime transport and port services. The requisite transitional provisions should – also on employment grounds – strive to avoid placing enterprises established in or operating in the EU at a disadvantage – however temporary – vis-à-vis other world market players and to avoid bringing about upheavals in the EU;
- 9) a comparison of the situation at worldwide level demonstrates that, in respect of both maritime transport and port services, basic conditions with regard to competition policy and competition law differ to a very considerable extent. Industrial policy considerations should therefore play a role when determining the extent, scope and speed of market liberalisation within the EU. Such considerations have up to now been totally disregarded. Complementary employment policy measures should also be put in place to minimise possible negative, short-term impacts of liberalisation;

**adopted the following opinion at its 59<sup>th</sup> plenary session of 13-14 April 2005 (meeting of 13 April):**

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**I. Proposal for a Directive of the European Parliament and of the Council on Market access to port services**

**1. General comments made by the Committee of the Regions**

**The Committee of the Regions**

- 1.1 **endorses** the Commission's desire to establish a special Community framework for port services. This endorsement is all the stronger in view of the fact that ports are to be found in 20 of the now 25 EU Member States;
- 1.2 **welcomes** the fact that in the Proposal for a Directive, the Commission sets out its fundamental objectives of ensuring competition and efficiency in the port sector. Where inefficiencies exist, the instruments of liberalisation, freedom of access to the markets and transparency can help to achieve these objectives;
- 1.3 **agrees** with the Commission that, in addition to the application of the transparency Directive to port enterprises, it is also essential to adopt aid guidelines in respect of port investment which are clear and transparent, on the one hand, but also flexible, on the other hand, in order to ensure continuing fair and efficient competition in the port sector;
- 1.4 **is pleased** that the Commission is making it possible for publicly-owned ports to provide port services in the interests of promoting effective competition;
- 1.5 **does, however, regret** that only a short time after the failure of its initial attempt to secure approval of its proposals, the Commission is now submitting a further proposal for a Directive, setting out stricter provisions in a number of key regulatory areas, without having carried out the requisite analyses. The new proposal for a Directive contains a large number of amendments based, for the most part, on the initial draft, which was rejected by both the Council and the European Parliament; some of these amendments clearly fall short of the results of the conciliation process;
- 1.6 **deplores the lack** of adequate consideration of the prevailing market structure with regard to European ports and port services. There is, in reality, a high degree of competition between individual ports in the EU, with the result that only those ports which are efficient and provide good value for money are able to stand up to the competition in the EU;
- 1.7 **concludes** that, as a result of the intense competition between ports, the only services which will be able to operate successfully within ports are those which are based on efficient and inexpensive production methods. As inefficient providers of port services have a detrimental effect on the competitiveness of the overall operation of individual ports, competition between ports will oblige such service providers to improve their productivity;

- 1.8 **regrets the failure** to take adequate account of the fact that competition is not confined solely to activities within ports; whole transport networks are also in competition with one another. Interventions in one component area of these transport networks – in this case ports – have an impact on the whole logistics chain in hinterland transport. The new proposal for a Directive therefore, in reality, regulates far more than simply access to port services. These proposals would have unforeseeable consequences in the field of logistics;
- 1.9 **fears** that there will be a drop in the number of active providers of port services in the EU if the proposal for a Directive is implemented in its current form. The possibility cannot be excluded that a small number of service providers from ports outside the EU, who earn high rates of return on their investments in their own monopolistic home markets, will step up their penetration of key ports in the EU and successfully take part in selection procedures by making high financial bids. This would be the case in particular, when the size of the bid was the only, or the decisive, selection criterion. This would significantly jeopardize the current structure of port industries in the EU, which is characterised by a large number of public and private terminal operators. Were it to be the case that a small number of terminal operators were able, in this way, to control a sizeable share of the market in cargo handling operations at ports, this would lead to the establishment, in the EU too, of monopolistic structures incompatible with the goal of achieving a higher level of competition;
- 1.10 **fears**, in addition, that there will be a drop in the level of investment by port-service providers. The proposal for a Directive creates uncertainties with regard to the duration of contracts and compensation which would lead to a considerable decrease in the expected level of amortisation revenue. These uncertainties will also put up the cost of refinancing investments as the banking sector will, in pursuance of the Basel II Requirements, pay greater attention to the risks concerned. Just these two consequences of the proposal for a Directive will result in a considerable reduction in investment incentives;
- 1.11 **identifies** an infringement of both the subsidiarity principle, set out in Article 5 of the EC Treaty, and the principle of proportionality as the proposal for a Directive pays only very scant attention to the fact that, at the level of the Member States, competition has already been liberalised between EU ports. With their existing form and scope, the provisions set out in the proposal for a Directive are therefore not necessary;
- 1.12 **therefore expresses its concern** that the measures put forward in the proposal for a Directive will not achieve the Commission's objectives, which are themselves to be explicitly welcomed; it fears that the current trend towards bringing about considerable increases in growth and efficiency at EU ports and in respect of port services is more likely to be damaged by these proposals;
- 1.13 **regards it as appropriate** that ports' scope to provide port services themselves is not confined to specific situations but extends across the board. Steps must be taken to ensure that

fair and transparent conditions of competition are safeguarded in cases where port authorities themselves are competing with other – private – bidders in selection procedures;

- 1.14 **would add** that there are qualitative differences in the various language versions of the proposal for a Directive, thereby making it more difficult to carry out an appraisal of the document;

### **Individual aspects of the proposal for a Directive**

#### **The Committee of the Regions**

- 1.15 **fears** that the proposed requirements in connection with mandatory authorisation will involve port authorities in a vast amount of red tape, which flies in the face of the goals of a "liberalising" Directive. The proposal for a Directive stipulates that all port services covered by the Directive (technical – nautical services such as pilotage, towing and mooring services, all activities linked to the handling of cargo and passenger services) will, in future, require authorisation. This requirement also covers port services which hitherto did not require authorisation. In future, port authorities would have to issue far more authorisations than had hitherto been the case as, for example, property owners, too, who operate port services on their own property would also need to have an authorisation. Parties carrying out self-handling in respect of cargo and passenger operations ("self-handlers") would also need to have an authorisation, although such authorisations could be provided for an unlimited period, albeit only for as long as self-handlers continue to comply with the criteria for issuing such authorisations. Port authorities would also be obliged to monitor authorisations. In addition to checking compliance with the criteria for issuing authorisations, it would also be necessary to carry out checks with regard to compliance with, for example, employment and social provisions, a task which is basically the responsibility of the social partners. In individual cases, these obligations taken overall, could also exceed the capacity of a given port authority;
- 1.16 **believes that it is possible** that the proposed mandatory authorisation in the case of property owners will infringe property rights and will also be incompatible with Article 295 of the Treaty establishing the European Community, under which Member States' rules governing the system of property ownership shall not be prejudiced. In the event that property owners see their bids in respect of their own port facilities rejected under a selection procedure and the contract awarded to a third party, such property owners would be unable to provide port facilities any more on their own property. As the port authorities are not the owners of the port areas in question, they would have no right of access to these areas and are therefore not in a position to conclude a contract of lease with a third party, without the agreement of the owner of the property. In particular, the port authority cannot compel the owner of the property to conclude a contract with the third party which has made the successful bid under the selection procedure. Authorisations awarded under such circumstances would therefore be ineffective;



- 1.17 **points out** that complications could arise in connection with the proposed selection process. In cases where limitations are imposed, the proposal for a Directive stipulates that the only authorisations which shall remain in force are those which are issued under a selection procedure. All authorisations which had, on the other hand, been properly issued in accordance with current legal provisions would cease to be valid. As the proposed new legislative act would have retroactive effect in this case, port authorities would therefore be required, once the Directive comes into force, to organise selection processes for re-issuing all authorisations, including existing authorisations;
- 1.18 **considers** that steps to give Member States sole responsibility for establishing rules on calculating compensation for the residual value of a company run the risk of distorting competition. For example, when calculating compensation it might be possible to provide for (hidden) additional deductions on property rent. Therefore the principle laid down in the Directive to set compensation on the basis of transparent rules established in advance, does not adequately formalise what is required of national rules on calculating compensation. At the same time any Community rules must take into account differences between the respective national depreciation provisions and tax systems so as to avoid causing distortions in competition. In line with these principles, European, rules could for instance make the application of generally applicable national depreciation provisions mandatory. Any divergence should only be allowed if there are suitable grounds for doing so. Moreover, rules on calculating compensation should be made public, or at least the Commission should be notified thereof, in order to promote transparency;
- 1.19 **fears** that various individual provisions set out in the proposal for a Directive will result in a reduction in investment; the provisions in question are as follows:
- a) the new, shorter durations of authorisations are out of step with the period required for amortisation. These excessively short durations will have the effect of making some long-term investments by no means profitable or lead to a situation whereby the prices charged hitherto – which were advantageous when compared with international rates – will have to be increased in order to ensure more rapid amortisation;
  - b) the proposal for a Directive does not include any provision for extending the duration of existing authorisations. Under the proposal, authorisations cannot be extended without organising a new selection process, thereby running the risk that authorisations may be lost. Under these circumstances, it is likely that long-term investments will only be carried out at the beginning of the duration of a given authorisation. Thereafter the incentive to invest diminishes continuously as the authorisation period runs out;
  - c) the proposed compensation rules are inadequate. Investment in modern technical equipment does not just require a capital outlay; considerable expenditure also has to be made on training employees and adjusting work management. In order to ensure that operations are effective, it is also essential to spend considerable resources on positioning

enterprises within the differentiated network of the transport chain. If compensation payments fail to take account of this expenditure, expectations as regards profitability are diminished from the very moment when investment plans are being drawn up. These measures will have the effect of either reducing investment or stopping investment altogether;

- 1.20 **points to** the fact that the lack of transitional provisions will produce considerable legal uncertainty in the case of port-service providers already providing such services. Enterprises which are already active on the market cannot rely on being able to continue their activities in future to the same extent. If a new port-service provider wishes to enter the market in future and if limitations are imposed, the port-service providers which are already active on the market will already have to take part in a selection procedure, thereby running the risk of losing their authorisations. On the one hand, this situation will undermine confidence in existing contracts and, on the other hand, uncertainty as to the continuing existence of authorisations will lead to a significant decrease in the readiness to invest. A one-sided infringement of current contracts will also give rise to the risk of sizeable demands for compensation;
- 1.21 **predicts** a decline in the level of attractiveness of EU ports to cruise ships as a result of the restrictions which are to be placed on self-handling operations. Under the proposal for a Directive, self-handling, using the ship's sea-faring crew, would be authorised only in the case of Short Sea Shipping and the Motorways of the Sea operations. International cruise ships would therefore no longer be entitled to carry out on-board checks using their own sea-faring crew;
- 1.22 **fears** that the proposed measure whereby self-handlers may use their own land-based personnel will lead to "social dumping", a decline in both the quality and the productivity of port services and conflicts with technical and political safety requirements (ISPS). Moreover, the selection procedure system proposed by the Commission would be undermined if, for example, handling enterprises were to receive authorisations to carry out loading work but were, in reality, not able to use these authorisations because shipping companies carried out self-handling;
- 1.23 **welcomes** the flexible nature of the provisions governing pilotage services which enable the Member States to set proper criteria in respect of national conditions for granting authorisation and the selection of service providers. The Committee does, however, **wonder** whether it is advisable to make it obligatory for the Member States to report to the Commission on measures to improve the effectiveness of pilotage services as, in the case of these services – as is also underlined in the proposal for a Directive itself – the criteria of the safety of maritime transport and personal expertise are the decisive factors.

## 2. Recommendations by the Committee of the Regions

### The Committee of the Regions

- 2.1 **considers** that the Directive should not be approved in its present form, because it does not promote competition in the port sector, but creates partly unnecessary or inadequate rules which are prejudicial to the interests of, in particular, small and medium-sized port service providers and which encourage social dumping; the Directive thus decreases efficiency of ports and restricts opportunities for them to engage in fair competition. The Commission's stated objectives will not be achieved via this Directive;
- 2.2 **considers it essential** to carry out a differentiated analysis of the current situation of the market for port services before organising further consultations. The only way effectively to tackle the danger of having an over-regulated market for port services, with the attendant decrease in competition and drop in the efficiency, is by having a detailed understanding of the existing weaknesses in the key market sectors of the EU port industry;
- 2.3 **is convinced** that it is essential to respect existing commitments and provide enterprises which are already active on the market with a guarantee as to their continued existence in order to reduce legal uncertainty. Enterprises which are already active on the market should therefore be exempted from mandatory authorisation for the duration of existing contracts or authorisations; alternatively existing authorisations should remain in force up to the maximum durations laid down in the proposal for a Directive. At the very least, however, appropriate transitional periods should be set, i.e. these periods should be prolonged in order to bring them into line with the objective requirements of the enterprises concerned;
- 2.4 **takes the view** that compensation provisions should be introduced in the Member States which would be aligned on the various national depreciation provisions, even after the due expiry of authorisations, and would, at the same time, be geared to the current value of an enterprise on the fictitious assumption that its authorisation is to remain in force. Such a provision would take account of both expenditure, of an investment nature, by the enterprises concerned on organisation, staff and the positioning of the enterprise in the transport network and also of the various basic institutional conditions;
- 2.5 **believes** that Community law should specify which factors may or must be taken into consideration in the rules on calculating compensation. However, such rules must take into account differences between the various national depreciation provisions and tax systems;
- 2.6 **advocates** that the duration of authorisations be geared to the term of the investments carried out. Furthermore, in the case of long-term investment carried out only in the course of the duration of an authorisation, options should be provided for extending the authorisation. The Committee **recommends** that at least the time-limit provisions set out in the proposal put

forward by the Conciliation Committee of the European Parliament and the Council in respect of Port Package I should be incorporated into the present proposal for a Directive;

- 2.7 **proposes** that the mandatory authorisation requirement be replaced by an authorisation requirement which would take effect only in the case of the imposition of a limitation on the number of service providers. This would bring about a considerable saving of resources;
- 2.8 **considers it essential** that provision for self-handling be unreservedly restricted to sea-faring crew members of the vessels concerned. In order to avoid "social dumping" and on grounds of safety, Member States should be allowed to restrict self-handling to port-users whose vessels sail under the flag of an EU Member State;
- 2.9 **takes the view** that the area of application of the proposal for a Directive should be extended to include access waterways to ports. Rivers and canals which are accessible to maritime transport should also be included in the scope of the Directive, even if they are not used exclusively as access waterways to ports. This proposal is, however, subject to the express proviso that the other recommendations put forward by the Committee of the Regions are implemented. Extending the area of application of the proposal for a Directive without taking account of the other recommendations would, on the other hand, aggravate the problems which have been described;
- 2.10 **strongly supports** the Commission's intention to draw up transparent guidelines in respect of the granting of aid to ports;
- 2.11 **believes** that the only way to make EU ports more efficient and to increase competitiveness is by taking account of the recommendations put forward by the Committee.

## **II. White Paper on the review of Regulation (EEC) No. 4056/86 applying the EC competition rules to maritime transport**

### **3. General comments made by the Committee of the Regions**

#### **The Committee of the Regions**

- 3.1 **praises** the Commission for its endeavours to carry out a review of Regulation 4056/86, applying the EC competition rules to maritime transport and for its desire, with that aim in view, to make intensive use of and to incorporate in its work the expertise of maritime transport operations and their associations;
- 3.2 **agrees** with the Commission that any future provisions will, at any rate after a transitional stage, have to comply, fully and without exception, with the standard conditions set out in Article 81(3) of the Treaty establishing the European Community;

- 3.3 **fully concurs** with the Commission in its desire to fully abolish the exclusions in respect of pricing and supply agreements and additional agreements which serve to restrict competition;
- 3.4 **agrees** with the Commission that the exclusion of cabotage and tramp services from the competition implementing rules enshrined in Regulation 1/2003 may be repealed as there are actually no obvious valid reasons for maintaining this exclusion. A further reason for repealing these exclusions is the fact that this would be a way of tackling, from the outset, a case of unequal treatment of European operators in respect of competition law, however implausible this case may be;
- 3.5 **welcomes the fact** that the White Paper presented by the Commission closely examines the issue of the compatibility of existing provisions with EU competition law; the Committee **does** however **have the impression** that there is indeed strong circumstantial evidence that the current provisions are no longer compatible with the provisions of Article 81(3) of the EC Treaty; it could, nonetheless be advisable to provide more sound underlying data to back up the conclusions in this regard set out by the Commission. This could provide the Commission with a way of accommodating the reservations expressed by maritime shipping enterprises and also of complying with the requirements of Article 253 of the EC Treaty;
- 3.6 **takes the view** that a comprehensive impact analysis has yet to be provided; the Committee is confident that such an analysis will play a key role, at the latest at the stage when concrete regulatory proposals are being drawn up; in this context greater consideration should be paid, in particular, to the impact on trade flows, investment, market shares and consumer prices. The objection that such an analysis would be made more difficult to carry out in view of the fact that, as liner conferences have been in existence for many years, there is a lack of data with regards to competitive market operations, is only partially applicable. The issue at stake here is an area in which any liberalisation drive will have to contend with a sector which was previously highly regulated;
- 3.7 **wonders, in particular**, whether any amendments should not also focus more strongly on employment aspects. The Commission points out that there is likely to be a higher level of concentration on the market which would give a boost to innovation. Whilst such a development should be endorsed from the research and industrial policy standpoints, it could, however, have a negative impact on employment in enterprises;
- 3.8 **takes the view** that the proposal put forward by the European Liner Affairs Association (ELAA), to continue to make provision for the exchange, on a non-discriminatory basis, of particular data not linked to named enterprises and aggregated with a delay should be examined in a favourable light. In the final analysis, freely available market information may lead to greater transparency and thus also promote competition. A price index accessible to all market participants would be a key component part of the system, the aim being to take over the guideline role played by existing conference tariffs. In this context it is, however,

absolutely essential to ensure that effective monitoring takes place and that the measures are confined to the mere exchange of information;

- 3.9 wishes to **stress**, that the primary issue at stake here – in addition to the question of the continued existence of particular provisions, where necessary in modified form – is the need to meet the requirements of enterprises which are established and active on the EU market by introducing appropriate and differentiated transitional measures. Such measures should be aligned first and foremost, on the findings of a comprehensive impact analysis. In this context, the Committee **wishes to draw attention** to the fact that, from the outset, Regulation 4056/86 provided absolute exemption from EU competition provisions solely in the case of maritime transport; this sector therefore always had to reckon with the fact that these provisions would be reviewed at a later stage. A demand that the existing provisions continue to be applicable or that transitional measures be introduced can therefore not be based solely on grounds of ensuring legal certainty and protecting confidence. The legislative body should, nonetheless, take account of the fact that the liner conference system has been in existence for many years, that practices are deeply rooted and that business relations have been built around the conference system;
- 3.10 **does not share the view** that the provisions set out in Article 2 of Regulation 4056/86, concerning authorisation to conclude technical agreements, should actually be repealed. The objections raised by the Commission, namely that the provisions in question were "merely declaratory", created confusion and were interpreted too broadly by shipowners, would not be resolved by repealing the provisions; this would rather have the effect of strengthening the objections since technical agreements would be authorised even if there were no legal provision to that effect. The absence of express provisions would more likely result in the creation of additional delimitation problems. The Committee is **of the opinion** that a provision which continues to define, in express terms, the agreements which are authorised may therefore maintain legal certainty and provide guidance. This is also subject to the proviso that Article 2, or the corresponding future provision, is adjusted accordingly, should the way in which the future competition regime is formulated render the hitherto existing provisions invalid. The future provision could be included in the block exemption for consortia (Regulation 823/2000);
- 3.11 **takes the view** that global standardisation of the basic legal conditions would appear to be desirable on competition and industrial policy grounds. This observation is all the more apposite in view of the fact that the EU market is henceforth to be liberalised and other shipping nations currently do, to some extent, regulate competition on their markets to a larger degree than is the case with current EU law in respect of the European market;
- 3.12 **draws attention to the fact** that the White Paper has, up to now, not paid sufficient attention to the impact which abolishing or amending Regulation 4056/86 would have on current international law, on the one hand, and the removal of possible conflicts of law, on the other hand;

- 3.13 **considers** that the planned repeal of Article 9 of Regulation 4056/86, which makes provision for negotiations in the event of conflicts of law between the EU and non-EU states, **should be reviewed**. Whilst it is recognised that this provision has up to now not yet been invoked, this situation could change, particularly if, as has been planned, current competition law governing maritime transport undergoes a thorough revision. Furthermore, there may be a need to hold negotiations not only in cases where one constitutional state requires something which another constitutional state prohibits but also in cases where a measure is permitted in one constitutional state but banned in another such state.

4. **Recommendations made by the Committee of the Regions**

**The Committee of the Regions**

- 4.1 **appeals to** maritime transport enterprises and associations not to close their minds to the economic advantages which could be gained, in the general public interest, by increasing competition;
- 4.2 **advocates** shaping the substance and timing of the subsequent process in such a way to ensure that the reservations expressed by shipping enterprises and their associations can be addressed on an ongoing basis. Detailed explanations should be given regarding the extent to which these reservations can be taken into consideration or have to be rejected. This is the only way to ensure the establishment of a competition regime for maritime transport which is sustainable, ensures legal certainty and is, wherever possible, accepted by all the parties involved;
- 4.3 **therefore calls for** the implementation, wherever possible, of a comprehensive impact analysis which would examine more closely the impact on trade flows, investment, market shares and consumer prices. The Committee **recommends** that attention be paid, in particular, to employment and social-policy aspects when examining the impact of liberalisation;
- 4.4 **takes the view** that the proposal put forward by the European Liners Affairs Association (ELAA) provides an effective basis for future regulatory measures; in this context, the Committee **regards it** as absolutely **imperative**, for the purposes of ensuring effective monitoring, to involve the Commission – from the point of view of both personnel and organisation – in the operation of the body which the ELAA proposes to be set up for the purposes of gathering and passing on information not relating to named enterprises. Furthermore, the Committee **takes the view that** consideration should be given to the idea of also channelling all flows of information via the Commission, or an observer appointed by the Commission, and even to the idea of having the proposed body established directly within the Commission. This would make it possible for the Commission to analyse, on an ongoing basis the impact which the exchange of information had on the market and on competition on the market. As reliable results can only be expected after the scheme has been in operation for

a relatively long period of time, it would be advisable to adopt a regulatory measure for a limited period and on a trial basis, with the option to extend it;

- 4.5 **calls for** consideration be given to whether the transitional arrangements could perhaps be aligned on amortisation periods or on the length of time the shipowners concerned are likely to need in order to make changes, with regard to the vessels which they have purchased or are leasing for long or short periods, in order to bring their operations into line with the new conditions;
- 4.6 **urges** that investigations be carried out to determine whether it would be possible for the duration of transitional periods to be geared also to geographical considerations, i.e. whether they could be aligned on the conditions prevailing on the regional markets concerned. This being the case, the transitional periods for the Baltic area could be rather short, as there are few liner conferences in this area, whereas the transitional period for the Atlantic routes could be rather longer, as liner conferences play a major role in this area;
- 4.7 **wishes to draw attention to the fact** that the establishment and duration of transitional periods could also be geared to "market-share thresholds";
- 4.8 **calls for** the existing uncertainties with regard to Article 2 of Regulation 4056/86 not to be seen as grounds for repealing the provisions set out in this Article but rather as grounds for reviewing the substance of these provisions within the framework of Regulation 4056/86 and Regulation 823/2000. On the one hand, steps should be taken to ensure that these provisions are compatible with Article 81(3) of the EC Treaty and are in line with the future competition regime and, on the other hand, it would be advisable to spell out more concretely those sections of the provisions which the Commission fears will be interpreted too broadly by maritime transport enterprises or in respect of which the Commission has established that such broad interpretations have already been made. The enterprises concerned should be advised to submit proposals on this matter of their own accord, if they wish to ensure that the provisions set out in Article 2 are retained;
- 4.9 **takes the view**, moreover, that both at bilateral and multilateral level and also in the context of cooperation within existing international organisations, further efforts might well be advisable with a view to achieving global conditions of competition which would be more uniform and therefore fairer. In this context checks should also be carried out to determine whether, and to what extent, provisions introduced by non-EU states could serve as an example for the EU;



- 4.10 **recommends** that Article 9 of Regulation 4056/86 be retained, at least on the basis of a limited-duration provision valid for several years, with the option of being extended.

Brussels, 13 April 2005

The President  
of the  
Committee of the Regions

The Secretary-General  
of the  
Committee of the Regions

**Peter Straub**

**Gerhard Stahl**

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