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Danish Maritime Authority - Søfartsstyrelsen
Carl Jacobsens Vej 31
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Att: Ms. Krista Risgaard
krr@dma.dk

PROPOSED AMENDMENT OF DANISH PILOTAGE ACT – HEARING RESPONSE FROM EMPA

Dear Ms. Risgaard,

EMPA has been made aware of the public hearing for the proposed amendment of the Danish Pilotage Act. We hereby would like to submit our comments.

EMPA, the European Maritime Pilots' Association, is a professional, non-profit organization (not a trade union), with office in Antwerp since 1963. EMPA represents about 5.000 maritime pilots from 25 European countries, with the aim of promoting efficient and safe pilotage in European ports and fairways.

EMPA strongly advises against expanding competition in Danish pilotage, with reference to the following:

1. In all European countries (except Romania and Denmark) pilotage is regarded as a public service which is incompatible with competition logics. In fact, Denmark is the only European country where day-to-day competition exists. (In Romania the competition is not functioning). The "Analysis of Danish Pilotage Market" (ref chapter 4.2) is in our opinion incomplete and misleading, when it does not inform about this essential aspect of the way pilotage is organized elsewhere in Europe (and in fact also elsewhere in the world).
In European countries or ports where pilotage is carried out by a private service provider, there is always only one provider, who is carrying out the pilotage responsibilities on behalf of, and under strict control of the competent authority. The tariffs are set by the authorities in transparent and open processes.
Also in the vast majority of coastal states outside Europe, pilotage is regarded as a public service, and organized accordingly.
2. Furthermore, the statement in the "Analysis of Danish Pilotage Market" (ref chapter 4.4), that the EU Commission's proposed Port Package will entail free market access to pilotage in the TEN-T ports of Europe, is inaccurate:
 - The proposed Port Package establishes a "framework for access to the market" (ref Article 1.1.a). **The Commission** explicitly proposes that "The competent Authority" may "decide to provide" pilotage themselves or "through agents

employed by the competent authority or commissioned by the competent authority' (ref Recital 18). (COM(2013) 296 final)

- The report of the **European Parliament TRAN Committee Rapporteur**, Mr. Knut Fleckenstein, proposes to exclude pilotage entirely from the Market Access Chapter II of the regulation. (COM(2013)0296 – C7-0144/2013 – 2013/0157(COD)). Quote: *"Pilotage should be excluded from the chapter on market access as it is a service highly relevant for navigational safety."*
 - The German Federal Chamber - **Bundesrat** has decided that pilotage should be excluded from the Port Package regulation, because the particular safety aspects linked to the pilotage services. (Beschluss 439/13 – 20.09.13)
Quote: *"Die Lotsendienste sind aufgrund besonderer Anforderungen nicht vergleichbar mit den anderen von der vorgeschlagenen Verordnung erfassten Hafendienstleistungen, die rein nach wirtschaftlichen Gesichtspunkten erbracht werden. Bei den Lotsendiensten stehen Sicherheitsaspekte von großer Bedeutung und nicht Fragen des Marktzuganges in Rede."*
 - **The French parliament** has stated that: *"...concerning safety, the pilot must act independently and without any commercial pressure. Therefore, it is essential that pilotage remains organized in a public service framework and not be regarded just as a simple service provider, which is a possible outcome of the Port regulation proposal"*. (Assemblée Nationale, 13.09.2013)
 - **Several other European member states** have expressed similar viewpoints, as those of the German and French lawmakers referred to above.
 - The **EU Committee of the Regions** has recommended that pilotage should be excluded from the Port Package regulation, because this service *"obeys to objectives of general interest, i.e. safety, security and the protection of the environment"*. (COTER-V-041 28-29 November 2013)
 - Also the **European Economic and Social Committee** has recommended similarly, stating that pilotage should *"be exercised under independent judgment, free of any commercial pressure that could prejudice the safety, security and environmental protection of the port community and the general public"*. (COM (2013) 296 final – 2013/0157 (COD) – EESC July 11th 2013 – Point 1.3)
3. The public service mission assigned to pilots requires that pilots should be able to act on behalf of society, with full integrity, free of commercial pressure, in order to achieve the optimal standards of safety and security, and protection of the environment:
- During the whole maneuvering process of vessels, **pilots are directly involved in the safety-critical decision-making process**. (For example deciding when and how tugs should be used). Therefore pilots play a particularly important role that requires integrity and independence, and which is inconsistent with competition.
 - Maritime Pilots are required by EU legislation to participate in the **Port State Control**: *"Member States shall take appropriate measures to ensure that their pilots engaged on the berthing or unberthing of ships or engaged on ships bound for a port or in transit within a Member State immediately inform the competent authority of the port State or the coastal State, as appropriate, whenever they learn in the course of their normal duties that there are apparent anomalies which may prejudice the safe navigation of the ship, or which may pose a threat of harm to the marine environment"* (DIRECTIVE 2009/16/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL – April 23th 2009 – Article 23 para 1). Obviously, such public service obligations could be compromised in a competitive environment.

- Also the **UN maritime body IMO** has assigned similar responsibilities to pilots: *“When performing pilotage duties, the pilot should report or cause to be reported to the appropriate authority, anything observed that may affect safety of navigation or pollution prevention. In particular, the pilot should report, as soon as practicable, any accident that may have occurred to the piloted ship and any irregularities with navigational lights, shapes and signals.”* (IMO Resolution A.960(23) Annex 2, chapter 7)
 - Formal safety studies into experiments of competition in pilotage overseas have concluded that **safety is compromised**. For example, following maritime accidents, the Office of Management and Budget of Alaska’s State highlighted, in 1994, that *“Competition [in pilotage services] has seriously compromised (...) the capacity to maintain a high professional standards”*.
4. The essential local knowledge possessed by pilots exceeds that which can be quality assured through licensing. All over the world, the insight in the local culture, the command of the local language, the knowledge about the structure, organization and operational procedures of society, the authorities and other co-operating stakeholders, are all vital constituents of the qualifications of a local pilot. Such competence is highly valuable both in regular operations, and not least when extraordinary incidents occur.
(ref IMO A.960: *“...each pilotage area needs highly specialized experience and local knowledge of the pilot...”*)
EMPA consequently strongly advises against the recommendation for expanded use of foreign pilotage organizations in Danish waters as promoted in the “Analysis of Danish Pilotage Market”. (ref chapter 5.1 – page 32).
 5. **Competition in pilotage hampers efficiency** and increases the total costs due to abundance and unnecessary redundancy in supporting services, transport material, bureaucracy etc. The benefits of economy of scale are lost. Competent authorities throughout Europe have concluded that the highest degree of efficiency in pilotage services can best be achieved when the services are carried out by one single service provider.
 6. **EMPA advises against the proposed savings of pilots’ training costs** in the “Analysis of Danish Pilotage Market”. (ref chapter 5.6 – page 37). Systematically training and continued proficiency are vital parts of the quality assurance systems of European pilotage. We strongly believe that such investments are necessary and proportional to the safety gain. The use of simulators has for years been a vital part of such training, as advised in IMO Resolution A.960 (Annex 1, Chapter 5).

With the sole interest of maritime safety, environmental protection and economic efficiency of European transport, EMPA, in line with the principles of other bodies that we have referred to hereinbefore, strongly advises against the proposed amendments of the Danish Pilotage Act.

A more general overview of EMPA’s position on competition in pilotage may be found on our website: <http://www.empa-pilots.eu/our-views/>. EMPA remains at your disposal if additional information or dialogue is required on these subjects.

Sincerely,

Capt. Dirk VAEL
Secretary General

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