



# Port package II

Can it be made to work ?

Patrick VERHOEVEN

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# Summary

1. A brief history
2. Is “Port Package II” a package?
3. Potential impact new proposal
4. Can the Directive be saved?
5. The political process
6. Conclusion

# 1. A brief history

- 1997: Green Paper on seaports and maritime infrastructure introduces idea of legal instrument on port services
- 13 Feb 2001: Port Package I with Directive proposal on market access to port services
- 20 Nov 2003: Directive proposal stumbles over self-handling

A close-up photograph of a woman with dark hair, looking upwards and to the left, clapping her hands. She is wearing a dark blue jacket and a small gold hoop earring. A black lanyard with a circular badge is visible around her neck. The background is dark and out of focus.

# **13 Oct 2004: Port Package II emerges**

## 2. Is “Port Package II” a package?

- No: Commission only proposes Directive on market access to port services
- But: art. 16 on “Transparency of financial relations” + art. 17 on “Transparency of State funding”
- State aid guidelines are in preparation ...
- ... as well as a possible legal instrument on port infrastructure charging

# Content of the new proposal

- Applies to cargo handling, technical-nautical and passenger services
- Existing and potential service providers must work on the basis of an authorisation
- Service providers must be selected through public tender
- Durations of authorisations limited (8, 12, 30 years)
- Existing service providers likely to undergo re-tendering
- Service providers have right to employ own staff
- Self-handling on board / on land

Technical-nautical, passengers and cargo handling services  
Ports with 1.5 million tonnes of freight traffic and/or 200 000 passengers

18 + 18

All service providers shall operate on the basis of an authorisation, granted by  
competent authority, based on criteria, within maximum durations (8-12-30)

Competent authority decides or  
existing/new potential  
service provider  
requests selection procedure?

Yes  
Authorisation granted  
with selection  
procedure

No  
Authorisation granted  
without selection  
procedure

Limitation?

Limitation?

Yes  
Authorisation in force  
until expires

No  
Authorisation in force  
until expires

Yes  
Authorisation  
terminated

No  
Authorisation in force  
until expires

Selection procedure  
within 6 months

Existing provider  
selected?

Yes

No. Compensation

If significant investments in immovable assets during last 10 years,  
possibility to launch selection procedure for new autorisation before existing autorisation expires

# 3. Potential impact new proposal

- ESPO impact assessment survey among 23 ports  
(Implementation simulation + overall impact assessment)
- Problem areas:
  - Separate competent authority
  - Mandatory authorisations
  - Mandatory selection procedure
  - Absence of transitional regime
  - Limitation concept
  - Durations
- Special attention:
  - Pilotage
  - Self-handling
- Few problems: rules on financial transparency

- Overall assessment
  - Few positive effects except for announced rules on transparency and State aid
  - Negative effects:
    - Competition
    - Modernisation
    - Economic, social and environmental
    - Existing legislation
    - Administration



## 4. Can the Directive be saved?

1. Added value legal framework: to set common rules in case basic freedom to provide services might have to be constrained:
  - Efficient management and operation of ports
  - Public service requirements / requirements in general interest
2. Enhance fair and transparent conditions of competition both in and between ports
3. Framework must be proportional, ensure level playing field, encourage investments in ports, respect diversity but ensure transparency

# Essential elements

- a) Competent authority
- b) Market access and authorisations
- c) Selection procedure
- d) Maximum durations
- e) Transitional rules

## a) Competent authority

- Managing body of the port in principle
- In case managing body also provides port services:
  - Independent appeal body
  - Separation of accounts
- No separate competent authority

## b) Market access and authorisations

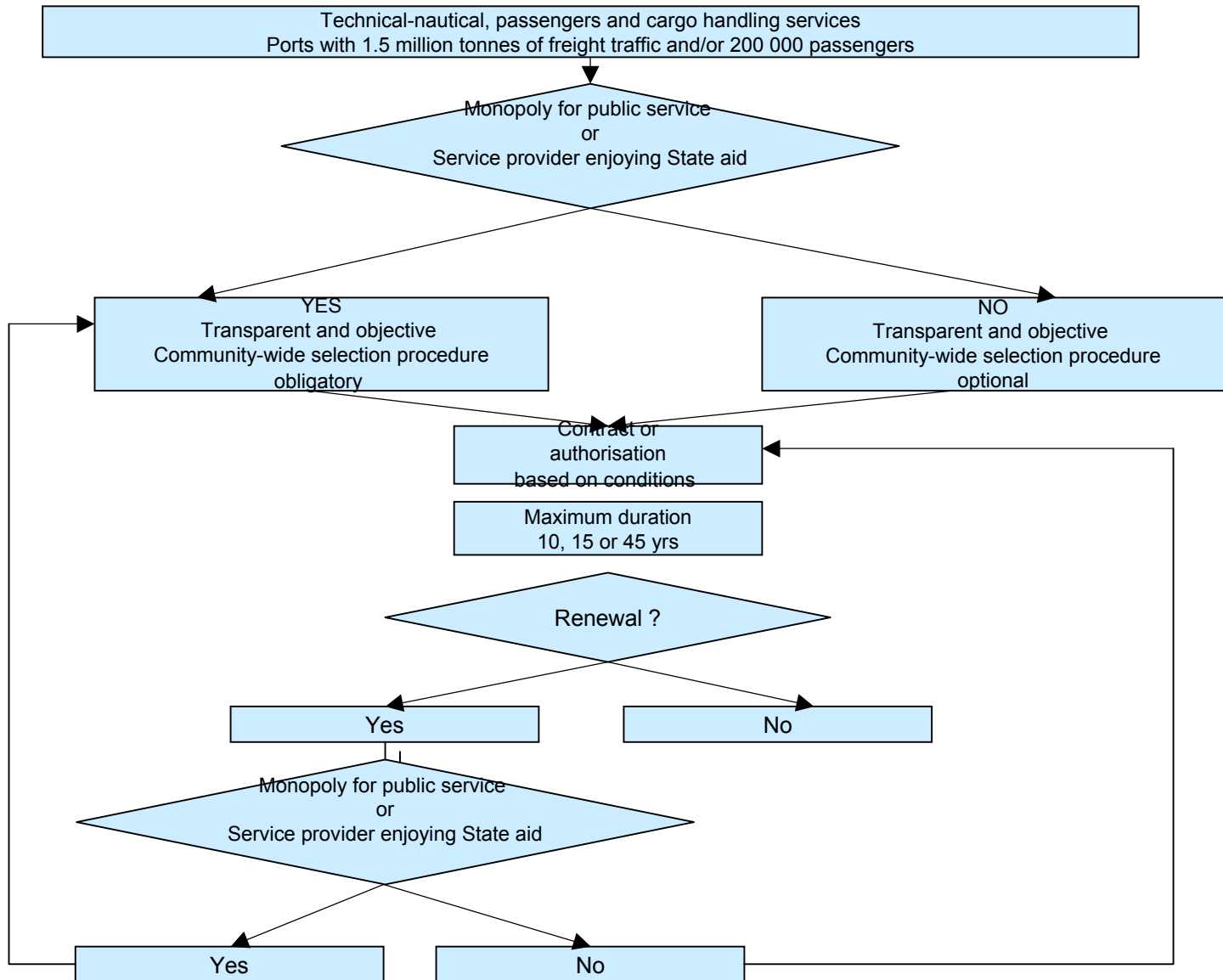
- Different ways of gaining market access should not be harmonised: authorisations or contracts
- Conditions which fall within sphere of competence of managing body port
- Public service requirements may be imposed
- Relevant legislation Member State applies
- Right to employ own personnel applies but subject to national social legislation and collective agreements

## c) Selection procedure

- Objective and transparent selection procedure is generally encouraged
- Selection procedure is mandatory:
  - If single service provider within port for reasons of public service requirements
  - If service provider enjoys / will enjoy (directly or indirectly) State aid
- No need for limitation concept

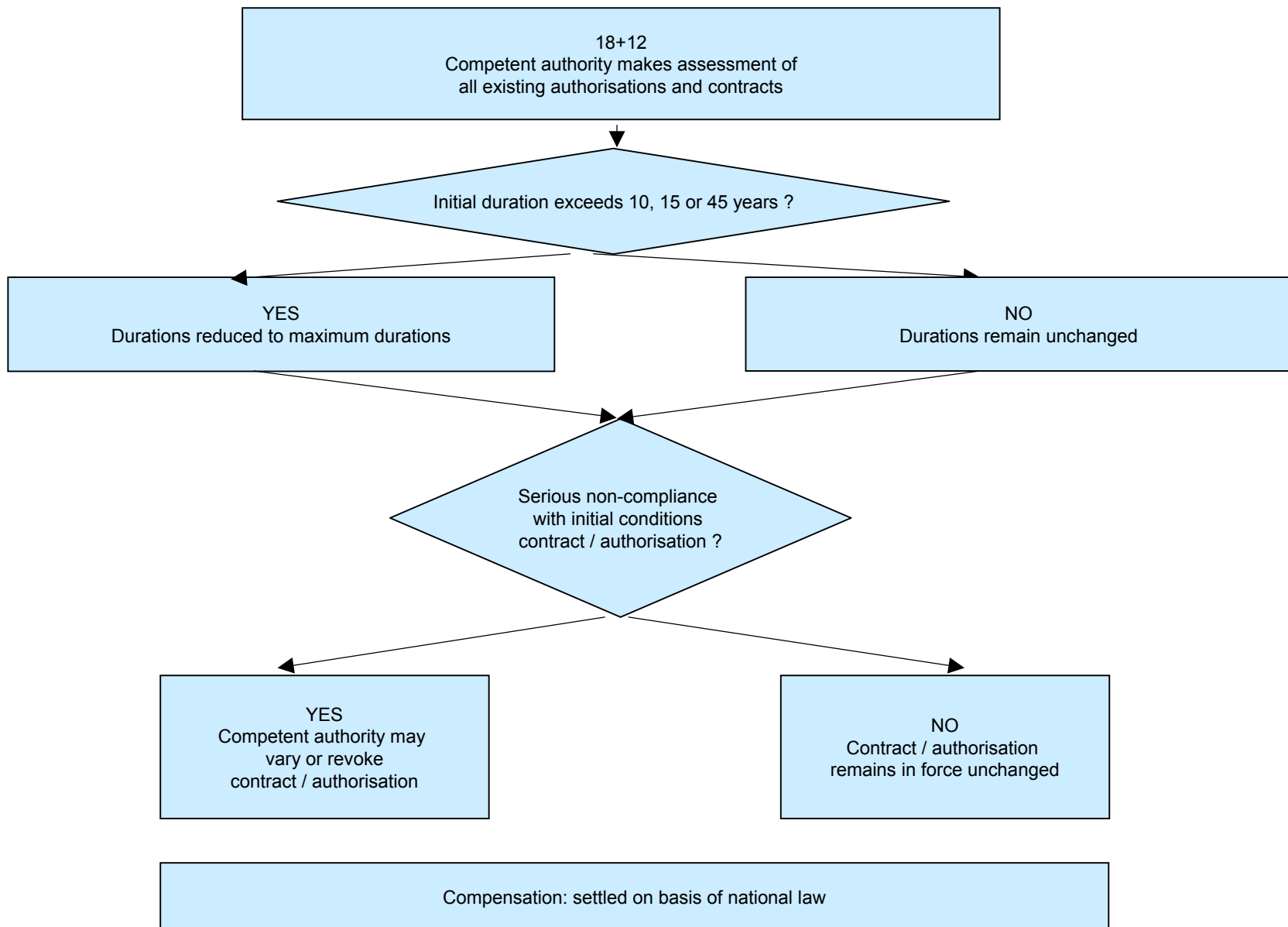
## d) Maximum durations

- Basic rule: agreements must be in relation to investments made
- Maximum durations: 10, 15 and 45 years
- Renewal must be possible unless tender procedure is mandatory
- Maximum durations do not apply in case service provider gains access to market through acquisition of right of ownership to a piece of land within a port



## e) Transitional rules

- State aid guidelines have to be adopted before framework can enter into force
- Framework applies in first instance to new authorisations and contracts
- Transitional regime for existing authorisations and contracts



# And what about self-handling ?



- Basic right to self-handle exists (on board and on land)
- For reasons of proportionality and subsidiarity better left out of a common framework
- To be settled at national or local level

# 5. The political process

- Co-decision procedure
- First reading Parliament:
  - Rapporteur returns to conciliation and excludes self-handling
  - Division of opinion in major political groups (reject or amend?)
  - Probably massive list of amendments
  - Votes in November (TRAN) and December (Plenary)
- First reading Council:
  - Wait for vote in Parliament
  - UK Presidency not against Directive as such
  - Views of many Member States still unclear
  - Comparison of impact assessment studies
- Second reading / conciliation ?
- Again two to three years of difficult negotiations ?



## 6. Conclusion

- A legal instrument on market access to port services could have added value provided the content is right
- The present Directive proposal can be saved through amendments, but not at any price
- The achilles heel of the port sector lobby is its diversity of opinion



# Thank you for your attention