European Commission - Press release

State aid: Commission adopts two decisions recommending taxation of ports in Italy and Spain

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Commissioner Margrethe **Vestager**, in charge of competition policy, said: "*Ports are key infrastructure for economic growth and regional development. That is why EU State aid rules provide ample room for Member States to support and invest in ports. At the same time, to ensure fair competition across the EU, ports generating profits from economic activities should pay taxes in the same way as other companies - no more, no less.*"

Cross-border competition plays an important role in the ports sector and the Commission is committed to ensuring a level playing field in this key economic sector.

Ports carry out both non-economic and economic activities:

· **Non-economic activities**, such as maritime traffic control and safety or anti-pollution surveillance, typically fall within the competence of public authorities. Such public remit activities are outside the scope of EU State aid control.

· The commercial operation of port infrastructure, such as providing paid access to the port, on the other hand constitutes an **economic activity**. EU State aid rules apply to these activities.

A corporate tax exemption for ports that earn profits from economic activities can provide them with a competitive advantage when they operate on the internal market and therefore involves State aid, which may not be compatible with EU rules.

In **Italy**, ports are fully exempt from corporate income tax.

In **Spain**, ports are exempt from corporate income tax on their main sources of revenue, such as port fees or income from rental or concession contracts. In the Basque Country, ports are fully exempt from corporate tax.

In April 2018, the Commission informed Italy and Spain of its concerns regarding their regimes for the taxation of ports. The Commission takes the preliminary view that, in both Italy and Spain, the existing tax regimes provide the ports with a selective advantage that may breach EU State aid rules.

Today, the Commission has therefore **invited Italy and Spain to adapt their legislation** in order to ensure that ports, as from 1 January 2020, will pay corporate tax in the same way as other companies in Italy and Spain, respectively. Each country now has two months to react.

The decisions today follow recent Commission decisions requiring the Netherlands, Belgium and France to abolish exemptions from corporate tax for their ports.

Background

The tax regimes applicable to ports in Italy and Spain existed prior to the entry into force of the EU Treaty in these Member States. Therefore, these measures are considered as "existing aid" and their assessment is subject to a specific cooperation procedure between the Member States concerned and the Commission. For existing aid that is found to be in breach of EU State aid rules, beneficiaries are not required to reimburse aid received in the past.

When existing aid appears to be in breach of EU State aid rules, the Commission, as a first step, informs the Member State about its concerns. In light of the reply, the Commission may then propose appropriate measures to bring the measure in line with EU State aid rules.

Today's proposals to Italy and Spain are such second steps. If the Member States do not accept the proposals, the Commission may decide, as a third step, to open an in-depth investigation to verify the compatibility of the existing aid. If the Commission concludes that the regime is not compatible with EU State aid rules, it may require the Member State to put an end to the aid scheme that distorts competition in the Single Market.

In parallel, the Commission is also continuing its investigation into the functioning and taxation of ports in other Member States and will take the necessary steps to ensure fair competition between all ports in the EU.

Removing unjustified tax advantages does not mean that ports can no longer receive State support. Member States have many possibilities to support ports in line with EU State aid rules, for example to achieve EU transport objectives or to put in place necessary infrastructure investment which would not have been possible without public aid. In this regard, in May 2017, the Commission simplified rules for public investment in ports. As a result of the Commission extending the General Block Exemption Regulation to non-problematic investment in ports, Member States can now invest up to €150 million in sea ports and up to €50 million in inland ports with full legal certainty and without prior verification by the Commission. The Regulation allows public authorities to, for example, cover the costs of dredging in ports and access waterways. Furthermore, EU rules enable Member States to compensate ports for the cost of undertaking public service tasks (services of general economic interest).

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Press contacts:

Ricardo CARDOSO (+32 2 298 01 00)
Giulia ASTUTI (+32 2 295 53 44)

General public inquiries: Europe Direct by phone 00 800 67 89 10 11 or by email