European Commission - Press release

State aid: Commission opens in-depth investigation into tax exemptions for Italian ports; welcomes Spain's commitment to subject ports to corporate tax as from 2020

Brussels, 15 November 2019

The European Commission has opened an in-depth investigation to assess whether tax exemptions granted under Italian law to ports are in line with EU State aid rules. The Commission also welcomes the commitment made by Spain to abolish the tax exemption benefitting Spanish ports as from 2020, allowing the Commission to close the procedure concerning Spain.

Commissioner Margrethe **Vestager**, in charge of competition policy, said: *"Ports are key infrastructure for economic growth and regional development. Our competition rules reflect that and allow Member States to invest in ports, creating jobs and preserving competition. At the same time, if port operators generate profits from economic activities these should be taxed in the same way of other companies under the normal national tax laws to avoid distortions of competition."*

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

Port authorities 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 fall 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 provides 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**, port authorities are fully exempt from corporate income tax.

In **Spain**, port authorities are currently 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, port authorities are currently fully exempt from corporate income tax.

In January 2019, the Commission invited Italy and Spain to adapt their legislation in order to ensure that ports, as from 1 January 2020, would pay corporate tax in the same way as other companies in Italy and Spain, respectively, in line with EU State aid rules.

Spain

Following the Commission decision in January 2019, Spain has agreed to amend its corporate income tax legislation to bring it in line with EU State aid rules. Notably, the Spanish authorities have committed to subject Spanish ports, including those located in the Basque Country, to the normal corporate income tax rules as from 2020. The Commission welcomes this commitment and has now formally accepted them in a decision adopted today.

Since the corporate tax exemption for ports already existed before the accession of Spain to the EU, these measures are considered as "existing aid" and the Commission cannot ask Spain to recover the aid already granted.

Italy

Italy has not agreed to change its corporate tax legislation as the Commission proposed in its January 2019 decision. For this reason, the Commission has now opened an in-depth investigation to assess whether or not its initial concerns as regards the compatibility of the tax exemptions for Italian ports with EU State aid rules are confirmed. If they are, the corporate tax exemption for ports in Italy would also amount to “existing aid”, since they already existed before the accession of Italy to the EU and the Commission would not be able to ask Italy to recover any aid already granted.

The opening of an in-depth investigation gives an opportunity for Italy and interested third parties – such as beneficiaries or competitors - to comment on the State aid assessment of the tax exemptions, in particular as to the assessment of the economic nature of ports' activities and the effect on competition and trade.

Background

"Existing aid", and its assessment, is subject to a specific cooperation procedure between Member States and the Commission. When existing aid appears to be in breach of EU State aid rules, the Commission, as a first step, informs the Member State concerned about its concerns. With respect to the present cases, in April 2018, following its investigation into the functioning and taxation of ports in all EU Member States, the Commission informed Italy and Spain of its concerns regarding their regimes for the taxation of ports. The Commission took 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.

In light of the discussions that follow, and as a second step, the Commission may then propose appropriate measures to the Member State to bring the measures in line with EU State aid rules. In January 2019, the Commission proposed, in two separate decisions, that Italy and Spain modify their corporate income tax legislation applicable to ports to align it with EU State aid rules.

If the Member State accepts to implement the Commission's proposal, as it is the case for Spain, the Commission adopts a decision formally acknowledging that commitment. This puts an end to the cooperation procedure. Today's decision concerning Spain falls within this category.

If the Member State does not accept the proposal, the Commission may decide, as a third step, to open an in-depth investigation to verify the compatibility of the existing aid. Today's decision concerning Italy falls into this third category.

Removing 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 investments which would not have been possible without public aid. In this regard, in May 2017, the Commission simplified the rules for public investment in ports. In particular, the Commission has extended the scope of its General Block Exemption Regulationto non-problematic investment in ports. As a result, 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 (so services of general economic interest).

In January 2016, the Commission required the Netherlands to put an end to the corporate income tax exemption granted to the Dutch public seaports In July 2017, the Commission required France and Belgium to put an end to the corporate income tax exemption granted to the French and Belgian ports. These decisions were upheld by the General Court in cases T-160/16 (Netherlands), T-673/17, T-674/17 and T-696/17 (Belgium) and T-754/17T-747/17 (France).

The non-confidential version of the decisions will be made available under case numbers SA.38397 (Spain) and SA.38399 (Italy) in the State Aid Register on the competition website once any confidentiality issues have been resolved. New publications of state aid decisions on the internet and in the Official Journal are listed in the State Aid Weekly e-News.

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