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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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 – Outcome of the European Parliament's first reading (Brussels, 13 to 16 May 2020)

I. INTRODUCTION

A number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

After the plenary approved the request of the Committee on Transport and Tourism to proceed according to the Rule 163 (urgent procedure) on 13 May 2020, EPP submitted two amendments (amendments 2-3), S&D submitted two amendments (amendments 4-5), Renew submitted four amendments (amendments 6-9), ID group submitted one amendment (amendment 17), Greens/EFA submitted one amendment (amendment 1), ECR submitted four amendments (amendments 13-16) and GUE/NGL submitted three amendments (amendments 10-12).

II. VOTE

When it voted on 15 May 2020, the plenary adopted amendments 2-5, 8-11 and 15 to the proposal for the Regulation and then adopted the proposal with these amendments in its final vote.

The Commission's proposal as thus amended constitutes the Parliament's first-reading position, which is contained in its legislative resolution as set out in the Annex hereto ¹.

The Parliament's position reflects what had been previously agreed between the Institutions. The Council should therefore be in a position to approve the Parliament's position bringing to a close the first reading for both Institutions.

The legislative act would then be adopted in the wording which corresponds to the European Parliament's position.

¹ The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Port infrastructure charges *I**

European Parliament legislative resolution of 15 May 2020 on the 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 (COM(2020)0177 – C9-0123/2020 – 2020/0067(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2020)0177),
 - having regard to Article 294(2) and Article 100(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0123/2020),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - after consulting the European Economic and Social Committee,
 - after consulting the Committee of the Regions,
 - having regard to the undertaking given by the Council representative by letter of 8 May 2020 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 59 and 163 of its Rules of Procedure,
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

1. Position of the European Parliament adopted at first reading on 15 May 2020 with a view to the adoption of Regulation (EU) 2020/... of the European Parliament and of the Council amending Regulation (EU) 2017/352, so as to allow the managing body of a port or the competent authority to provide flexibility in respect of the levying of port infrastructure charges in the context of the COVID-19 outbreak

2. (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,

After consulting the European Economic and Social Committee,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure²,

² Position of the European Parliament of 15 May 2020.

Whereas:

- (1) The COVID-19 outbreak is having a serious negative impact on the maritime transport sector. The serious consequences for maritime transport services and for the use of port infrastructure have been pervasive since the beginning of March 2020 and are likely to continue throughout 2020. A waiver, suspension, reduction or deferral of the payment of port infrastructure charges could contribute to the financial sustainability of ship operators in these exceptional circumstances.
- (2) Regulation (EU) 2017/352 of the European Parliament and of the Council³ requires Member States to ensure that port infrastructure charges are levied. Regulation (EU) 2017/352 does not provide for any exception to the obligation to levy charges.

³ 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).

- (3) In view of the severity of the consequences of the COVID-19 outbreak, it is appropriate to allow ■ the managing body of a port or the competent authority ■ to decide to waive, to suspend, to reduce or to defer the payment of port infrastructure charges due for the period from 1 March 2020 to 31 *October* 2020. ***Nevertheless, this Regulation should not interfere with the port organisation of Member States. Therefore, Member States should be able to retain the power to regulate the adoption of such decisions by the managing body of a port or the competent authority.*** Such waiver, suspension, reduction or deferral of the payment of port infrastructure charges should be granted in a transparent, objective and non-discriminatory way ■ .
- (4) In view of the urgency, it is also appropriate to allow the managing body of a port or the competent authority to derogate from the obligation, provided for in Regulation (EU) 2017/352, to inform the users of port infrastructure of any changes in the nature or level of the port infrastructure charges at least two months before those changes come into effect.

- (5) Since the objective of this Regulation, namely to amend Regulation (EU) 2017/352 to respond to the urgent situation created by the COVID-19 outbreak, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). 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 entailed by the exceptional circumstances caused by the COVID-19 outbreak justifying the proposed measures, and more particularly in order to adopt the necessary measures quickly so as to contribute to the financial sustainability of ship operators, it was considered to be 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 European Union, annexed to the TEU, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

- (7) The unforeseeable and sudden outbreak of COVID-19 and the legislative procedures required for the adoption of relevant measures meant that it was impossible to adopt such measures in time. For that reason, the provisions of this Regulation should also apply to port infrastructure charges due for a period before its entry into force. Given the nature of those provisions, such an approach does not result in a violation of the legitimate expectations of the persons concerned.
- (8) Regulation (EU) 2017/352 should therefore be amended accordingly.
- (9) This Regulation should enter into force as a matter of urgency on the day 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 is added:

- “3. ***Notwithstanding*** Article 13(1), (3) and (4), ■ the managing body of the port or the competent authority ***may decide*** to waive, to suspend, to reduce or to defer the payment of port infrastructure charges due for the period from 1 March 2020 to 31 ***October*** 2020. ***Member States may decide that such decisions shall respect the requirements set to that end in national law.*** The waiver, suspension, reduction or deferral of the payment of port infrastructure charges shall be granted in a transparent, objective and non-discriminatory way ■ .

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 ...,

For the European Parliament

For the Council

The President

The President
