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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 supported by Spain

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.

Joint statement by Germany, Poland, Belgium and France

On the occasion of the Regulation of the European Parliament and the Council establishing a framework on market access to port services and financial transparency of ports.

Germany, Poland, Belgium and France support the objectives being pursued with the Regulation. In particular, they welcome the fact that the Regulation is designed to enhance the financial transparency of the European ports and to boost their international competitiveness.

Germany, Poland, Belgium and France give their approval to the Regulation on the assumption that the compromises reached in the legislative procedure and the associated decisions taken by lawmakers will not be counteracted through other relevant acts, such as the revision of the General Block Exemption Regulation (GBER).

Statement by the United Kingdom

The United Kingdom welcomes that this Regulation is significantly less onerous than originally proposed. Nevertheless, even in its amended form, the UK regrets its adoption, considering its provisions (other than those promoting transparency of public funding) unnecessary and largely inappropriate for the promotion of investment and efficiency at European ports, and particularly those in the UK. Believing that it would have a detrimental effect on the UK's competitive and efficient ports, the United Kingdom is voting against the Regulation.

The experience of the UK's deregulated, competitive, predominantly privately owned and largely unsubsidised ports sector over recent decades demonstrates conclusively that deregulated ports operating in an environment of fair competition, can and will invest to develop in line with current and future transport requirements.

Statement by Italy

On the occasion of the Regulation of the European Parliament and the Council establishing a framework on market access to port services and financial transparency of ports, Italy, while supporting the objectives being pursued with the Regulation (in particular, it welcomes the fact that the Regulation is designed to enhance the financial transparency of European ports and boost their international competitiveness), wishes to express its concern about other possible legal basis, still under discussion, to be applied to the same subjects (ports), potentially incoherent with EU Port regulation.

Consequently, Italy gives its approval to the Regulation on the assumption that the compromises reached in the legislative procedure and the associated decisions taken by lawmakers will not be jeopardized by other relevant acts or initiatives, namely those carried out by Commission's DGs without the co-decision process – such as the revision of the General Block Exemption Regulation (GBER) or the enquiry on functioning and taxation of ports – if not previously submitted to a “coherence test” in strict coordination with all DGs involved.

In particular, Italy would like to draw the attention on the outstanding issues mentioned in the common position (see letter addressed to Commissioners Bulc and Vestager) of Germany, France, Italy, Belgium and Poland (i.e. definition of port infrastructure, dredging, concept of “single project” for all investments carried out in the same port in a 3-year period). Only the request by MS to withdraw any reference to the duration of concessions has been explicitly accepted up to now. Further issues have been highlighted, in respect of ports, by many MS on the occasion of the second consultation on the revision of the GBER as well as of the Working Group Infrastructures which do not seem to have been taken in due consideration by the European Commission.

At the basis of this underassessment there seems to be a too wide extension of the so-called “Leipzig Halle” judgement leading, for the first time, to sectoral rules on State aid to be included in the GBER without being previously tested through the drafting and implementation of specific guidelines, as it has been the case for all other soft law measures (on SMEs, regional aid, Environment & Energy, and so on).

Therefore, Italy urges the EC to commit itself to further elaborate on their interrelated “soft law”/enabled act projects, in order to ensure their coherence, taking MSs view in close consideration and consulting them again, previously to the completion of the adoption procedure, possibly via bilateral meetings.
