



Council of the  
European Union

Brussels, 16 January 2017  
(OR. en, de)

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**Interinstitutional File:  
2013/0157 (COD)**

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**5162/17  
ADD 1**

**CODEC 24  
TRANS 8  
MAR 7  
FIN 10**

#### **'I/A' ITEM NOTE**

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

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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

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#### **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**

In connection with the Regulation of the European Parliament and of the Council establishing a framework for market access to port services and the financial transparency of ports:

The Federal Government supports the objectives of the Regulation. In particular, it welcomes the fact that the Regulation is designed to enhance the financial transparency of European ports and to boost their international competitiveness.

The Federal Government agrees to the Regulation in the expectation that the compromises reached during the legislative procedure and the decisions taken by the legislator in that connection will not be counteracted by other relevant legal acts, such as the revision of the General Block Exemption Regulation (GBER).

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