



EUROPEAN COMMISSION

Brussels, 8.11.2013  
C(2013) 7444 final

*Dear President,*

*The Commission would like to thank the Kamra tad-Deputati for its Reasoned Opinion concerning the proposal for a Regulation on market access to port services and financial transparency of ports {COM (2013) 296 final}.*

*The Commission would like to draw the attention of the Kamra tad-Deputati to the fact 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 particular exchanges with peripheral areas and islands. Last but not least, the ports of the trans-European network are already competing with each other across the intra-EU borders.*

*In this context, attracting investors requires to ensure undistorted competition between the ports of the trans-European network, including between those which are located in different Member States. Since the ports of the trans-European network are located in different Member States, this could not be achieved by the Member States alone, hence the proposal to introduce common rules on the financial transparency, which is a prerequisite for an effective application of the State aid policy.*

*According to the Reasoned Opinion of the Kamra tad-Deputati, actions at European level should be non-legislative by nature given the competitive nature of the sector. Such non legislative actions under the form of non-binding guidance would in its view provide the desired legal certainty. However it is precisely because of the strong competitive nature of the sector, together with its transnational character, that common rules at European level are needed to ensure undistorted competition between ports located in different Member States.*

*Moreover, by nature, non-binding guidance of the Commission cannot provide the legal certainty needed by the operators willing to enter the market of port services. In case of legal*

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*dispute, the lawfulness of the individual situations in respect of the Treaty on the Functioning of the European Union can only be confirmed by the Court of Justice on a case by case basis.*

*In the Impact Assessment accompanying the proposal {SWD(2013) 181}, a comparison of the performance of a large sample of European ports was made and revealed a large gap between low and high performing ports. A more recent study ranking the world's ports by how effective they are in moving cargo for their size, carried out on the basis of data transmitted by shipping lines, has moreover confirmed the relatively poor performance of EU ports in comparison with ports of other regions of the world.<sup>1</sup>*

*Finally, the Commission would like to point out that this proposal is enshrined in the Single Market Act II which was endorsed by the European Council in March 2013 as part of the EU growth strategy. The implementation of this Regulation 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 Kamrad-Deputati and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

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<sup>1</sup> "Key Findings On Terminal Productivity Performance Across Ports, Countries And Regions" The JOC Group Inc, July 2013  
[http://www.joc.com/sites/default/files/u59196/Whitepapers/Port\\_productivity/portProductivity\\_whitepaper.pdf](http://www.joc.com/sites/default/files/u59196/Whitepapers/Port_productivity/portProductivity_whitepaper.pdf)