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Dear President,

The Commission would like to thank the Saeima for its Reasoned Opinion on the proposal for a Regulation of the European Parliament and of the Council establishing a framework on market access to port services and financial transparency of ports {COM(2013) 296 final}.

The Commission takes note of the Saeimas' view that the proposal is not compliant with the principles of subsidiarity and proportionality and in reply would like to provide the following clarifications.

The Commission notes that more than half of the traffic transiting through ports is of EU and transnational relevance. Ports have been recognised by the EU legislator as an integral part of the trans-European network. Ports play a key role in short sea shipping and therefore are essential to develop exchanges between Member States within the internal market in certain cross-border regions. The Commission concurs with the Saeima about the crucial importance of the port sector for the Baltic Sea region and the need to ensure conditions of undistorted competition between ports across the EU.

The development of an EU port policy and a common framework to contribute to an improved efficiency of ports and ensure a fair completion between ports located in different Member States is therefore a logical step. This is why this development was enshrined in the Single Market Act II and endorsed by the European Council in March 2013 as part of the EU growth strategy.

The Commission's proposal applies exclusively to maritime ports which form part of the Trans-European Transport Network (TEN-T) and which, as such, are entitled for EU co-funding under the Connecting Europe Facility and the Structural Funds.

It is important to note that the fundamental purpose of the draft Regulation is to ensure that in those ports, the following two elementary principles apply:

- Fair market access to providers of port services under clear, non-discriminatory and transparent conditions;*
- Respect of financial transparency rules in the use of public funds in ports and transparent infrastructure charging rules.*

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In recognition of the diversity of the port systems, the Commission's intention has been to draft the provisions of the proposed Regulation in a way as to allow the necessary flexibility to the Member States and the managing bodies of the port for adopting the port governance models they consider most appropriate.

In that regard, the provisions contained in Article 8 of the proposed Regulation just require a clear definition of public service obligations in ports. Paragraph 3 of Article 8 would allow Member States to designate the authority in charge of establishing those obligations according to their respective national legislation. The requirement should not be seen as involving additional costs and administrative procedures, as it is just a matter of clarification of responsibilities.

In respect of the port users' advisory committee foreseen in Article 15 of the proposed Regulation, the Commission notes that such committee is already a usual practice in many European ports. The purpose of the proposed provision is to extend that good practice to all TEN-T ports, ensuring that ports' users have the possibility to be consulted once a year on the structure and levels of infrastructure charges or port service charges that are compulsory and that are fixed unilaterally. Providing relevant information to users should not be considered as creating administrative burden for the bodies establishing the charges in question.

Concerning the independent supervisory body foreseen in Article 17 of the proposed Regulation, the Commission's intention is not to seek the creation of new bodies in the port sector. As it is already the case in several Member States, a national authority, or several authorities, should be in a position to ensure the adequate implementation of the Regulation, looking after effective enforcement of the two elementary principles – fair market access and financial transparency in the use of public funds – referred to above.

As regards the treatment reserved for cargo handling and passenger services in Chapter II of the proposed Regulation, the Commission's intention is to avoid creating special rules governing the granting of public concessions in the port sector. The new Concessions Directive is an instrument which covers in a horizontal manner different economic sectors and that should guarantee the respect of the basic public procurement principles also in the port sector. In the Commission's view, the Concessions Directive allows Member States to take account of the circumstances of particular sectors. In any case, market access to cargo-handling operations will be covered by EU legislation.

The proposed Regulation aims to ensure the respect of basic Single Market principles in the port sector and does not involve an undue interference in the internal organisation of ports at national level.

Finally, the Commission would like to underline that the adoption and implementation of this proposal is also needed for ensuring the smooth and successful implementation of the new TEN-T Guidelines and of the "Connecting Europe Facility" financial instrument as of year 2014.

The Commission hopes that these clarifications address the concerns raised by the Saeima and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*