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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 29 April 2020

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL amending Regulation (EU) 2017/352, so as to enable
managing bodies or competent authorities to provide flexibility in respect of
the levying of port infrastructure charges in the context of the COVID-19
outbreak

Delegations will find attached document COM(2020) 177 final.

Encl.: COM(2020) 177 final



Brussels, 29.4.2020
COM(2020) 177 final

2020/0067 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) 2017/352, so as to enable managing bodies or competent authorities to provide flexibility in respect of the levying of port infrastructure charges in the context of the COVID-19 outbreak

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishes a framework for the provision of port services and common rules on the financial transparency of ports¹ (hereinafter ‘Regulation (EU) 2017/352’). Its Article 13 requires Member States to ensure that a port infrastructure charge is levied.

The outbreak of COVID-19 is having a serious impact on maritime transport and on the financial sustainability of operators. A suspension or deferral of the payment of port infrastructure charges may therefore help ship operators in such exceptional circumstances.

Article 13(1) of Regulation (EU) 2017/352 requires Member States to ensure that a port infrastructure charge is levied.

Port infrastructure charges are defined in Article 2(9) of Regulation (EU) 2017/352 as *”a charge levied, for the direct or indirect benefit of the managing body of the port or of the competent authority, for the use of infrastructure, facilities and services, including the waterway access to the port concerned, as well as access to the processing of passengers and cargo, but excluding land lease rates and charges having equivalent effect”*.

Port infrastructure charges are levied by a managing body of a port or by a competent authority on the port users, i.e. ship owners or operators.

Article 13(4) of Regulation (EU) 2017/352 provides that port infrastructure charges may vary, inter alia, for certain categories of users, but does not allow a managing body of a port or a competent authority to waive, suspend, reduce or defer the payment of port infrastructure charges for all port users.

The new transitional provision will provide Member States with the option to allow managing bodies of a port or competent authorities to decide whether to:

- waive (condone, i.e. not require the payment at all); or
- suspend (freeze or put on hold the payment for a certain time period); or
- reduce (decrease the payment); or
- defer (require the payment at a later point in time) the payment of the port infrastructure charges.

As the duration of the impact on maritime transport of the outbreak of COVID-19 is uncertain and in order to allow for sufficient flexibility for the sector, the new transitional provision will apply to port infrastructure charges due for the period between 1 March 2020 and 31 December 2020.

Article 13(5) of Regulation (EU) 2017/352 provides: “The managing body of the port, or the competent authority, shall ensure that users of the port infrastructure are informed of any changes in the nature or level of the port infrastructure charges at least two months in advance of the date on which those changes come into effect.”

¹ Regulation (EU) 2017/352 of the European Parliament and the Council Regulation (EEC) of 15 February establishing a framework for the provision of port services and common rules on the financial transparency of ports, OJ L 57, 3.3.2017, p. 1

The requirement of a notice of “at least two months” should be dispensed with in exceptional circumstances like the current coronavirus crisis. Therefore, the proposed amendment grants managing bodies of a port or competent authorities the possibility to deviate from the “at least two months” notice in exceptional circumstances and to give a shorter notice, which period is to be determined by the managing body of the port or the competent authority.

- **Consistency with existing policy provisions in the policy area**

Regulation (EU) 2017/352 does not foresee the possibility for ports to waive, suspend, reduce or defer port infrastructure charges in exceptional circumstances, such as the consequences of the COVID-19 outbreak. The Regulation should therefore be amended so as to allow for the possibility to mitigate the effects of the current crisis and to provide legal certainty to Member States, their competent authorities and individuals.

- **Consistency with other Union policies**

The effective functioning of maritime transport depends on the economic performance of the ship operators. The negative economic consequences of the current COVID-19 outbreak for ship operators will have an impact on their financial health of those operators and entail serious negative effects for the transport system and the economy as a whole. The amendment of Regulation 2017/352 to allow Member States to provide managing bodies of a port or competent authorities with the flexibility to decide to waive, suspend, reduce or defer the payment of port infrastructure charges can help address this concern. The Member States will have to ensure compliance of the adopted measures with the State aid rules.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This initiative is based on Article 100(2) of the Treaty on the Functioning of the European Union. That provision permits the adoption of all appropriate provisions for sea transport and already served as a basis for the adoption of Regulation (EU) 2017/352.

- **Subsidiarity (for non-exclusive competence)**

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reasons. Regulation (EU) 2017/352 does not allow Member States, for reasons such as those in question here, to permit ports to waive, suspend, reduce or defer port infrastructure charges. This objective may be achieved only through an amendment of the Regulation.

- **Proportionality**

The proposal is limited in time and does not go beyond what is necessary to achieve the objective of alleviating the impact of the current COVID-19 outbreak for the purposes of the operation of Regulation (EU) 2017/352. The proposed measure is therefore proportionate.

- **Choice of the instrument**

Since the legal act amends Regulation (EU) 2017/352, the appropriate legal instrument is a Regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

This is an urgent measure which is triggered by the sudden and unforeseeable outbreak of COVID-19. For this reason, the measure is not relevant for the regulatory fitness programme and no ex-post evaluation has been carried out.

- **Stakeholder consultations**

Given the urgency of the matter formal stakeholder consultation has not been carried out. However, some Member States authorities and ports have already announced measures similar to those foreseen.

- **Collection and use of expertise**

As explained, the proper collection of expertise was not possible due to the urgency of the situation.

- **Impact assessment**

Given the urgency of the situation, an impact assessment could not be carried out.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The measure does not include any specific monitoring or reporting arrangements. However, the Member States will be requested to report on the use of the measures in view of the preparation of a report to the European Parliament and the Council on the functioning and effect of the Regulation by 24 March 2023 as required by Article 20 of Regulation (EU) 2017/352.

- **Detailed explanation of the specific provisions of the proposal**

A new paragraph 3 is added in Article 21 of Regulation (EU) 2017/352. The new provision provides for a possibility for Member States, notwithstanding the provisions of Article 13(1), to allow managing bodies of a port or competent authorities to waive, suspend, reduce or defer the payment of port infrastructure charges due for the period between 1 March 2020 and 31 December 2020. The waiver, suspension, reduction or deferral of the port infrastructure charge must be granted in a transparent, objective and non-discriminatory way to all port users subject to port infrastructure charges. The new provision also grants managing bodies of a port or competent authorities the possibility to deviate from the “at least two months” notice laid down in Article 13(5) of Regulation (EU) 2017/352.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) 2017/352, so as to enable managing bodies or competent authorities to provide flexibility in respect of the levying of port infrastructure charges in the context of the COVID-19 outbreak

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The outbreak of COVID-19 is having a serious impact on maritime transport. The consequent serious impact on maritime transport and port infrastructure has been pervasive since 1 March 2020, and is likely to continue to have an impact throughout 2020. A waiver, suspension, reduction or deferral of the payment of port infrastructure charges could therefore contribute to sustaining the financial operation of ship operators in these exceptional circumstances.
- (2) Article 13(1) of Regulation (EU) 2017/352 of the European Parliament and of the Council⁴ requires Member States to ensure that port infrastructure charges are levied by a managing body of a port or by a competent authority. There is no exception from this obligation to levy charges, not even in exceptional circumstances.
- (3) In view of the consequences of the COVID-19 outbreak, it is appropriate to allow Member States to provide the managing bodies of a port or the competent authorities with the possibility to waive, suspend, reduce or defer the payment of port infrastructure charges due for the period from 1 March 2020 to 31 December 2020. The waiver, suspension, reduction or deferral of the port infrastructure charges should be granted in a transparent, objective and non-discriminatory way to all port users subject to port infrastructure charges.

² OJ C , , p. .

³ OJ C , , p. .

⁴ Regulation (EU) 2017/352 of the European Parliament and the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports (OJ L 57, 3.3.2017, p. 1).

- (4) In view of the urgency, it is also appropriate to grant the managing bodies of a port or the competent authorities the possibility to derogate from the obligation provided for in Article 13(5) of Regulation (EU) 2017/352, to inform the users of the port infrastructure of any changes in the nature or level of the port infrastructure charges at least two months before these changes come into effect.
- (5) Since the objective of this Regulation requires the adoption of an amendment of Regulation (EU) 2017/352, in view of the urgency created by the outbreak of COVID-19, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.
- (6) In view of the urgency due to the exceptional circumstances caused by the COVID-19 outbreak justifying the proposed measures, and more particularly the need to adopt such measures quickly in the interest of sustaining the financial operation of ship operators, it is appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community.
- (7) The unforeseeable and sudden outbreak of COVID-19 and the relevant legislative procedures required for adoption of relevant measures, made it impossible to adopt such measures in time. For that reason, the provisions of this Regulation should also cover the charges due for the period before its entry into force. Given the nature of these provisions, such an approach should not result in violation of the legitimate expectations of the persons concerned.
- (8) This Regulation should enter into force as a matter of urgency on the date following that of its publication in the Official Journal of the European Union,

HAVE ADOPTED THIS REGULATION:

Article 1

In Article 21 of Regulation (EU) 2017/352, the following paragraph 3 is added:

“3. By way of derogation from Article 13(1) Member States may allow the managing body of the port or the competent authority not to levy or to suspend or to reduce the port infrastructure charge or to defer a payment of the port infrastructure charge due for the period from 1 March 2020 to 31 December 2020. The waiver, suspension, reduction or deferral of the port infrastructure charge shall be granted in a transparent, objective and non-discriminatory way to all port users subject to port infrastructure charges.

The managing body of the port or the competent authority shall ensure that port users and the representatives or associations of port users are informed accordingly. The time limit of two months referred to in Article 13(5) shall not apply.”

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President