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Dear Presidents,

The Commission would like to thank the Congreso de los Diputados and the Senado for their joint Reasoned Opinion concerning the proposal for a Regulation on market access to port services and financial transparency of ports {COM(2013) 296 final}.

In respect of the compatibility with the principle of subsidiarity, the proposal for a Regulation seeks to introduce two basic principles in all the ports which form part of the Trans-European Transport Network (TEN-T). In a summary manner, those principles are:

- 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.*

The Commission's intention has been to draft the provisions of the Regulation in such a way as to remain completely neutral in respect of the internal organisation of the Member States regarding their port systems, including the mechanisms for ensuring coordination and control of the national port system. Certainly, a number of provisions in the draft regulation introduce obligations affecting the managing bodies of the port (usually port authorities). However, those provisions do not prevent the existence of a framework of reference defining the competences and modalities of organisation of port authorities under national law¹. The key goals are to help modernise ports, ensure economic rationality in the public funding of ports' projects and sustain the competitiveness of maritime transport and performance of

¹As it is the case in Spain, cf. Real Decreto Legislativo 2/2011, de 5 de septiembre por el que se aprueba el Texto Refundido de la Ley de Puertos del Estado y de la Marina Mercante

ports in the transport chain. This can however only be achieved by ensuring undistorted competition between ports and port service providers and by providing legal clarity on the conditions to access the market.

In respect of the possibility of refusing market access to port service providers, the draft Regulation requires transparent, non-discriminatory, objective and relevant reasons by the authorities in charge. The provisions in chapter III of the draft Regulation give a reasonable degree of flexibility to the authorities in charge for taking account of the particular circumstances of the port and/or the type and nature of the port service.

Moreover, the draft Regulation also seeks a clear definition of public service obligations in ports, without prejudging the particular elements that each Member State may consider appropriate. The draft Regulation does not preclude the possibility of competent authorities to grant compensation for the accomplishment of the public service obligations in ports, for example for technical-nautical services, provided that it complies with the applicable State aid rules.

As regards the establishment of port infrastructure charges, the draft Regulation is in line with the policy orientation of the EU Transport White Paper²: price signals play a crucial role in many decisions that have long-lasting effects on the transport system. Transport charges and taxes must be restructured in the direction of wider application of the 'polluter-pays' and 'user-pays' principle. They should underpin transport's role in promoting European competitiveness and cohesion objectives, while the overall burden for the sector should reflect the total costs of transport including infrastructure and external costs.

From this point of view, after a careful analysis, the Commission has come to the conclusion that the managing bodies of the port should be able to define their infrastructure charging strategies in an autonomous way, assuming the responsibility of their commercial strategies and investment plans. The goal is to contribute to a better use of investment resources and a greater capacity of ports to adapt to the competitive conditions of the relevant market.

Nevertheless, such approach to port infrastructure charges does not prevent Member States from establishing appropriate coordination mechanisms at national level which can provide financial support to certain ports, nor does it prevent Member States from implementing a policy promoting certain forms of transport (e.g. short sea shipping). As is already the case, those mechanisms have to be established in accordance with State aid rules.

In this respect, it should also be stressed that transport infrastructure charges, regardless of their denomination in national law as tax, charge or fee, have been constantly treated in the EU legislation and case law, for all transport modes, as payment in return for providing access to an infrastructure and therefore as a matter related to the transport policy and not to the fiscal policy (see in particular the Court ruling of 12 September 2000 in Case C-276/97).

Concerning the independent supervisory body foreseen in Article 17 of the draft Regulation, the Commission's proposal does not seek the creation of new bodies in the port sector. As 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 draft Regulation, looking after effective enforcement of the two main principles – fair market access and financial transparency in the use of public funds – referred to above. In conclusion, the draft regulation does not seek to establish a uniform model for all European ports. It seeks to

² White Paper "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system", COM/2011/0144 final

ensure the respect of principles that are at the core of the Single Market and that are the general rule in many other economic sectors.

Finally, the Commission would like to express a sense of urgency in the adoption of the proposed Regulation. The implementation of this Regulation is 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. 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 Commission hopes that this letter provides useful clarifications which address the concerns raised by the Congreso de los Diputados and the Senado and looks forward to continuing the political dialogue.

Yours faithfully,

*Maroš Šefčovič
Vice-President*