Council of the European Union

Brussels, 18 January 2017
(OR. en, de)

5162/1/17
REV 1 ADD 1

Interinstitutional File:
2013/0157 (COD)

CODEC 24
TRANS 8
MAR 7
FIN 10

'I/A' ITEM NOTE

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

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).

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.