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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Draft Regulation of the European Parliament and of the Council
establishing a framework for the provision of port services and common
rules on the financial transparency of ports (**first reading**)
- Adoption of the legislative act (**LA + S**)
= statements

Statement by the Commission

The Commission considers that recital 45 should not have been included for the following reasons.

First, the recital does not relate to any of the enacting terms of the regulation and hence does not comply with the principles of the Interinstitutional Agreement on Better Law-Making. In that agreement, the European Parliament, the Council of the European Union and the European Commission confirmed that they remain fully committed to the Interinstitutional agreement on common guidelines for the quality of drafting of Community legislation, which provides that the purpose of recitals is to set out concise reasons for the chief provisions of the enacting terms, without reproducing or paraphrasing them, and that recitals should not contain normative provisions or political exhortations.

Second, the Commission recalls that the notion of State aid within the meaning of Article 107(1) TFEU is an objective one, enshrined in the Treaty and not at the disposal of the Union legislator. It can only be applied as such by the Commission or national courts in specific cases, subject to the control of the Union courts.

Third, the wording of the recital may create confusion. Having regard to the Treaty notion of State aid, it cannot be claimed that public funding of all access and defence infrastructure accessible to all users on equal and non-discriminatory terms always falls outside the scope of the State aid rules. The Commission's decisional practice shows, for instance, that public funding of certain access infrastructure located within the area of a port may constitute State aid.

Statement by Germany

Anlässlich der Verordnung des Europäischen Parlaments und des Rates zur Schaffung eines Rahmens für den Zugang zum Markt für Hafendienste und die finanzielle Transparenz der Häfen

Die Bundesregierung unterstützt die mit der Verordnung verfolgten Ziele und begrüßt insbesondere, dass die Verordnung zur finanziellen Transparenz und zur Stärkung der Leistungsfähigkeit der europäischen Häfen im internationalen Wettbewerb beitragen soll.

Die Bundesregierung stimmt der Verordnung zu in der Erwartung, dass den im Gesetzgebungsverfahren gefundenen Kompromissen und den diesbezüglichen Entscheidungen des Gesetzgebers in anderen relevanten Rechtsakten wie z.B. der Revision der Allgemeinen Gruppenfreistellungsverordnung (AGVO) nicht entgegen gewirkt wird.
