

DABELSTEIN & PASSEHL

Rechtsanwälte & Solicitors  Hamburg · Leer





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**Assessment of the
Directive of the
European Parliament
and of the Council on
Liberalisation of Port Services**

Dr. Stefan Schrandt





I. Background and tasks

1. Objectives of the package of measurements under „Port Package II“

- freedom to provide services
- improved and non-discriminatory access
- improve competition
- abolish restrictions



- improve quality
- increase efficiency and flexibility

2. Business sectors approached

- Transshipment services
- other services





II. Definition of the applying “market“

- Transshipment as part of overall logistic support
- Competing ports / providers
- Review of the reasoning for intervention



III. Consequences of an implementation of Port Package II

- 1. Consequences for the companies on the market**
- 2. Effects on other areas of the logistics chain**
- 3. Costs of the procedure/the tender**



4. Details of the implementation

- self-handling
- concentration control
- disturbance of procedures operational

5. Chances of reaching the objectives

- a) Objective of increasing efficiency and decreasing costs
- b) Objective of free access to the market



IV. Legal assessment

1. Competency of the European Community

- a) Decision requirements
- b) Preconditions of the subsidiary competency and the legal obligation for justification
- c) No insufficient realisation of the objectives at the level of the Member States



- High performance standards
- Sufficient possibilities of market access at the business level

d) Achievement at the Community level

- Expected effects of the Directive
- Comparison
- Restriction of competence by the principle of proportionality



2. Violation of the fundamental right to property

- a) Expiry of the duration of the license according to plan
- b) Anticipated termination of the duration of the authorisation
- c) Protection of fundamental rights under Community Law
 - Obligation of the Community to abide by fundamental laws
 - No competency of the Community to expropriate



d) Legal consequences for transshipment companies

- Expiry of the license according to plan
- Anticipated termination of the duration
- Breach of the principle of confidence
- No remedy through compensation



3. Limitation of the scope of the Directive

4. Practicable (emergency) solutions

- a) Existing licenses
- b) Durations of the licenses
- c) Handling of the change of the authorised company
- d) Compensation and corrective payments
 - Intervention in existing entitlements
 - Obligation of the new service provider to compensate



VI. Assessment under competition law

- 1. Compatibility of the Draft Directive and the European competition and transport policy**
 - a) General rules on competition of the EC Treaty under economic constitutional law
 - b) Principles of European regulatory policy for liberalized markets



2. Assessment of the compatibility of objectives

a) Fundamental assessment of the Draft Directive

- Lack of an institutional guarantee of an increase of the number of port service providers
- Interventions in business planning impairing competition
- Risk of a concentration of market power in the European port industry
- Termination of the competitive selection areas



b) Evaluation of selected competitive regulatory areas

- Article 10 (2) - Compensation

c) Impacts on the inter-port competition

- No improvement of the port competition by the rejection of competition law and the application of regulatory law
- No sustainable improvement of access to port services



d) Impacts on the inter-port competition

- Impairment of existing competition as a consequence of the insufficient consideration of inter-port competition
- Insufficient control of the risk of a market concentration
- Preliminary clause for the determination of the sectors subject to regulation