



## Maritime interests and the EU port services directive

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### Abstract

A key theme of the EU Port Policy has been the establishment of free market access to the provision of port services in EU ports. However, two successive European Commission proposals for a relevant EU port services directive (PSD) failed to produce a new policy regime. This paper examines the mobilisation of maritime interests, aiming to identify stakeholders' preferences and their contribution to the rejection of this port policy proposal. The analysis suggests that, although they did not share the same perspective, the views of organised maritime interests shared a common denominator: they were against the proposed EU rule due to its structural deficiencies. Assisted by the industrial heterogeneity, the difficulties to implement a 'one size fits all ports' policy, and the observed institutional tensions a variety of vested interests frequently with monopolistic positions contributed to the produced policy output failure.

*Keywords:* Intra-port competition; Port policy; Maritime interests.

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### 1. Introduction

Following a lengthy consultation process, an overwhelming majority of the European Parliament (EP) voted, in January 2006, against the adoption of a European Commission proposal for a Directive aiming to establish free market access to port services, the so-called 'port services directive' (PSD). The paper analyses the role of maritime interests within this consultation process and assesses their contribution to this policy output failure.

This was the Commission's second unsuccessful attempt to establish a common European regulatory framework regarding the provision of port services in the major European ports. A narrow majority of the EP plenary session rejected the first proposal in December 2003. The almost immediate publication of a revised PSD proposal (PSD II) in October 2004 aimed to iron out the most controversial issues, yet the EP argued that this second proposal resembled the first one. Still, the EP reactions to the Commission's political manoeuvres can partially account for the produced output-

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failure. This is because in both cases the EU-level interest groups representing stakeholders have been mobilised aiming to influence the policy-making process. Some of them united in seeking to preserve the status quo and did so successfully.

The search for a long-term EU Port Policy has been marked by the mobilisation of, and conflicts between, contending maritime interests, frequently with monopolistic positions (Baird, 1982; Pallis, 1997; Chlomoudis and Pallis, 2002). European Port Policy changes are the result of a dynamic process within which national governments and EU institutions need stakeholders' consensus to transform policy ideas to policy rules. Evidently, there are different opinions regarding several aspects of this policy, including the proposed PSD on port services liberalisation. Thus, the EU policy-making does not necessarily produce collective policy outcomes.

Via a comparative content analysis of their position papers published at various stages of the consultation process, the paper concludes with the contribution of maritime interests to the failure of translating the Commission's second proposal into an adopted EU port services directive. In Section 2, the paper briefly presents the content of the proposed port policy regime, while Section 3 discusses the observed institutional tensions between the Commission and the European Parliament regarding the prospect of converting this proposal into an EU policy. Section 4 analyses the stance of vested interests and the final Section presents the conclusions of this analysis.

## **2. The proposal for a Port Services Directive (PSD)**

On November 20, 2003, the EP rejected the European Commission's first proposal on a PSD that would liberalise market access to port services, by a narrow majority (CEU, 2001). Within less than a year the Commission reintroduced the issue in the agenda of the EU port policy emphasising its intention not to abandon this effort. The PSD 'was complex, but necessary' (ESPO, 2004a); thus, in October 2004, it published a second proposal, the PSD II (CEU, 2004).

The initial proposal aimed at establishing open access on the basis of transparency, non-discrimination, and principles on issues like charging, public service obligations, as well as safety. Another objective was to assure that there were at least two service providers for each one of the three categories of port services: (a) technical-navigational services (pilotage, towage, mooring); (b) cargo-handling services (stevedoring, stowage, transshipment and other intra-terminal transport, storage, depot and warehousing); and (c) passenger services (embarkation, disembarkation).

The right to grant authorisations would be maintained by national governments, while the level of investment contemplated by the service provider would determine the maximum length of each authorisation. The aim was to ensure free competition within each port. In general, intra-port competition helps to eliminate any (private or public) strategy of price discrimination (i.e. according to demand elasticity) and monopolistic rent seeking. Inter-port competition also fosters specialisation (De Langen and Pallis, 2006a; Goss, 2006).

A further provision considered the right of port users to cargo self-handling. "Self-handling' is a situation in which an undertaking, which normally could buy port services, provides for itself, using its own land-based personnel and its own equipment,

one or more categories of port services. Along with the liberalization of pilotage, these have been the most controversial issues within the EU decision-making process.

Following a lengthy consultation, the EU institutions detailed a compromise including: (a) the obligation of every port to submit information on its financial relations; (b) the obligation of newly authorised service providers to compensate former providers in those cases that the duration of their authorisation would be reduced; (c) the application of the rule in the case of pilotage according to safety criteria and public service requirements; and (d) the conditional permission of self-handling. Still, the European Parliament rejected this agreement (November 2003). This rejection was portrayed as a triumph by a heterogeneous spectrum of stakeholders ranging from dockers to some private ports (Psaraftis, 2005).

The revised PSD proposal was very similar on the grounds of definitions, scope, and objectives, (i.e. selection procedures for authorisations, neutrality of competent authority in selection, limitations, provisions for pilotage, financial transparency issues), with the exception of self-handling. The spirit of change could be found in the strictness and the mandatory character of the regime regarding authorisations, shorter maximum durations for each authorisation, and a new and broader definition of self-handling (Pallis and Vaggelas, 2005).

The directive would apply to any EU port, provided that its average annual throughput over the last three years has not been under three million tonnes or 500.000 passenger movements. In cases of ports reaching the freight traffic threshold without reaching the corresponding passenger movement one, the provisions of the Directive would not have been applicable to port services reserved exclusively for passengers, and vice versa. The implication was that, if adopted, the directive would have had an immediate effect on the provision of port services in 364 ports throughout Europe (DfT, 2005), comprehensively altering the structure of the EU port system.

Table 1: Total freight and passenger movement in ports implementing the PSD and in all EU ports (by EU member-state; in .000)

Member State	Total freight tonnage, by				Total passenger movements, by			
	No of PSD ports	(i) PSD ports	(ii) all ports	PSD as % of total	No of PSD ports <sup>1</sup>	(i) PSD ports	(ii) all ports	PSD as % of total
Belgium	4	178,689	181,110	99%	0	591	739	80%
Cyprus	2	4,823	7,220	67%	0	287	287	100%
Denmark	14	77,061	103,954	74%	36	47,352	48,653	97%
Estonia	4	43,467	44,682	97%	0	5,172	5,172	100%
Finland	16	90,633	104,439	87%	2	15,865	16,341	97%
France	19	308,767	319,032	97%	8	27,148	27,405	99%
Germany	16	246,349	254,834	97%	22	30,009	32,146	93%
Greece	20	132,870	-	-	0	-	-	-
Ireland	4	36,927	44,919	82%	2	3,567	3,747	95%
Italy	38	457,789	477,028	96%	27	79,831	82,576	97%
Netherlands	10	407,421	410,330	99%	0	1,981	2,015	98%
Norway	11	148,486	190,034	78%	1	4,598	4,656	99%
Poland	5	50,712	51,020	99%	0	2,886	3,188	91%
Portugal	5	53,888	57,470	94%	0	-	-	-
Slovenia	1	10,720	10,788	99%	0	-	-	-
Spain	24	321,651	326,001	99%	2	19,510	20,041	97%
Sweden	25	136,626	161,454	85%	5	32,263	32,748	99%
UK	40	526,869	555,662	95%	5	33,009	33,708	98%

Note 1: In addition to ports that already meet the freight traffic threshold.

Source: UK Department for Transport, 2005 (Annex, D).

### 3. Major issues of conflict

This Commission's second initiative (PSD II) created tensions between stakeholders and the EU institutions. A major issue related to the selection procedure for authorisations for service provision. Among the main questions was the maximum duration of authorisations, with port authorities demanding lengthier periods than those suggested by the Commission. This preference could be adequately explained taking into account that the ports have opted in several cases for authorisations that extend to 75 or even 99 years of duration. Port operators and port authorities argued that shorter time authorisation could not allow for the full amortization of their investments in movable assets, and especially those investments immovable assets fully amortized. Evidently, these concerns triggered the reaction of port authorities on other issues as well.

Compensations to existing service providers and the transitional regime were two further controversial issues. Details regarding compensation for past investments, especially in cases when a service provider would not yet be able to renew its

authorisation, were of great importance for port operators. Yet these details were not clarified in the context of the PSD II proposal. As regards the transitional period between the adoption of the PSD and its implementation, the industry (foremost port authorities) demanded sufficient time that would facilitate the amortization of past investments.

There was also a dilemma regarding whether port authorities would continue to provide port services within the future regime, or if they should be neutral arbiters of port services provision by third parties. Whilst the Commission initially opted for the former option, port authorities opted for the latter.

The various forms of state aid provided to ports by EU member states was an additional controversial issue. This public funding has the target to restructure the port facilities and allow for adjustment to contemporary challenges. However, it is also responsible for situations that cause distortions of port competition. Market opening within a port demands clarification of the condition for capital mobilisation in order to avoid situations where this mobilisation favours certain port enterprises. As explained in the forthcoming sections, certain stakeholders were particularly interested in such clarifications.

The proposed permission of self-handling and the liberalisation of pilotage led to numerous reactions as well. On the issue of self-handling, under current national rules, port authorities in Europe are required to employ only local union labourers to load and unload cargo. However, exemptions are not rare and are (mostly) observed in dedicated terminals. Shipping companies and some ports would like casual labourers or ship crews to be allowed to perform these services. Trade unions, as well as port operators, were against the potential of self-handling services. Port authorities were divided, because in some ports self-handling is already applied. Shipowners and shippers had a united front in favour of allowing self-handling. As regards pilotage, many stakeholders advocated the degrading safety implications due to a potential liberalisation of this service. Maritime pilots felt strongly, stating that “*pilotage isn’t a commercial service but a Maritime Public Safety Service with responsibility for protection of the environment*” (EMPA, 2005).

#### **4. Policy makers’ reactions**

Despite the presence of all these controversies, a number of parameters contributed to the institutional ‘push’ toward the fast re-introduction of the PSD proposal in the European agenda. For the EU policy-making standards, the time span between the rejection of the controversial initial proposal and the re-opening of the process was extremely tight indeed.

European integration is based on the liberalisation of the economy. Both PSD proposals were consistent with this spirit. Within the European integration experiment, the port sector has been among the few cases in which the liberalisation process has not progressed. Both the industrial complexity, produced by the heterogeneity of the industry, and the difficulties in identifying port policy either as an ‘industrial’ or as a ‘transport’ policy, contributed to the observed difficulties to promote a supranational regime (Pallis, 1997).

On the other hand, in the 1990s, port market liberalisation progressed in the context of the national policies (i.e. Italy, Spain, etc). Notably, alongside PSD II, the Commission introduced a proposal for another directive (the ‘Bolkenstein’ Directive) aiming to eliminate any barriers that prevent businesses from offering services across the EU. This initiative re-emphasised the EU commitment to liberalise services in the Single European Market, and even though it was decided to exclude transport and thus port services from the scope of the directive (due to their peculiarity), the spirit is apparent. Moreover, the European Court of Justice had started to examine concessions to port service providers or labour organisations on a case-by-case basis.

Bureaucratic politics stand as another influential parameter. The urgent reintroduction of the PSD took place just two months before the Commission’s college stepped off power, with ‘self-motivation’ of the departing politicians being evident. To the Commissioner of the time responsible for Transport (Loyola de Palacio), the PSD proposal was a key theme of the transport strategy that she pursued during her stay in office. In an attempt to push it through, she had already advanced the application of the rule in her country of origin, Spain (Orru, 2005). Similarly to what it has done in other relevant policy areas, like maritime safety (Pallis, 2006) and shortsea shipping (Alexopoulos, 2000), the European Commission attempted to act as policy-innovator and act as the key actor for promoting port policy. The potential of progress was limited by that fact as the content of this second proposal was considerably different from the text that the conciliation between the Commission and the European Parliament had produced in 2003. The EP, which had voted against the first proposal, was not happy with this ‘premature’ Commission initiative.

This institutional conflict advanced the existing participation of maritime interests in the EU port policy-making process. In general, both the EP and the Commission maintain a rather good relationship with interest groups (Mahoney, 2004), and in the case of the PSD, the EP invested further towards this direction. Consistent with the route of the enforcement of the relationship with the interest groups, the EP organised a public hearing with the participation of all interest groups (June 2005). The results of this meeting, along with a number of impact studies that were presented during the public hearing, or were publicly circulated (ESPO, 2004b; DfT, 2005; OSC, 2005), further enhanced the discontent vis-à-vis the Commission’s proposal.

At the national level, governments were divided as well. Although they all agreed in principal, several tensions were apparent and portrayed as a conflict between the continental and the Anglo-Saxon approach to port organisation. In fact, some member-states that had already opened access to the port services market worried that the PSD II would have negative effects, i.e. crowding-out of existing investors, and creating a mid-term legal uncertainty. Others (i.e. the Mediterranean countries and the new members of the EU), however, were in favour of the PSD II proposal, seeking the introduction of intra-port competition in their national port systems.

## **5. Interest groups reactions**

A number of interest groups attempted to promote a large number of amendments and lead the PSD proposal toward a more positive (in their terms) direction, or even to provoke the rejection of the proposal. They did so by following multi-level lobbying

practices (Pallis, 2007), which acknowledge the dynamic of both the Commission and the EP in the EU institutional setting. Impact studies, either commissioned by stakeholders (ESPO, 2004b), national governments (DfT, 2005; ECORYS and Trandemco, 2005) or third-parties (OSC, 2005), provided an input towards the formation of the critical stance advocated by these interest-groups.

In practice, the strong stance of port stakeholders towards the PSD II led to the formation of an informal alliance and an 'issue network' (Greenwood, 2003). The joint position statement of ESPO and FEPORT (2002) provides an illustrative example. However, this network was formed incidentally, and corporation between the maritime interest groups remains occasional.

### *Port Authorities*

For port authorities, reaching a common position vis-à-vis the PSD II was not an easy task, especially since the Euro-federation that represents them (ESPO - European Sea Ports Organisation) has a wider membership than the EU. Some ESPO members opposed the directive, with others being neutral. The existence of (quasi)open market access regimes in some North European ports added to the Anglo-Saxon thoughts that the directive might induce a number of disturbing structural changes. This was observed especially in those cases in which intra-port competition is already a fact. In the context of ESPO, port authorities reached a sceptical common position, and they actively promoted this stance in the EU policy-making process.

During the consultation process regarding the initial PSD proposal, ESPO was in favour of the directive. The situation changed dramatically after the hasty reintroduction of the matter in the agenda. The core of the problem was that PSD II ignored the amendments of the conciliation procedure that had taken place in the context of the discussion of the first proposal (2003). For port authorities, the details of the agreement that had been reached within that process were very important: the agreement had incorporated most of their demands.

The reaction to the PSD II proposal was mostly based on the adoption by the Commission of a 'one size fits all' policy approach and the consequent 'absence of flexibility'. On these grounds, the main areas in which ESPO sought to alter the Directive proposal were:

- The protection of the interests of existing providers of port services in European ports.
- The mandatory authorisations for potential and existing providers.
- The maximum durations for authorisations.
- The provisions regarding self-handling of cargoes.
- The simplification of the proposed regime.

As regards authorisations, ESPO requested an increase in the number of criteria for the limitation of (existing or potential) service providers and demanded that the personnel should be a choice of the service provider itself. ESPO expected a clarification on the exact way that the new regime would limit the continuation of the existing providers' operation, demanding a reconsideration of the rights of existing providers. Furthermore, it advocated that the port authority and the competent authority for granting and monitoring authorisations should be the same body. ESPO's proposition about durations was: (a) in the case of no-investments by the providers, it

recommended a 10-year limit; (b) in the case of investments in movable assets, it recommended a 15-year limit; (c) in the case of investments in immovable assets, it recommended a 45-year limit. As expected, port authorities were strongly discontented with the prospect of allowing self-handling by shipping companies.

ESPO (2005) demanded the withdrawal of the PSD II proposal (November 2005). To support this view and, not least, to enhance the quality of the internal consultation, ESPO initiated an economic impact study, which assessed the consequences that the implementation of the PSD II would have. This study produced two very interesting results. First, that 19 out of the 20 participating ports identified a negative impact by the implementation of the PSD II. Second, that the participating ports had once again demonstrated the vital heterogeneity of the port industry, either by expressing different opinions on the same issue, or by giving different answers to the same questions, (ESPO, 2004b).

Precisely because of this heterogeneity, the various impact studies that took place during the same period reached different conclusions depending on the examined sample. Some concluded that there would be no substantial impact (OSC, 2005), whilst others predicted a positive impact (Pallis and Vagellas, 2005). These differentiated results came to emphasise the importance of the sector's diversity.

### *Private Port Operators*

Reaching a unanimous position was less complicated for private port operators. The Federation of Private Port Operators (FEPORT) opposed both Commission PSD proposals. PSD II was even more annoying than the first one; insofar as it differed in the agreement that had been reached during the conciliation procedure of the first proposal. On the practical front, FEPORT had major objections, in essence demanding a rewriting of the proposal. In addition to the self-handling provisions which were considered as the major problem, FEPORT requested changes in the provisions about mandatory authorisations, durations, compensation, and transition periods.

FEPORT's view was that the criteria for providing an authorisation should be further increased. Agreeing with ESPO, FEPORT argued that the port authority and the competent authority could be the same body, as far as an anti-trust organization would secure the fair and transparent functioning of the port. FEPORT also shared ESPO's position on the issue of service providers' limitation. As regards the "really important" duration of authorisations, FEPORT demanded an increase of the authorisations' maximum length, the preservation of the right to extend an authorisation, and the examination of each case with an agreement between the two contracted parts. As far as self-handling was concerned, FEPORT advocated the need for the same criteria as in the case of other services to be applied, and the examination of each case separately. Finally, FEPORT (2005) demanded a framework that, in case of authorisation termination, would provide compensation which would be greater than the amount of amortized investments.

The opposition of the port industry as a whole (i.e. including both port authorities and private operators) had been detailed earlier by a joint ESPO and FEPORT statement (March 2002) concerning the first PSD proposal. The core of the problem was that, according to these two interest groups representing the most significant parts of the port industry, the conciliation draft, which had not been taken into consideration by the

Commission, could be a starting point. The second proposal had the problems of the first one, while it introduced additional ones as well.

Port authorities and private operators assessed that, at this point at least, the European Parliament provided a stand to advocate their cause. Hence, during the consultation process, ESPO and FEPORT decided to publicise their positions and lobby the European Parliament with a more intense and systematic way. Due to the indications of a shift of powers between the European institutions, the strategy of these two interest groups also changed: they decided to accompany the strategy of approaching the Commission's and other institutions' officials (access strategy), with the use of strategies which had a more public appeal (voice strategy).

### *Shipowners*

The stance of shipowners and shippers vis-à-vis the liberalisation of port services and the PSD II proposal had constantly been positive. Shipowners in particular advocated the liberalization of the port services for more than a decade, whether or not this liberalisation has been discussed in the context of other maritime policy initiatives (i.e. the promotion of shortsea shipping in Europe) or the port policy *per se*. ECSA (European Community Shipowners Association) reassured this positive stance even after the rejection of the PSD II proposal by the European Parliament. In reaction to this rejection, French shipowners stated their will for a restart of the process of port services liberalization as soon as possible.<sup>1</sup>

Shipowners expressed their own position in almost all the controversial fields of the proposal. According to them, authorisations should be of optional character and each service provider should be scrutinized for professional efficiency. On the issue of limitations to services' provision, ECSA was not very positive. Shipowners argued for an exclusion of these provisions from the EU policy framework, as well as for the need to further clarify the proposed criteria and the 'reasons of national security' that could lead to such limitations. Finally, ECSA advocated that there should be at least two service providers for each port service. As far as authorisations were concerned, ECSA demanded the reduction of their duration and the extension of the authorisation only in the cases in which important investments occurred. On the issue of self-handling, ECSA endorsed a positive stance but wanted the implementation of self-handling to be limited to ocean shipping personnel, rather than expanded to land-based personnel. Within its statement during the PSD II related public hearing organised by the European Parliament, ECSA (2005) stated that: "*Whilst insisting on a further liberalization, ECSA feels that the proposed Directive II, needs further study and analysis particularly on five critical points notably: authorisation, duration, compensation, transitional periods and self-handling*".

Shipowners are among the most powerful stakeholders, and they demonstrated the ability to influence EU maritime transport policy developments and direct them towards their interests (Pallis, 2002). Their relative power is the outcome of their economic power and, foremost, of the advantage offered by capital mobility (Aspinwall, 1995), which allows them to pressure political institutions successfully at national and regional supranational levels. As a powerful maritime interest group, ECSA had used different

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<sup>1</sup> See the reaction published only five days after the rejection of the Commission proposal: French owners: EU port talks must restart. *Lloyd's List*, 23 January 2006.

strategies, taking advantage of its economical and political power. Like port industry representatives, in the case of the PSD II proposal, ECSA expressed its preferences publicly, via statements that aimed at influencing all the EU institutions, including the EP. Yet, the economic conditions and the consequential port industries' stance prevailed over the shipowners' capacity to determine policy outputs.

### *Shippers*

Shippers, like other interest groups of the maritime sector, participated in the EP public hearing of June 2005, demonstrating a change in their interests' representation strategy. They chose a 'voice' strategy with a more public appeal, instead of an 'access strategy' (Beyers, 2004).

The European Shippers Council (ESC) expressed similar positions to the shipowners, while, in some respects (i.e. ports in which the directive would apply), it advocated a more liberalised regime. ESC welcomed the PSD II proposal and pushed for further services liberalisation. Their stance was in favour of the further extension of the scope of the PSD, in a way that it would cover *all* EU ports and *all* port services, rather than those defined in the proposal. Advocating that shippers are often victims of protectionism of the liner shipping industry, they lobbied for the 'full liberalisation' of port services. Among others, the latter was the opportunity to liberalise a part of the transport chain, with other parts expected to follow. As regards the PSD II proposal, the shippers' major concerns related to two issues: the durations of authorisations and self-handling, respectively. On the issue of self-handling, shippers were positive, whilst they demanded a specific period determination of concessions' durations by the regulatory regime. As regards self-handling, they pursued a liberalised regime that would not create an exclusive right of services provision by the carriers of the cargoes (shipowners) but would create opportunities for them to handle these cargoes.

### *Trade Unions*

Dockworkers were the most discontent stakeholders. Their stance had been expressed in the context of the discussions of the first PSD proposal, with their strong opposition contributing to the failure of the proposal. This happened despite the fact that in this process transport workers were not exactly united. Different organizations, including the European branch of ITF (International Transport Workers Federation), the ETF (European Transport Workers Federation) and the IDC (International Dockworkers Council), followed separate campaigns. There were sporadic national level campaigns (i.e. the Netherlands), as well. Progressively, trade unions realised that a united front would contribute to the accomplishment of their goals and provoke the greatest pressure possible.

In order for this collective action to result in effective union articulation, new labour networks were established aiming at a trans-national corporation (Turnbull, 2005) that would take advantage of two industrial characteristics: firstly, the immobility of capital and secondly a strong workplace union organization. The trade unions had a 'weak start' during the first PSD proposal, but during the discussions of the PSD II proposal they were more organised and expressed their resistance dynamically.

Three were the topics that concerned port workers mostly: (a) the mandatory character of authorisations, (b) the prospect of self-handling, and (c) the definition of the competent authority. Port workers advocated that authorisations should be optional, rather than mandatory, and that further criteria for potential service providers should be introduced. They also argued that in all cases the port authority should differ from the competent authority. This should be ensured by the existence of an anti-trust organisation. As expected, trade unions were in principal against any form of self-handling, arguing that self-handling was against Decision 137 of the International Labour Organisation (ILO), on safety and social grounds.

Maintaining a dynamic momentum, dockworkers continued to declare their opposition to the liberalisation of port services. Unlike other maritime interest groups, trade unions like any social character interest groups followed a voice strategy throughout the policy-making process. With their statements and especially their dynamic demonstrations, they pressed to influence public opinion, as well as the vote of the members of the European Parliament. Their campaign was marked by the dynamic demonstrations of January 2006, when dockworkers marched (and had a violent confrontation with police forces) in Strasbourg. These events took place in proximity to the European Parliament's buildings. As they were 'heard and felt' by the MEPs, it can be argued that these events contributed in favour of the dockworkers' stance during the voting that took place some days later: the vote resulted in the rejection of the PSD II proposal by an overwhelming majority.

### *Other Interest Groups*

The other interest groups that expressed their point of view during the policymaking process were the Euro-groups representing freight forwarders (CLECAT), the European Tug-Owners Association (ETA), the European Maritime Pilots Association (EMPA) and the European Boatmen Association (EBA). Each of these associations had different priorities and focused on different aspects of the proposed port policy.

Overall, CLECAT identified a very positive development for the European port industry in the proposal. However, it put forward some amendments, in particular the provisions concerning granting of authorisations and self-handling. In the latter case CLECAT was in support of allowing self-handling in European ports. The EBA statement was also positive, as it stated that the main disagreement was not the principle but the details of the proposed PSD II: their demand was the exclusion of self-handling from the span of the directive.

EMPA's main concern was the potential inclusion of pilotage services within the span of the PSD. Strongly arguing that pilotage as a service has a lot to do with matters of safety and cannot be treated as a profitable occupation, EMPA made clear that pilots in the EU would not tolerate the pilotage inclusion in the PSD. Finally, the ETA stated very clearly that it did not support the drafted directive. This stance was based on the fact that the revised proposal ignored the details of the agreement that had been reached in the conciliation committee. That said, ETA did not clarify if it condemned the whole effort in principle or because of some specific details. It might be assumed that for ETA the main problem was that it wanted different criteria for the service of towage.

### *Consumers*

As they are not organised in an interest-group, the ultimate consumers' perspective was not expressed in a systematic way during the discussion of any of the two PSD policy proposals. The debate was dominated by other interest groups and the outcome was determined by the power of interested parties on the supply side and their success in preserving their own powerful positions.

Notably, these consumers would be among the beneficiaries of the proposed increased competition in the European port sector. The main effects of the endorsement of the proposed regime would be the lowering of entry barriers for entering the market and the enhancement of the intra-port competition. Today, regulatory (as well as economic, and geographical) entry barriers are substantial in most seaports and are getting more complex as modern ports are increasingly embedded in supply chains and parts of multilayered networks with multiple entry-levels. Lowering entry barriers is desirable from an economic point of view, since they enhance the contestability of markets and increase the level of intra-port competition (De Langen and Pallis, 2006b). The latter might result in substantial benefits, such as preventing abuse of market power and fostering specialisation. Users of services, especially the captive ones, are less exposed to monopolistic pricing conditions and excess rent seeking from service providers, a positive effect that results in lower final prices that the consumer ultimately pays. Furthermore, in conditions of intra-port competition, port service providers have incentives to specialise and differentiate their services from competitors in the same port. This results in faster implementation of new technologies and business models, in turn leading to more tailor-made services. The ultimate effects are the efficient and effective transportation of every type of cargo to be consumed (De Langen and Pallis, 2006a).

## **6. Conclusions**

A core element in the search of a long-term EU port policy has been the opening of access in the provision of port services in European ports. Free market operation is in line with the wider project of European political and economic integration, a fact that was recently highlighted by the Bolkenstein directive aiming at liberalising services in the EU. However, due to the peculiarities of the market, port services were excluded from this directive and have been the subject of a different Commission's proposal on a port services directive (PSD). This measure would restructure the industry, thus the proposal became part of a lengthy debate. As the PSD has been rejected twice by the EP, the debate has (at least temporarily) closed with a policy output failure.

The analysis demonstrated that interest groups formed an informal 'issue network', aiming at influencing the policy-making process. Although they do not share the same perspectives, vested interests lobbied for the same goal: to achieve the withdrawal of the PSD II proposal, due to the identification of structural deficiencies in the proposed regime (Table 2).

In the aftermath of the introduction of the PSD II proposal, maritime interest groups identified institutional tensions. They realised the unease of the European Parliament and used voice strategies towards this institution in order to influence the final policy

outcome successfully. Assisted by the core characteristics of the economic environment (mostly by the heterogeneity of the European port sector and the difficulties that this heterogeneity causes any attempt to adopt any 'one size fits all' supranational port policy), the stance of organised maritime interests decisively contributed to the second rejection of this EU port policy initiative.

By seeking a strict pan-European regime with minimum implementation flexibility, the Commission was unable to address the concerns of stakeholders. Furthermore, the Commission overlooked the draft of the Conciliation Committee that had been agreed in 2003, even though this agreement was considered as a good starting point for further discussions by several interest groups. On the contrary, the Commission preferred to draw up a new proposal virtually from scratch. In certain aspects, this second proposal was stricter (i.e. durations of authorisations) and thus less attractive to maritime interests than the conciliation committee draft, or even the initial PSD proposal. Moreover, this Commission's stance created certain institutional tensions. This situation gave the opportunity to several organised interests to advocate the maximum of their preferences, and seek the accommodation of all of their demands rather than search for a workable policy regime.

Table 2: Maritime interest groups vs. the PSD II proposal

	ESPO	FEPOR T	ECSA	ESC	ETF	EMPA	CLECA T	ETA	EBA
Mandatory nature of authorizations for port services provision	-	-	+	++	+	n.e	-	--	n.e
Selection procedure	-	-	+	-	n.a.	n.e	n.e	n.e.	n.e
Limitation of service providers	+	-	CC	-	n.a.	n.e.	n.e	n.e.	n.e
Mandatory nature of authorizations for port services provision	-	-	+	++	+	n.e	-	--	n.e
Compensation of existing providers	-	--	CC	-	n.e	n.e	+	-	n.e
Transitional periods	-	--	CC	-	-	n.e	-	--	n.e
Liberalisation of Self-handling	--	--	+	+	--	--	++	n.e.	--
Liberalisation of Pilotage services	--	n.e.	++	+	+	--	n.e.	n.e.	--
Competent Authority	-	-	n.e.	n.e.	+	n.e.	n.e.	n.e.	n.e.

++: strongly positive.

+: positive, but amendments.

-: negative.

--: strongly negative.

CC: support of the Conciliation Committee text.

n.e.: No opinion Expressed.

n.a.: non available.

In terms of content, the Commission could have worked towards the creation of a more homogenised port operating framework, before proposing such a strict regime that the PSD II aimed to introduce. For instance, there is considerable scope for initiating a European policy proposal that would create the essential background conditions, like the clear and similar public funding regimes of port infrastructure projects, and legal certainty regarding the application of existing competition rules. Even then however, the

best policy option might remain to move away from a strict regulatory approach and look for alternative solutions such as a code of good practice or interpretative guidelines on the application of the rules of the Treaty. In any case, the ultimate goal needs to remain the same: to ensure a level playing field and lower entry barriers enhancing intra-port competition and benefiting consumers.

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