

DI/DC/ES  
Contact: Ewout Sandker

21 August 2001

**Subject: Access to Ports Services**

Dear Member of Parliament,

UNICE welcomes the Commission proposal for a directive on market access to port services, as well as the efforts of the EP Committee for Regional Policy, Transport and Tourism to clarify and improve the draft legislation. European business attaches great importance to improving the quality of port services, by allowing fair competition in and between ports, and covering all port services. Concerning the draft directive, we consider it should be guided by the following principles:

**SCOPE**

It should cover all ports (which are open to general commercial traffic) and all services; the port area and relevant markets should be defined more clearly.

**INFRASTRUCTURE MANAGEMENT/SERVICES**

Infrastructure management needs to be fully separated (legally and administratively) from the provision of services.

**MARKET ACCESS**

- It is not necessary to specify a minimum number of providers, it is sufficient to guarantee free access to the market.
- Only if there is a lack of space or capacity, should the port authority be allowed to limit the number of providers; in that case the provider needs to be selected in an objective and transparent manner, through tender procedures. Any provider who feels he has been disadvantaged, should be able to appeal to the national courts.
- Exemptions from the obligation to tender can be granted by the Commission if it considers that the current provider or providers do not have a dominant market position in the relevant market (for example when a comparable alternative - in terms of both quality and price - is available in a nearby port).

**DURATION CONCESSIONS**

The duration of the concessions must be sufficient to allow the operator to achieve a suitable return on his investment, and can therefore in some cases be more than 25 years; however, this may mean that concessions need to have safeguard clauses making it possible to

withdraw the concessions if services malfunction. Furthermore, a port service provider must be able to invest up to the expiry of his authorisation's time limit, regardless of the latter's duration. That is why such clauses should nevertheless be accompanied by other clauses that allow for compensation of the agent in the event of eviction before the end of the concession's term, failing which the mechanism might not offer adequate incentive for private investors. For the same reason, when a new service provider is selected, he should compensate his predecessors at the current market rate for the value of equipment that he inherits.

#### **STATE AID**

Article 87 of the Treaty, governing the conditions for granting state aid, applies to this sector like any other. UNICE considers it very important to streamline the application of state aid rules in this sector, thereby avoiding distortions of competition. It favours a strict interpretation of the Treaty rules, allowing state aid only for the realization of infrastructure, and not for its use. UNICE would therefore welcome Commission guidelines that explain the application of state aid rules to the ports sector, within a year's time.

#### **IMPACT STUDY**

Considering the different situation in many European ports, and the potentially far-reaching consequences of the proposed legislation, UNICE considers it appropriate that, before new legislation is definitively adopted, the Commission should first conduct an in-depth study on the impact of its proposals, both on service providers and users.

I thank you for the attention you may give to our views.

*(Signed by Daniel Cloquet for)*  
Daniela Israelchwili  
Acting Secretary General