COMMISSION DECISION (EU) 2017/2116

of 27 July 2017

on aid scheme SA.38398 (2016/C, ex 2015/E) implemented by France — Taxation of ports in France

(notified under document C(2017) 5176)

(Only the French text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those articles ([1]) and having regard to their comments,

Whereas:

1. PROCEDURE

(1) On 3 July 2013, the Commission sent a questionnaire on the functioning and taxation of ports to all Member States to gain an overview of the state of play and clarify the situation of ports in the light of Union State aid rules. The French authorities responded by letter dated 25 October 2013. By letter of 3 February 2014, the Commission requested additional information on the rules concerning the French corporate tax applicable to ports. The French authorities responded by letter dated 1 April 2014.

(2) By letter dated 9 July 2014, the Commission informed the French authorities, pursuant to Article 21 of Council Regulation (EU) 2015/1589 ([2]) ('the Procedural Regulation'), of its preliminary assessment of the French rules on the taxation of ports. The letter stated that the Commission classified these rules as existing State aid and specified the reasons for which it considered them incompatible with the internal market. The Commission gave the French authorities the opportunity to present their comments on this preliminary assessment. The French authorities presented their comments by letter of 7 November 2014. A meeting between the Commission and the French authorities was held on 12 December 2014. On 15 January 2015, the latter sent additional comments to the Commission. By letter dated 1 June 2015, the Commission informed the French authorities that, at this stage, it maintained the preliminary point of view expressed in the letter of 9 July 2014.

(3) By letter dated 21 January 2016, the Commission confirmed its position and proposed to the French authorities, as 'appropriate measures' under Article 108(1) of the Treaty on the Functioning of the European Union ('TFEU') and Article 22 of the Procedural Regulation, the abolition of the corporate tax exemption in favour of the ports in respect of the income from their economic activities from the start of the 2017 tax year. The French authorities were requested to state their unconditional and unequivocal opinion on the Commission proposal within two months, in accordance with Article 23(1) of the Procedural Regulation.

(4) By letter of 11 April 2016, the French authorities sent their comments to the Commission. A meeting between the French authorities and the Commission took place on 27 June 2016.

(5) Since the reply of the French authorities did not constitute unconditional and unequivocal acceptance of the proposal for appropriate measures, the Commission decided, by letter dated 8 July 2016, to initiate the procedure provided for in Article 108(2) TFEU, pursuant to Article 23(2) of the Procedural Regulation. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ([3]). The Commission invited France to submit comments on the content of the decision. It also invited interested parties to submit their comments on the measure at issue.

([1]) OJ C 302, 19.8.2016, p. 23.
([2]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).
([3]) OJ C 302, 19.8.2016, p. 23.

(6) France presented its comments to the Commission by letter dated 19 September 2016.

(7) The Commission received comments from the following interested parties: major seaports of metropolitan France (Le Havre, Rouen, Dunkirk) and overseas (French Guiana, Guadeloupe), chambers of commerce and industry ('CCIs'), port managers (CCI of Brest, CCI of Bayonne Pays Basque), trade associations or representatives of ports and the maritime community in general (*Association française des ports intérieurs*, 'AFPI'), the liaison committee for the promotion of waterways/Provoideau, the *Union des ports de France* ('UPF'), the *Institut français de la mer*, local and regional authorities (Department of Guadeloupe, Region of Guadeloupe, Region of Brittany), and the port of Rotterdam, acting on behalf of the five Dutch public seaports.

(8) The Commission forwarded those comments to France, which was given the opportunity to comment on them. It received comments from France by letter of 3 November 2016. A meeting between the French authorities and the Commission was held on 16 November 2016.

2. DESCRIPTION OF THE MEASURE AND ITS CONTEXT

2.1. Ownership and management of ports in France

(9) The port system in France (fishing ports, commercial ports and marinas) consists of ports belonging to the State (the major seaports (*grands ports maritimes* — 'GPMs'), formerly known as 'autonomous ports', and the major inland ports, in particular the autonomous ports of Paris and Strasbourg) and ports belonging to local and regional authorities. Although France indicates that the measure at issue focuses on the fishing ports and commercial ports, marinas may in fact be operated by entities covered by the corporate tax exemption (such as the CCIs) and are therefore also concerned by the procedure.

(10) The GPMs, known as 'autonomous ports' until the reform of 2008 ([4]), are State public institutions. They handle more than 80 % of French maritime freight transport. According to France, the GPMs carry out the following tasks: regulation and policing of maritime traffic in the port areas and the access to them, through harbour-masters, development and maintenance of port infrastructure, management and renovation of the port area, general promotion of the port, and development of the supply of port services and port hinterland rail and waterway connections. They enjoy financial autonomy.

(11) The State is responsible for the operation of the GPMs. They are assigned a public accountant, and they are audited by government officials. France states that, since the reform of 2008, which transferred handling activities to the private sector, the tasks of the GPMs have been redirected to security, safety and port police activities and to tasks relating to the renovation of the port area. The ports are henceforth owners of the area they occupy.

(12) The autonomous inland ports, i.e. the autonomous port of Paris and the autonomous port of Strasbourg, are operated by State public institutions. The other inland ports are managed by concessionaires (CCIs in general).

(13) The ports belonging to local and regional authorities, known as decentralised ports, are under the control of those authorities and their operation is generally assigned to CCIs or maritime chambers of commerce ([5]). According to France, these ports are generally small and of local significance.

2.2. Corporate tax rules applicable to ports

(14) Pursuant to Article 205, Article 206(1) and Article 1654 of the General Tax Code (*Code général des impôts* — 'CGI'), legal persons governed by private or public law engaging in a business or transactions of a profit-making nature are subject to corporate tax. Second, pursuant to Article 165 of Annex 4 to the CGI, public institutions of an industrial or commercial nature are subject to all direct taxes and equivalent taxes applicable to similar private undertakings. Article 167 of Annex 4 to the same Code specifies that these provisions apply in particular to 'chambers of commerce and industry' and to 'autonomous ports' (which became major seaports in 2008, with some exceptions, such as the autonomous inland ports of Paris and Strasbourg).

([4]) See Commission Decision of 29 June 2011 on measure SA.27106 (C 13/09 — ex N 614/08) which France is planning to implement for ports (OJ L 221, 27.8.2011, p. 8).

([5]) Chambers of commerce with their registered office located in a coastal town and chambers of commerce which, wherever their geographical location, are concessionaires of public equipment at a seaport.

(15) However, ministerial decisions of 11 August 1942 and 27 April 1943 ([6]) exempted from corporate tax 'the autonomous ports, maritime chambers of commerce, chambers of commerce and industry managing port installations, municipalities which are concessionaires of public equipment owned by the State in the seaports, and any undertakings to which they may have entrusted the operation of that equipment'. This exemption concerns, in general, all 'buildings and services necessary to operate ports or depending directly on that operation'. The tax documentation specifies that 'the aforementioned decision [decision of 11 August 1942] should be applied liberally and the tax exemption should be maintained not only with regard to the services of an undeniably maritime nature, but also for the installations of the maritime chambers of commerce which, without strictly speaking being port installations, are nevertheless attached to the operation of a port without which they would have no reason to exist' and that the 'financial proceeds received by the autonomous ports and maritime chambers of commerce and industry from the investment of sums deriving from the operation of maritime industrial and commercial installations' are also exempt from corporate tax.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

(16) In its letter of 8 July 2016, the Commission pointed out that the French authorities had not accepted the timetable for the implementation of the appropriate measures indicated in its letter of 21 January 2016 and that, whilst stating at the outset that they did not contest the principle of the measures proposed by the Commission, they seemed to call into question the classification as State aid adopted by the Commission with regard to the small ports. The Commission considered that the appropriate measures that the Commission had proposed on 21 January 2016 had not been accepted by the French authorities unconditionally, unequivocally and in full.

(17) Since the Commission still considered that the corporate tax exemption in favour of ports, with respect to their economic activities, constituted an existing State aid scheme, and had doubts about the scheme's compatibility with the internal market, it decided to initiate the procedure provided for in Article 108(2) TFEU, pursuant to Article 23(2) of the Procedural Regulation.

4. OBSERVATIONS BY THE FRENCH AUTHORITIES AND INTERESTED PARTIES AFTER THE INITIATION OF THE FORMAL INVESTIGATION PROCEDURE

4.1. Undertakings/economic activities

(18) Certain operators of French seaports and representatives of port managers, principally the GPM of Le Havre, the CCI of Brest and the UPF, consider that ports are not 'undertakings' within the meaning of Article 107(1) TFEU. The French authorities share this reasoning and add that the ports 'are not undertakings like others', but 'operators at the service of other undertakings' and that 'the fact that the Treaty on the Functioning of the European Union has provided for an ad hoc article [Article 93] to deal with State aid in the transport sector, shows that the European legislator wished to take this particularity into account'.

4.1.1. *Activities of general interest or forming part of the essential functions of the State*

(19) According to the CCI of Brest, ports provide a non-economic service of general interest (SGI), and only the public authorities can define the scope of activities of general interest. Article 107(1) TFEU does not apply where the State acts 'exercising official authority', which is the case for the ports, which perform executive activities delegated by law by the State. According to the CCI of Brest, the ministerial decisions of 11 August 1942 and 27 April 1943 apply Article 165 of the CGI's Annex 4, and recognise that the activities of the ports do not have a profit motive.

(20) The UPF and GPM of Le Havre add that certain French ports are critical installations, 'the unavailability of which would be liable to bring about a significant reduction in the potential to wage war, economic potential, security or the ability of the nation to survive' within the meaning of Article L. 1332-1 of the Defence Code (*Code de la défense*), which means that they constitute infrastructure intended for activities coming under the essential functions of the State.

(21) Referring to Case C-276/97, the GPM of Le Havre stresses that the GPMs are bodies governed by public law, carrying out their activities under the regime specific to them in terms of creation, control, governance and revenue. As 'bodies governed by public law' carrying out their activities 'as public authorities', the GPMs fulfil the conditions to benefit from the exemption from VAT provided for by Article 4(5) of the Sixth VAT Directive.

([6]) See French tax documentation BOI-IS-CHAMP-30-60, paragraphs 230 et seq.

(22) Finally, the French authorities and several port managers consider that dredging operations, whether they are carried out within or outside the ports, are non-economic, and that the Commission accepted this in a Decision of 20 October 2004 in Case N 520/200[3] (***) ([7]) ('the Decision of 20 October 2004'). They explain that this activity enables all the terminals to be served and is necessary to ensure access, in total safety, to the channels and water areas of the port, for all operators needing it, and in this way permits free movement for all shipping. The dredging benefits all operators in the area served without distinction, and therefore the maritime community as a whole.

4.1.2. *Activities which are not economic*

(23) The GPM of Le Havre states that the structure of the port charges is determined at national level and that the Court of Justice, in Case C-343/95, attaches importance to the fact that tariffs are approved by a public authority. It considers that all the tasks assigned to GPMs by Article L. 5312-2 of the Transport Code (*Code des Transports*) are of a non-economic nature according to the decision-making practice of the Commission, and especially the Decision of 20 October 2004 and the decisions referred to in point 17(a) and (f) of the Commission Notice of 19 July 2016 on the notion of State aid ([8]) ('the Notice of 19 July 2016'). The GPM considers that the only activity which might previously have been considered an economic activity was the operation of public equipment, but that since the reform of 2008 GPMs can do this only on an exceptional basis.

(24) The GPM of Le Havre and the CCI of Brest consider that any residual economic activity of the ports should in any case be classified as ancillary, so that such an activity should not be regarded as economic in accordance with points 18 and 207 of the Notice of 19 July 2016.

(25) The AFPI argues that, for ports, ensuring a return on investment, a decisive objective in the investment choices of a traditional undertaking, takes second place after the general interest. The AFPI considers that the Commission has itself acknowledged, in the Decision of 20 October 2004, that the port infrastructure projects 'would never be carried out on a purely commercial basis'. It adds that competition law must apply only to undertakings with a profit-making or commercial objective and that the profits made by inland ports (river ports), which have no shareholders, are systematically reinvested.

4.2. **Economic advantage**

(26) Several operators of French seaports and the representatives of operators of inland ports consider that the measure at issue compensates for the tasks assigned to ports by the public authorities. The GPM of Dunkirk maintains that the cost of these tasks systematically exceeds the theoretical corporate tax charge. Accordingly, the tax exemption does not confer an economic advantage on ports.

4.3. **Selectivity**

(27) The French authorities and several operators of French seaports consider that the measure is not selective since it applies to all French ports and that it has formed an integral part of the French tax system for over 70 years.

(28) They add that the Commission has not proved how the ports are in a factual and legal situation comparable to that of other companies, and argue that the ports, under national law, provide the operating conditions necessary for transport operators to carry out their tasks, without competing with or substituting themselves for the latter, and must carry out tasks constituting public service obligations or an exercise of the official powers of a public authority. The GPM of Le Havre specifies that the large share of port charges in the budget of the ports, the extent of State control over the GPMs, and the fact that there are no 'operators acting under normal economic conditions … in view of the legal monopoly exercised by the GPMs over the management of the ports' differentiates them from other operators. For the Brittany region, the fact that certain small ports are managed by CCIs shows that they are in a different situation.

(***) Correction of a clerical error.

([7]) Commission Decision of 20 October 2004 on State aid in case N 520/2003 — Belgium — Financial support for infrastructure works in Flemish ports, recital 35 (OJ C 176, 16.7.2005, p. 11).

([8]) OJ C 262, 19.7.2016, p. 1.

(29) The CCI of Brest, which is the manager of the port of Brest, and the GPM of Le Havre state that the basis of the corporate tax exemption for ports is Article 165 of Annex 4 to the CGI, because the ports do not engage in profit-making activities of a nature to be subject to corporate tax. Thus, the ministerial decisions of 11 August 1942 and 27 April 1943 are merely the confirmation of the application to ports of the general provisions of Article 165 of Annex 4 and Articles 205 and 206 of the CGI.

(30) Referring to the French Constitutional Council, which has held that a derogation is possible from the principle of equal treatment in matters of taxation, provided that the legislature bases the differences of treatment on objective, rational criteria in accordance with the aims pursued by the measure and provided that the measure does not entail any clear breach of equal treatment in terms of charges levied by the State (Decision No 2012-238 QPC, 20 April 2012) ([9]), several operators of French seaports also maintain that the measure at issue does not create any clear breach of equal treatment in terms of charges levied by the State.

4.4. **Distortion of competition and effect on trade**

(31) The French authorities and several operators of French seaports argue that the Commission has not demonstrated any restriction on competition, whereas the traffic in which there is competition is small and the attractiveness of a port is measured by a very large number of parameters (the performance of the other links of the logistics chain) on which subjecting ports to corporate tax will have no impact. The AFPI considers that, in contrast to the seaports, the inland ports are not in competition with one another as their hinterlands are far smaller and separate.

(32) The French authorities and several operators of French seaports consider that the activity of the small ports (ports which do not belong to trans-European transport networks) has no effect on competition, due to their volume of business and the essentially local nature of their impact, especially since the combined activity of the small French ports accounts for only 1 % of the total traffic of the Union. The Commission itself has recognised that 'in well-established case practice … aid to infrastructure in ports with minor shares below 5 % of the EU passenger or freight traffic did not produce undue negative effects on competition and trade between Member States' (Decision of 11 April 2016 in Case SA.43975 Port of Funchal) ([10]).

(33) Several interested parties consider that the overseas ports do not have the capacity to compete with the ports of other Member States.

(34) For the French authorities and several interested parties, subjecting the French ports to corporate tax now would in fact lead to a distortion of competition between European ports, as the States all apply different taxation rates. They add that a large number of States provide financial assistance for their ports under a variety of tax or other arrangements.

(35) The port of Rotterdam considers that, for the Dutch ports, corporate tax will represent a considerable cost in 2017 which their competitors, and especially the ports of Dunkirk and Le Havre, do not have to pay.

4.5. **Compatibility**

(36) The French authorities and several operators of French ports argue that the exemption at issue is in all cases compatible with the internal market as it allows compensation for certain tasks financed by the ports, constituting an exercise of the official powers of a public authority (tasks related to the harbourmaster's office, dredging of port accesses, maintenance work for coastal defences, land access, protection of the environment and security and safety). Since the amount of corporate tax from which each port is exempted does not exceed the amount of the costs arising from the exercise of the official powers of a public authority, and is even well below this latter amount, the exemption is compatible with the internal market.

(37) The representatives of the inland port managers emphasise that the inland ports play an important role in the development of multimodal transport, that the investments made by the ports fall within the scope of Article 93 TFEU (coordination of transport) and that the corporate tax exemption also falls within the scope of Article 107(3)(b) TFEU concerning important projects of European interest, such as Seine Northern Europe and the trans-European transport corridors. The AFPI specifies that Article 93 TFEU could be applicable in that it provides for the 'reimbursement for the discharge of certain obligations inherent in the concept of a public service'.

([9]) *Journal officiel de la République française*, 21 April 2012, p. 7198.
([10]) Commission Decision of 11 April 2016 on State aid SA.43975 (2016/NN) — Portugal — Investment aid for the Port of Funchal (OJ C 183, 11.5.2016, p. 1).

(38) The French authorities and several overseas interested parties argue that for the ports located overseas the compatibility of the measure should be examined specifically in the light of Article 349 TFEU. Due to the narrowness of the markets, the insular or isolated nature of these territories, and the remoteness from any other European port, the measure at issue has no impact on competition. The GPM of Guadeloupe mentions the proposal to integrate overseas transport operating aid in Commission Regulation (EU) No 651/2014 ([11]) ('the General Block Exemption Regulation'). The GPM of French Guiana considers that it is carrying out a task of general interest (public safety, national defence, provisioning) without adversely affecting the conditions of trade, because the port is the only way of obtaining supplies. Due to its cost, freight transport by air to the territory accounts for only 1 % of total freight transport. The interested parties consider that the abolition of the corporate tax exemption would lead to an increase in the cost of provisioning the territory — which would be reflected in the price of goods for end customers — and to a reduction in investment capacity. They stress that abolition of the exemption would be counter to other derogating tax provisions accepted by the Commission, such as investment grants or zero rating of VAT, which enable the cost of consumption flows to be reduced.

4.6. **Timetable for the procedure**

(39) Several operators of French seaports asked the Commission for suspension of the procedure in progress until the current European port agenda has been finalised, and especially the revision of the General Block Exemption Regulation and the proposal for a Regulation establishing a framework for access to the port services market and financial transparency of ports ('the proposal for a Regulation on port services') ([12]). They were surprised by the rapidity of the procedure brought against France when the Commission exchanged views for about 20 years with the Netherlands before adopting a final decision.

(40) The port of Rotterdam asks the Commission to postpone subjecting the Dutch ports to corporate tax until a sector inquiry has been carried out and all the seaports in the north European range (ports on the southern coast of the North Sea) become subject simultaneously to the tax or, at the very least, to subject the Belgian and French ports to corporate tax rapidly and simultaneously.

5. **ASSESSMENT OF THE MEASURES**

5.1. **Presence of State aid within the meaning of Article 107(1) TFEU**

(41) According to Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

5.1.1. *Undertakings/economic activities*

5.1.1.1. General

(42) According to settled case-law, 'the concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed' ([13]). The Court of Justice has held that 'an economic activity is any activity consisting in offering goods and services on a given market' ([14]).

([11]) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

([12]) COM(2013) 296 final — 2013/0157 (COD) (OJ C 327, 12.11.2013, p. 111). This proposal has been adopted in the meantime: Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports (OJ L 57, 3.3.2017, p. 1).

([13]) Judgment of the Court of Justice of 12 September 2000, *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, EU:C:2000:428, paragraph 74.

([14]) See judgments of the Court of Justice of 16 June 1987, *Commission* v *Italy*, C-118/85, EU:C:1987:283, paragraph 7, and of 18 June 1998, *Commission* v *Italy*, C-35/96, EU:C:1998:303, paragraph 36.

(43) In line with the case-law ([15]), the Commission has established, in a series of decisions, that the commercial operation and construction of port infrastructure constitute economic activities ([16]). For example, the commercial operation of a port terminal by making it available to users against the payment of a fee constitutes an economic activity ([17]). Likewise, the Court of Justice has already implicitly, but quite definitely, recognised the economic nature of certain port operations, in particular the '*loading, unloading*, transhipment, *storage and general movement of goods or material of any kind within the port*' ([18]). These principles apply not only to seaports, but also to inland ports ([19]).

(44) The Commission does not dispute that ports may be delegated to perform certain public authority or non-economic tasks, such as maritime traffic control and safety ([20]) or anti-pollution surveillance ([21]), or that, in carrying out these tasks, the ports are not undertakings within the meaning of Article 107(1) TFEU. The exemption from corporate tax at issue here is therefore of a nature to constitute State aid only if it relates to income generated by economic activities. On the other hand, the fact that an entity performs one or more functions of a sovereign state or one or more non-economic activities is not enough to take away the designation of 'undertaking' for all purposes. A port will be regarded as an 'undertaking' if — and to the extent that — it in fact carries out one or more economic activities.

(45) The French ports may engage in several types of economic activities corresponding to the supply of various services on several markets ([22]). First, ports supply a general service to ships by providing them with access to the port infrastructure in exchange for a remuneration. Second, certain ports provide more particular services to ships, such as piloting, lifting, handling, or mooring, also in exchange for remuneration. For piloting and lifting the remuneration received by the port is generally known as a 'port charge' (*droit de port*) ([23]). Third, the ports, for remuneration, make certain infrastructure or certain land available to undertakings, which use these areas for their own needs or to supply some of the aforementioned port services to ships ([24]).

([15]) Judgment of the General Court of 12 December 2000, *Aéroports de Paris* v *Commission*, T-128/98, EU:[T] (***):2000:290, paragraph 125, upheld on appeal in the judgment of the Court of Justice of 24 October 2002, *Aéroports de Paris* v *Commission*, C-82/01 P, EU:C:2002:617. Also see judgment of the General Court of 17 December 2008, *Ryanair* v *Commission*, T-196/04, EU:T:2008:585, paragraph 88; and judgment of the General Court of 24 March 2011, *Freistaat Sachsen and Land Sachsen-Anhalt and Others* v *Commission*, Joined Cases T-443/08 and T-455/08, EU:T:2011:117, in particular paragraphs 93 and 94, upheld on appeal in the judgment of the Court of Justice of 19 December 2012, *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle* v *Commission*, C-288/11 P, EU:C:2012:821, in particular paragraphs 40-43 and 47.

([16]) See, for example, Commission Decision of 15 December 2009 in State aid case N 385/2009 — Public financing of port infrastructure in Ventspils Port (OJ C 62, 13.3.2010, p. 7); Commission Decision of 15 June 2011 in State aid case 44/2010 — Latvia — Public financing of port infrastructure in Krievu Sala (OJ C 215, 21.7.2011, p. 21); Commission Decision of 22 February 2012 in State aid case SA.30742 (N/2010) — Lithuania — Construction of infrastructure for the ferry terminal in Klaipėda (OJ C 121, 26.4.2012, p. 1); Commission Decision of 2 July 2013 in State aid case SA.35418 (2012/N) — Greece — Extension of Piraeus port (OJ C 256, 5.9.2013, p. 2); Commission Decision of 18 September 2013 in State aid case SA.36953 (2013/N) — Spain — Port Authority of Bahía de Cádiz (OJ C 335, 16.11.2013, p. 1).

([17]) See, for example, Commission Decision of 18 September 2013 in State aid case SA.36953 (2013/N) — Spain — Port Authority of Bahía de Cádiz (OJ C 335, 16.11.2013, p. 1).

([18]) Judgment of the Court of Justice of 10 December 1991, *Merci Convenzionali Porto di Genova*, C-179/90, EU:C:1991:464, paragraphs 3 and 27; judgment of the Court of Justice of 17 July 1997, *GT-Link A/S* v *De Danske Statsbaner*, C-242/95, EU:C:1997:376, paragraph 52: 'It does not follow, however, that the operation of any commercial port constitutes the operation of a service of general economic interest or, in particular, that all the services provided in such a port amount to such a task.'

([19]) See, for example, Commission Decision of 18 December 2013 in State aid case SA.37402 — Freeport of Budapest (OJ C 141, 9.5.2014, p. 1); Commission Decision of 17 October 2012 in State aid case SA.34501 — Inland port Königs Wusterhausen/Wildau (OJ C 176, 21.6.2013, p. 1); Commission Decision of 1 October 2014 in State aid case SA.38478 — Győr-Gönyü Public Port (OJ C 418, 21.11.2014, p. 1).

([20]) Commission Decision of 16 October 2002 in State aid case N 438/02 — Belgium — Subsidies to port authorities for carrying out public authority tasks (OJ C 284, 21.11.2002, p. 2).

([21]) Judgment of the Court of Justice of 18 March 1997, *Calì & Figli*, C-343/95, EU:C:1997:160, paragraph 22.

([22]) These activities relate to the buildings and services necessary for the operation of the ports and are therefore exempt from corporate tax.

([23]) Article L. 5321-1 of the French Transport Code indicates that a 'port charge can be levied in the seaports coming under the State, local or regional authorities or their groupings, based on the commercial operations or stays by ships there' and that this charge 'may comprise several elements' or 'fees' (according to Article L. 5321-3 of the same Code). These provisions are also applicable to inland ports according to Article L. 4323-1 of the Code. In Decision No 76-92 L of 6 October 1976, the French Constitutional Council held that the provisions in question 'establish charges, in connection with stays of ships in ports and operations carried out there, the amount of which is assigned in full to financing the port expenses … in exchange for the use of the public equipment and the services which are provided on this occasion [and that these charges] have the nature of charges for services rendered'.

([24]) According to Article L. 5312-2 of the Transport Code, the GPM is entrusted in particular with 'the management and development of the land it owns or which is assigned to it'. Also see Article L. 5313-2 for the autonomous ports and Article L. 4322-1 for the autonomous port of Paris.

(46) All French ports do not necessarily carry out all the aforementioned activities. In particular, as pointed out by some of them, GPMs can as a general rule no longer operate 'the equipment used for loading, unloading, handling and storage operations related to ships' (Article L. 5312-4 of the French Transport Code). However, it seems that some GPMs do continue to operate this equipment and to provide the corresponding services ([25]).

(47) Although public authorities have a large degree of discretion to define which economic activities may constitute services of general economic interest ('SGEIs'), this does not prevent these activities from being of an economic nature. It is settled case-law that the concept of 'economic activity' derives from matters of fact, in particular the existence of a market for the services concerned, and does not depend on the choices or assessments made in one country. Thus the fact that the activities of the ports are not profit-making within the meaning of the provisions of the CGI, even supposing this to be the case, is insufficient to take away their economic nature within the meaning of State aid law. Likewise, the mere fact that the tasks carried out by the ports were delegated to them by the State does not suffice to classify the activities in question as non-economic. All SGEIs are tasks delegated by the State to undertakings. And SGEIs do involve carrying out economic activities.

(48) In addition, the fact that some ports can be classified as critical infrastructure within the meaning of Article L. 1332-1 of the French Defence Code does mean that port activities are essential functions of the State within the meaning of State aid law. A large number of economic activities in the energy, telecommunications and transport sectors may also prove to be critical for the life of the nation without this depriving them of their economic nature. The Commission would also point out that the Defence Code (see Articles L. 1332-4, L. 1332-5 and L. 1332-6) explicitly mentions the classification of 'undertaking' of some at least of the operators concerned.

(49) Next, the alleged fact that the GPMs meet the criteria which are laid down in Article 4(5) of the Sixth VAT Directive ([26]) and which were considered by the Court of Justice in Case C-276/97 is not relevant to this case. That article of the VAT Directive provides that 'States, regional and local government authorities and other bodies governed by public law shall not be considered taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with these activities or transactions', and the Court of Justice considers that 'activities pursued as public authorities within the meaning of the first paragraph of Article 4(5) of the Sixth Directive are those engaged in by bodies governed by public law under the special legal regime applicable to them' ([27]). Although ports may be acting in the context of the special legal regime applicable to them, this characteristic alone will not cause them to cease to be regarded as taxable persons for VAT purposes ([28]). Far from contradicting the economic nature of the activities carried out, invoking the exemption confirms that the activities carried out are indeed economic, as the exemption (which directly affects the status of taxable person) is meaningful only if the activities carried out are economic ([29]). Above all, this criterion (pursuit of an activity under the special legal regime applicable to public bodies) was developed by the Court in connection with Article 4(5) of the VAT Directive and has no equivalent in State aid law. On the contrary, in accordance with the case-law recalled in recital 43, the legal regime to which the operators are subject is not sufficient to exclude the existence of an economic activity within the meaning of Article 107 TFEU.

([25]) See French Court of Auditors, *Le bilan de la réforme des grands ports maritimes, Rapport public annuel 2017 — février 2017*, La documentation française: '*Le maintien d'activités de manutention dans certains ports*'.

([26]) This provision is now included in substance in Article 13 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

([27]) Judgment of the Court of Justice of 12 September 2000, *Commission of the European Communities* v *French Republic*, C-276/97, EU:C:2000:424, paragraph 40.

([28]) Beyond a condition related to the absence of 'significant distortions of competition', Article 4(5) indicates that 'in any event, bodies governed by public law shall be regarded as taxable persons in respect of the activities listed in Annex I, provided that those activities are not carried out on such a small scale as to be negligible'. Port services are listed in Annex I.

([29]) In Case C-276/97, the Court of Justice clearly classifies the activity in question (providing access to roads in return for payment) as an economic activity (paragraph 32), before examining whether the exemption provided for in Article 4(5) applies (paragraph 37).

(50) Likewise, whether or not the ports act on a purely commercial basis of profit maximisation, whether or not they put the general interest before the return on investment, whether or not their objective is to seek a profit, and whether or not they systematically reinvest their profits are not considerations sufficient to exclude the economic nature of an activity consisting in offering goods or services on a market ([30]). The Commission would also point out that certain French ports make profits and pay dividends to the State ([31]), and consequently do not systematically reinvest their profits in the infrastructure.

(51) Finally, the argument of the French authorities that the TFEU contains a specific article (Article 93) to deal with State aid in the transport sector merely confirms that transport activities are economic activities (otherwise there would be no State aid).

5.1.1.2. Access to port infrastructure in general

(52) As regards, more specifically, the services offered by the ports in exchange for the payment of port charges, the fact that the structure of the port charges is determined at national level and that the charges are approved by the public authorities is not in itself sufficient to deprive these services of their economic nature ([32]). As a basis to assess the economic nature of the activities at issue in Case C-343/95, cited by the GPM of Le Havre, the Court of Justice looked primarily at the nature of the activities (see recitals 18 and 23) and only in the second place at the approval of the tariffs at national level. For the rest, under the French Transport Code ([33]), the ports themselves are responsible for setting the tariffs.

(53) Concerning the reference made by the GPM of Le Havre to the Commission Decision of 20 October 2004 in case N 520/200[3] (***), the Commission would point out that its decision-making practice has evolved since 2004, in conjunction with the development of the Court of Justice case-law. The construction and the maintenance of port access infrastructure, where the infrastructure is available to all users without discrimination and free of charge, are normally considered general measures, carried out by the State in the framework of its responsibility for developing maritime transport. Unless specific features of the case point to a different conclusion, the Commission considers in principle that access infrastructure located outside the area of a port benefits the maritime community as a whole and that its public funding does not constitute State aid. Conversely, public funding of access infrastructure located within the area of a port is in principle assumed to specifically benefit the operation of the port itself, and constitutes State aid ([34]).

5.1.1.3. The making available of specific land and infrastructures to undertakings against remuneration

(54) It cannot be inferred from the Commission Decision in case SA.36346 ([35]), cited in point 17(f) of the Notice of 19 July 2016, that the management or development of the port area, and in particular the renting or making available of specific land and infrastructure against remuneration, is not an economic activity. Case SA.36346 concerned support for the revitalisation of public land and not the renting of land against remuneration.

([30]) See judgment of the Court of Justice of 10 January 2006, *Cassa di Risparmio di Firenze and Others*, C-222/04, EU:C:2006:8, paragraphs 122 and 123.

([31]) The autonomous port of Paris paid EUR 8 million for the financial year 2014 and EUR 11 million for the financial year 2016. The GPM of Dunkirk for its part paid EUR 5 million for the financial year 2014 and EUR 4 million for the financial year 2016. See orders of 18 February 2016 and 23 February 2017 setting the amount of the dividends payable to the State by the autonomous port of Paris and the major seaports (*arrêtés des 18 février 2016 et 23 février 2017 fixant le montant des dividendes dus à l'État par le port autonome de Paris et les grands ports maritimes*), *Journal officiel de la République française* No 0048, 26 February 2016, and No 53, 3 March 2017. The dividends paid vary considerably over time in proportion to the net result (between 14 % and 33 % for the GPM of Le Havre over the period 2008-2013, between 22 % and 35 % for the GPM of Marseilles over the period 2009-2014).

([32]) See Commission Decision of 22 February 2012 in State aid case SA.30742 (N/2010) — Lithuania — Port of Klaipėda, recital 9 (OJ C 121, 26.4.2012, p. 1).

([33]) See in particular Articles R. 5321-2 and R. 5321-11.

([34]) See points 5 and 7 of the analytical grid for port infrastructure (http://ec.europaen.pdf.eu/competition/state_aid/modernisation/grid_ports) and Commission Decision of 30 April 2015 in State aid case SA.39608 Extension of the port of Wismar, recital 31 (OJ C 203, 19.6.2015, p. 3).

([35]) Commission Decision of 27 March 2014 in State aid case SA.36346 (2013/N) GRW land development scheme for industrial and commercial use (OJ C 141, 9.5.2014, p. 1).

(55) In general, the renting of public property against remuneration constitutes an economic activity, especially where the port's co-contracting party provides port services to its customers ([36]). The French administration itself has already taken the view that the income from renting land (*redevances domaniales*, State fees) should be subject to corporate tax under national law ([37]). The comments on tax legislation published by the Directorate-General of Public Finance (*Direction générale des finances publiques*), which constitute the French tax administration's official interpretation of the law ([38]), also make it clear that the concession fees for all or part of a port (for example, a concession for public equipment) are subject to VAT, which constitutes further evidence of their economic nature.

5.1.1.4. Dredging operations

(56) The construction and maintenance of port access infrastructure, and especially the dredging of rivers, access routes and channels, which is available to all users without discrimination and free of charge, are normally considered to be general measures, carried out by the State in the framework of its responsibility for developing maritime transport. As a general rule, the Commission draws a distinction according to whether the access infrastructure is located inside or outside the port and is accessible to the general public. Unless specific features of the case point to a different conclusion, the Commission considers in principle that access infrastructure located outside the area of a port benefits the maritime community as a whole and that its public funding does not constitute State aid. Conversely, public funding of access infrastructure located within the area of a port is in principle assumed to specifically benefit the operation of the port itself and constitutes State aid ([39]).

(57) For example, the Commission has stated that dredging in an estuary, which would improve access to the river and benefit indistinctly all the operators located in the estuary and along further inland waterways, is a general measure for the benefit of the maritime community as a whole. The Commission therefore considered in that case that dredging did not constitute an economic activity ([40]).

5.1.1.5. The ancillary or principal nature of the economic activities

(58) The fact that the economic activities of an entity are minor or marginal in relation to its non-economic activities does not in principle allow these economic activities to be regarded as exempt from the State aid rules.

(59) In addition, and without it being necessary to undertake a port-by-port evaluation of the proportion of the different economic activities, it will be clear from the argument above that a very large part of the activities considered to be non-economic by certain interested parties and the French authorities are in fact of an economic nature. In addition, the port charges and concession fees account for the vast bulk of the income of the major seaports ([41]) and greatly help the ports to generate a positive tax base for the purposes of corporate tax.

([36]) See Commission Decision in State aid case SA.36953 (2013/N) Port of Bahía de Cádiz, recital 29 (OJ C 335, 16.11.2013, p. 1), Commission Decision in State aid case SA.30742 (N/2010) Klaipėda, recitals 8 and 9 (OJ C 121, 26.4.2012, p. 1), Commission Decision in State aid case N 44/2010 Port of Krievu Sala, recital 67 (OJ C 215, 21.7.2011, p. 21), Commission Decision in State aid case C 39/2009 (ex N 385/2009) Port of Ventspils, recitals 30, 57 and 58 (OJ C 62, 13.3.2010, p. 7).

([37]) See the report of the Inspectorate-General of Finance (*Inspection générale des finances*) (No 2007-M-031-01) and of the General Council of Bridges and Highways (*Conseil général des ponts et chaussées*) (No 005126-01) on the modernisation of the autonomous ports, July 2008, page 53 ('The current fees for equipment come within the scope of taxable profit-generating activities but they are set to disappear in the medium term, as resources of the ports, with the proposed reform. Under these conditions, the State fees constitute, in the medium term, the main and lasting source of taxable activity') (http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/084000035.pdf).

([38]) See BOI-TVA-BASE-10-20-40-10 §§230 to 270 (http://bofip.impots.gouv.fr/bofip/1474-PGP.html). Also see the reply to written question No 17487 by Mr Jean Arthuis, published in *JO Sénat*, 10 March 2011, p. 573; http://www.senat.fr/questions/base/2011/qSEQ110317487.html

([39]) See points 5 and 7 of the analytical grid for port infrastructure (http://ec.europa.eu/competition/state_aid/modernisation/grid_ports_en.pdf).

([40]) See Commission Decision of 11 March 2014 in State aid case SA.35720 (2014/NN) — United Kingdom — Liverpool City Council Cruise Liner Terminal, recitals 64-69 (OJ C 120, 23.4.2014, p. 4).

([41]) As a percentage of turnover, port charges and State fees represent, for example, 42 % and 34 % respectively (and together 55 % of the operating costs) for the GPM of Bordeaux (in 2013, see French Court of Auditors, special report published on 8 March 2016, pp. 60 and 64), and 62 % and 18 % respectively (and together 76 % of the operating costs) for the GPM of Le Havre (in 2013, see Court of Auditors, special report published on 30 March 2016, pp. 112 and 113).

(60) Finally, the Commission accepts that all the financing of an infrastructure can be excluded from the State aid rules if this infrastructure is used almost exclusively for the purposes of a non-economic activity and any economic use remains purely ancillary ([42]). However, the fact that the ports engage in non-economic activities within the site they occupy does not mean that the port infrastructure itself is used almost exclusively for a non-economic activity, or that the economic activities are ancillary to the non-economic activities.

5.1.1.6. Conclusion

(61) The autonomous ports (most of which have become GPMs, with the exception in particular of the autonomous inland ports of Paris and Strasbourg), maritime chambers of commerce, chambers of commerce and industry managing port installations, municipalities which are concessionaires of public equipment owned by the State in the seaports, and undertakings to which they may have entrusted the operation of that equipment, which operate the infrastructure directly or supply services in a port, are, as regards their economic activities — especially those identified in recital 45 — 'undertakings' within the meaning of Article 107(1) TFEU.

5.1.2. *State resources and imputability to the State*

(62) According to Article 107(1) TFEU, only measures granted by Member States or through State resources are liable to constitute State aid. It is settled case-law that waiving revenues that would — in principle — otherwise have been paid to the State constitutes a transfer of State resources within the meaning of that provision ([43]).

(63) Through the tax exemption from which the operators of the French ports benefit, the French State waives tax revenue, which is why this exemption implies a transfer of State resources within the meaning of Article 107(1) TFEU. Since this tax exemption is based on a series of ministerial decisions, it is also imputable to France.

5.1.3. *Economic advantage*

(64) To constitute State aid, the measure at issue must confer a financial advantage on the beneficiary. An advantage comprises not only a positive benefit, but also all the measures which in various forms mitigate the charges which are normally included in the budget of an undertaking ([44]).

(65) As pointed out above, under French tax legislation, 'the autonomous ports, maritime chambers of commerce, chambers of commerce and industry managing port installations, municipalities which are concessionaires of public equipment owned by the State in the seaports, and undertakings to which they may have entrusted the operation of that equipment' ([45]) should be subject to corporate tax as regards their economic activities, but are in fact exempt from it. Consequently, these entities do not have to bear the cost of corporate tax normally assumed by French undertakings in relation to their economic activities. They therefore benefit from an economic advantage within the meaning of Article 107(1) TFEU.

(66) Moreover, the alleged fact that the exemption from corporate tax compensates for the additional costs deriving from tasks of general interest assigned to the ports by the public authorities would call into question the classification as an advantage only if, on the one hand, the amount of the advantage resulting from the tax exemption were in fact intended to compensate for the additional costs associated with tasks of general interest and, on the other hand, this amount were limited to the net additional cost of performing these tasks (no overcompensation) ([46]). That is not so in the present case. No provision of national law establishes any connection of any kind between the exemption from corporate tax and any public service tasks assigned to the ports ([47]). Nor does national law guarantee that the amount of the compensation (i.e. the amount of corporate tax not paid) is limited

([42]) See point 207 of the Notice of 19 July 2016.
([43]) Judgment of the Court of Justice of 16 May 2000, *France* v *Ladbroke Racing and Commission*, C-83/98 [P] (***), EU:C:2000:248, paragraphs 48 to 51.
([44]) See judgment of the Court of Justice of 8 November 2001, *Adria-Wien Pipeline*, C-143/99, EU:C:2001:598, paragraph 38.
([45]) And their successors (notably the GPMs) considered exempt from corporate tax by the tax administration on the same basis.
([46]) See point 206 of the Notice of 19 July 2016 and, with regard to SGEIs, judgment of the Court of Justice of 24 July 2003, *Altmark Trans*, C-280/00, EU:C:2003:415, paragraphs 87 to 95.
([47]) Historically, the tax exemption granted in 1942 aimed to speed up the reconstruction of the ports destroyed by acts of war, and not to provide some kind of compensation for public service tasks.

to the amount needed to cover all or part of the costs arising from the fulfilment of public service obligations. The corporate tax exemption, the amount of which is proportional to the profit made, is not subject to a maximum limit and may therefore lead to an advantage which is disproportionate to the additional cost resulting from the public service obligations. Finally, the assertion by the GPM of Dunkirk that the cost of the public service tasks systematically exceeds the theoretical corporate tax charge is not demonstrated by any figures or any historical data; in the absence of a legal guarantee (also valid for the future) of absence of overcompensation, even if this assertion had been proved to be true for the past, that would not be sufficient to comply with the no overcompensation requirement.

5.1.4. *Selectivity*

(67) To be considered State aid, a measure must be selective, in the sense that it favours certain undertakings or the production of certain goods within the meaning of Article 107(1) TFEU ([48]).

(68) According to settled case-law ([49]), the assessment of the material selectivity of a tax measure mitigating the charges which are normally included in the budget of an undertaking proceeds in three steps. First, it is necessary to identify the common or 'normal' tax regime (the 'reference system') applicable in the Member State concerned. Second, it is necessary to determine whether the measure in question derogates from the reference system by differentiating between economic operators which, in the light of the objective pursued by said tax regime, are in a comparable factual and legal situation. If this is the case, the measure is *prima facie* selective. As a third step, it is necessary to establish whether the derogating measure is justified by the nature or overall structure of the reference system. As regards this third step, the Member State must demonstrate that the differential tax treatment results directly from the basic or guiding principles of its tax system ([50]) identified as reference system.

Reference system

(69) The reference system is the French corporate tax, levied in principle on all profits or income obtained by companies and other legal persons (Article 205 of the CGI). Under the provisions of Article 206(1) and Article 1654 of the CGI, legal persons governed by private or public law engaging in a business or transactions of a profit-making nature are subject to corporate tax. Under the provisions of Article 165 of Annex 4 to the CGI, public institutions of an industrial or commercial nature are liable to all direct and assimilated taxes applicable to similar private undertakings. Article 167 of Annex 4 to the same Code specifies that these provisions apply in particular to chambers of commerce and industry and to the autonomous ports. Neither the French authorities nor interested third parties made any comments on this point following the opening decision.

Derogation from the reference system

(70) By virtue of the ministerial decisions of 1942 and 1943 referred to above, 'the autonomous ports, maritime chambers of commerce, chambers of commerce and industry managing port installations, municipalities which are concessionaires of public equipment owned by the State in the seaports, and undertakings to which they may have entrusted the operation of that equipment' are exempt from corporate tax. Contrary to the arguments of certain French ports, the corporate tax exemption in favour of the ports results therefore not from the general provisions of the CGI (and in particular Article 165 of Annex 4 to the CGI) and the non-profit-making nature of the activity of the ports, but from the ministerial decisions of 1942 and 1943, which explicitly derogate from these general provisions and implicitly take the view that the ports engage in profit-making activities ([51]). This is confirmed by the decision of the Council of State cited by the interested parties ([52]).

([48]) See judgment of the Court of Justice of 15 December 2005, *Italy* v *Commission*, C-66/02, EU:C:2005:768, paragraph 94.
([49]) See judgment of the Court of Justice of 8 September 2011, *Paint Graphos and Others*, Joined Cases C-78/08 to C-80/08, EU:C:2011:550, paragraph 49; judgment of the Court of Justice of 6 September 2006, *Portugal* v *Commission*, C-88/03, EU:C:2006:511, paragraph 56.
([50]) See judgment of the Court of Justice of 8 September 2011, *Paint Graphos and Others*, Joined Cases C-78/08 to C-80/08, EU:C:2011:550, paragraph 65; judgment of the Court of Justice of 6 September 2006, *Portugal* v *Commission*, C-88/03, EU:C:2006:511, paragraph 81.
([51]) See *Bulletin officiel des finances publiques-Impôts* — BOI-IS-CHAMP-30-60, II (paragraph 240): 'successive ministerial decisions have exempted the ports from direct taxes'.
([52]) Council of State, 2 July 2014, Minister for the Budget, No 374807, FR:CESSR:2014:374807.20140702.

(71) However, in the light of the objective of the reference system, which is to tax the profits made by companies and legal persons, the entities covered by the ministerial decisions of 1942 and 1943 are in a comparable factual and legal situation to that of the other companies or legal persons subject to the tax in so far as all these undertakings generate profits. The exemption in question therefore constitutes a derogation from the rules established by the reference tax system.

(72) The Commission therefore considers that the tax exemption in favour of the above-mentioned entities is *prima facie* selective.

(73) The fact that the measure applies to all French ports, assuming it to have been established ([53]), does not call this conclusion into question. The measure at issue is not general in relation to the reference system, since it applies only to certain undertakings, the port operators, which are nevertheless in a factual and legal situation comparable to that of the other companies or legal persons subject to the tax, in other words to all profit-making undertakings. The measure would be general only if a reference system were to be considered which was confined to the ports themselves (a reference system formed by the ministerial decisions of 1942 and 1943), whereas it has been shown above that the reference system consists of the general corporate tax provisions to which undertakings of all sectors are subject.

(74) Furthermore, in the light of the objective of the reference system, which is to subject the profits made by any legal person to income tax, characteristics such as those cited by the French authorities and the interested parties (tasks imposed on the ports for the benefit of other undertakings, special obligations, operation by CCI, absence of competition, financing by port charges and exercise of the official powers of a public authority) will not serve to establish the existence of a different factual and legal situation. Although those circumstances can in some cases explain that the operators of ports assigned general interest tasks have a lower profitability and therefore lower taxable profits, they cannot justify the exemption from corporate tax of the profits made, in spite of the costs associated with such general interest tasks.

(75) The French administration has already recognised, with regard to a request to create a derogating tax regime in favour of the autonomous marina authorities, that 'the European regulations on competition rules preclude the possibility of granting derogating tax measures in favour of certain activities' ([54]).

Justification based on the nature and general scheme of the system

(76) The French authorities state that the measure has been an integral part of the French tax system for over 70 years, but the passage of time cannot suffice to consider a derogation from the normal rules of the system to be justified by the nature and general scheme of the system. The passage of time can, on the other hand, be used to justify the use of the procedure for existing aid (see below). The Commission considers that the inherent logic of the reference system in this case is to tax profits. A tax exemption based solely on belonging to a certain category of undertakings or granted only to certain entities identified by law is not in keeping with this logic.

(77) Finally, as regards the assertion by certain interested parties that the measure at issue does not create any 'clear breach of the principle of equal treatment', the Commission would point out that the fact that a measure does not create any 'clear breach of the principle of equal treatment' in French law does not mean that it derives directly from the intrinsic basic or guiding principles of the reference system or is the result of inherent mechanisms necessary for the functioning and effectiveness of the system (***) ([55]) within the meaning of State aid law. As found in the decision of the Constitutional Council ([56]), the evaluation of the principle of equality in French law takes into consideration the objectives pursued by the derogating measure, i.e. objectives of general

([53]) Certain ports are operated by legal persons not covered by the decisions of 1942 and 1943, for example the commercial and fishing port of Sète (operated by a regional public institution — see judgment of the Administrative Court of Appeal of Marseilles of 19 January 2016, No 13MA03445), the port of Lorient (managed by a mixed-ownership company, see parliamentary question No 23815 published *Journal officiel de la République française*, 9 April 2013, p. 3694) or the marina of Saint-Cyprien (operated by the public institution of the port of Saint-Cyprien, a municipal authority with legal personality — see judgment of the Administrative Court of Appeal of Marseilles of 27 November 2012, No 12MA01312).

([54]) Reply to parliamentary question No 18664, published *Journal officiel de la République française*, 3 March 2009, p. 2040.

([55]) See judgment of the Court of Justice of 8 September 2011, *Paint Graphos and Others*, Joined Cases C-78/08 to C-80/08, EU:C:2011:550, paragraph 69.

([56]) Decision No 2012-238 QPC, 20 April 2012, *Journal officiel de la République française*, 21 April 2012, p. 7198.

interest extrinsic to the tax system, which cannot be used at the stage of justification by the nature and general scheme of the tax system. Although objectives extrinsic to the system may possibly be taken into account at the stage of the assessment of the compatibility of aid, they do not permit justification of the selectivity of a derogation or, therefore, demonstration of the absence of State aid. In addition, the decision of the Constitutional Council mentioned by the interested parties does not concern the ministerial decisions exempting the ports from corporate tax, but a legislative text exempting certain sports meetings from a tax with a different intrinsic logic to that of corporate tax.

(78) The Commission therefore considers that the corporate tax exemption is not justified by the nature and general scheme of the French tax system.

5.1.5. *Distortion of competition and effect on trade*

(79) In order to be classified as State aid, the measure must affect intra-EU trade and distort, or threaten to distort, competition. These two criteria are closely linked.

(80) As the Court recalled in particular in the *Eventech* judgment ([57]):

'65. … in accordance with the Court's settled case-law, for the purpose of categorising a national measure as State aid, it is necessary, not to establish that the aid has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition (the judgment in *Libert and Others*, C-197/11 and C-203/11, EU:C:2013:288, paragraph 76 and case-law cited).

66. In particular, when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid (see, to that effect, the judgment in *Libert and Others*, EU:C:2013:288, paragraph 77 and case-law cited).

67. In that regard, it is not necessary that the beneficiary undertakings are themselves involved in intra-Community trade. Where a Member State grants aid to undertakings, internal activity may be maintained or increased as a result, so that the opportunities for undertakings established in other Member States to penetrate the market in that Member State are thereby reduced (see, to that effect, the judgment in *Libert and Others*, EU:C:2013:288, paragraph 78 and case-law cited).

68. Further, according to the Court's case-law, there is no threshold or percentage below which it may be considered that trade between Member States is not affected. The relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that trade between Member States might be affected (the judgment in *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415, paragraph 81).

69. Consequently, the condition that the aid must be capable of affecting trade between Member States does not depend on the local or regional character of the transport services supplied or on the scale of the field of activity concerned (the judgment in *Altmark Trans and Regierungspräsidium Magdeburg*, EU:C:2003:415, paragraph 82).'

(81) In the *Wam* judgment ([58]), the Court stressed the following in particular:

'53. … the fact that an economic sector has been liberalised at Community level may serve to determine that the aid has a real or potential effect on competition and affects trade between Member States (*Cassa di Risparmio di Firenze and Others*, paragraph 142 and the case-law cited).

54. With regard to the condition of the distortion of competition, it should be borne in mind in that regard that, in principle, aid intended to release an undertaking from costs which it would normally have to bear in its day-to-day management or normal activities distorts the conditions of competition (see Case C-156/98 *Germany* v *Commission* [2000] ECR I-6857, paragraph 30, and *Heiser*, paragraph 55).'

([57]) Judgment of the Court of Justice of 14 January 2015, *Eventech*, Case C-518/13, EU:C:2015:9, paragraphs 65 to 69.
([58]) Judgment of the Court of Justice of 30 April 2009, *Commission* v *Italy and Wam*, Case C-494/06, EU:C:2009:272, paragraphs 53 and 54.

(82) In the present case, the tax advantage in favour of the ports concerned frees them from a current charge which they would normally have to bear. It is of a nature to favour them in relation to French ports and foreign ports of the European Union which do not benefit from that advantage. Thus it is liable to affect intra-Community trade and to distort competition.

(83) There is competition in the port sector, and it is exacerbated by the nature and characteristics specific to transport, and especially maritime and inland waterway transport. Even though it may be considered that the ports hold a legal monopoly to offer port services within the port they operate, the transport services they offer are, at least to a certain extent, in competition with those offered by or in other ports and by other providers of transport services both in France ([59]) and in other Member States.

(84) For instance, in the context of the public consultation of interested parties on a draft Regulation in the ports sector, 'all stakeholders stressed the need for a stable and fair level playing field … for inter-port (competition between ports) … competition in the EU' ([60]). Likewise, the ports, and especially the inland ports and more generally inland waterway transport of which they form a constituent part, are in competition with other forms of transport. In so far as other solutions exist or could exist to transport freight in the overseas regions, the measure can, even for these ports located far from metropolitan France or other European ports, lead to a distortion of competition and have an impact on trade between Member States.

(85) It is true that the attractiveness of a port is measured by a number of parameters, in particular its connections with the hinterland ([61]), but the price of the services provided by the port (port charges and other fees paid by shipowners) is nevertheless a factor in the relative competitiveness of the ports ([62]). Contrary to the arguments put forward by the French authorities and certain interested parties, the fact that this aspect is more or less important in relation to other factors of the competitiveness of ports does not permit the conclusion that the measure at issue does not affect competition, since the measure may influence the prices practised by the ports and, all other things being equal, this price will be decisive in the shipowners' choice of a route or a logistics solution involving one port rather than another.

(86) Moreover, it should be pointed out that European ports also compete to attract operators (or concessionaires) providing shipowners with certain port services, where the port authority does not provide these services directly itself. The level of the fee charged by the ports in exchange for land and infrastructure (port equipment) being made available to concessionaires also plays a role in the choice made by concessionaires to establish themselves in one port rather than another, and in the choice of the resources to be used there. More generally, the ports are in competition with other economic operators on the financing and investment market; all other things being equal, the measure confers an advantage on the ports in relation to investors, compared to other operators not benefiting from the measure (the ports represent a more lucrative investment).

(87) In addition, as the measure at issue constitutes an aid scheme which applies to ports of very different size, geographical location, type (inland port, seaport) or activities, it is not necessary, in order to establish that the measure examined is State aid, to demonstrate individually that that measure results for each port in a distortion of competition and an effect on trade.

(88) It suffices in this respect to mention that the French authorities and interested parties accept that certain large ports, such as the ports of Le Havre, Rouen or Marseilles, are in competition with other ports of the European Union, so that the measure has an impact on commerce and affects trade. The comments of the port of Rotterdam are also on these lines.

([59]) In particular the French ports not benefiting from the corporate tax exemption. See footnote 51 to the present Decision.
([60]) See point 2.1 of the proposal for a Regulation on port services. Also see 'Communication from the Commission on a European Ports Policy', COM/2007/0616 final, point II.4.2.
([61]) See 'Communication from the Commission on a European Ports Policy', COM/2007/0616 final, point II.1.
([62]) The price of transport services provided by the ports often represents a large share of the total transport cost. See *Europe's Seaports 2030: challenges ahead*, European Commission memo of 23 May 2013: 'The costs and quality of port services are a major factor for European business. Port costs may account for a significant part of the total costs in the logistics chain. Handling cargo, port dues and port nautical services can account for between 40 %-60 % of the total door-to-door logistic costs for business using short sea shipping to transport goods.'

(89) Moreover, the alleged fact that similar State aid measures exist in other Member States and the behaviour of the Commission concerning these possible measures have no bearing on the classification of the measure concerned as State aid ([63]), since the corporate tax exemption of the French ports has the consequence of improving their competitive situation in relation to a reference situation in which they would be taxed under the normal conditions of the corporate tax system ([64]). Similarly, the existence of different corporate tax rates in the Member States is just a consequence of the lack of harmonisation of direct taxation between Member States and merely reflects the sovereign choices of the Member States to use tax to finance certain services — or a certain level of services — to taxpayers.

(90) For the rest, it is not necessary for the distortion of competition or the effect on trade to be significant or substantial. Thus the alleged fact that the traffic in which there is competition is small, far from demonstrating the absence of distortion of competition, tends to prove that a competitive relationship, of greater or lesser intensity, does exist between French ports and other ports of the Union. Likewise, the fact that the combined activity of the small French ports accounts for only 1 % of the total traffic of the Union does not mean that their market share on one or more markets relevant to an analysis of the distortions of competition is of the same order. In addition, the Decision of 11 April 2016, cited by the French authorities and the interested parties, concerns the compatibility of an investment aid measure, which means that the measure in question is recognised as State aid affecting competition and trade between Member States.

(91) Furthermore, even if the 'small ports', as defined by France ([65]), account for only a small proportion of the traffic of the Union, the fact that the beneficiary undertaking is of modest size does not in itself exclude distortion or threat of distortion of competition in the internal market, especially where the activity of the beneficiaries is located in border areas. The observations of the Bayonne Pays Basque CCI, concessionaire of the commercial port of Bayonne and the fishing port of Saint-Jean-de-Luz/Ciboure, which are 'small ports' according to the definition proposed by France, illustrate moreover the perception held by those ports close to a border of the existence of actual cross-border competition ([66]). Although the Commission recognises, in certain cases ([67]), that it is possible that an advantageous measure does not affect trade between Member States, it does not base its recognition only on the size of the beneficiary undertaking, but on an individual assessment of several criteria ([68]).

(92) The Commission does not exclude the possibility that in the particular case of certain ports — those fulfilling the conditions laid down by its decision-making practice, in particular — the measure at issue may be considered to have no effect on trade.

(93) However, for the more systematic reasons set out above, the measure examined, as a general corporate tax exemption scheme for all the beneficiaries mentioned by the ministerial decisions of 1942 and 1943, affects trade within the Union and distorts or may distort competition.

5.1.6. *Conclusion*

(94) Consequently, the Commission concludes that the tax exemption in favour of the autonomous ports (some of which are now classified as major seaports), maritime chambers of commerce, chambers of commerce and industry managing port installations, municipalities which are concessionaires of public equipment owned by the State in the seaports, and undertakings to which they may have entrusted the operation of that equipment constitutes State aid within the meaning of Article 107(1) TFEU.

([63]) Judgment of the Court of Justice of 10 December 1969, *Commission* v *France*, Joined Cases 6/69 and 11/69, EU:C:1969:68, paragraph 21; judgment of the Court of Justice of 19 May 1999, *Italy* v *Commission*, C-6/97, EU:C:1999:251, paragraph 21.

([64]) Judgment of the Court of Justice of 2 July 1974, *Italy* v *Commission*, 173/73, EU:C:1974:71, paragraph 36.

([65]) Ports with traffic below the level defined in Article 20(2)(b) of Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1) (0,1 % of the total annual cargo volume handled in all maritime ports of the Union).

([66]) The CCI states that making it subject to corporate tax would jeopardise the ports it manages in view of their geographical location on the border with Spain and the proximity of the Spanish ports.

([67]) Also see the Decisions of the European Commission of 29 April 2015 in cases SA.37432 Czech Republic — Public hospitals in the Hradec Králové Region (OJ C 203, 19.6.2015, p. 1), SA.37904 Germany — Medical centre in Durmersheim (OJ C 188, 26.6.2015, p. 1), and SA.33149 Germany — Städtische Projektgesellschaft 'Wirtschaftsbüro Gaarden — Kiel' (OJ C 188, 5.6.2015, p. 1).

([68]) The activity of the beneficiary port must have a purely local dimension, for example where the port supplies goods or services within a limited area of the country and is unlikely to attract customers from other Member States. The measure must also have no foreseeable effect — or only marginal effects — on transnational investments in the sector concerned or on the location of undertakings within the single market.

5.2. **Compatibility of the measure with the internal market**

(95) It is for the Member State concerned to demonstrate that a State aid measure can be regarded as compatible with the internal market. As a basis for the compatibility of the measure, the French authorities rely only on compensation for certain tasks carried out by the ports, referring to Article 106(2) TFEU, and on Article 107(3)(a) TFEU; certain interested parties also invoke Articles 93 (coordination of transport) and Article 107(3)(b) TFEU (important projects of European interest).

(96) First, Article 106(2) TFEU provides that compensation for carrying out public service tasks can be declared compatible with the internal market if it meets certain conditions ([69]). In this respect, the French authorities and certain interested parties consider that the measure at issue is compatible with the internal market because it allows compensation for certain tasks financed by the ports which constitute an exercise of the official powers of a public authority. However, the Commission would point out that the measure at issue, which links the amount of aid to the profits made, is not linked or limited to the net costs of the public service tasks ([70]). Nor does it derive from a clear mandate given to the beneficiaries of the measure to carry out such tasks ([71]). Consequently, the measure cannot be regarded as public service compensation compatible with the internal market and is not compatible on the basis of Article 106(2) TFEU.

(97) Second, Article 93 TFEU stipulates that aids which meet the needs of coordination of transport or represent reimbursement for the discharge of certain obligations inherent in the concept of a public service can also be declared compatible with the internal market. Although, as the representatives of managers of French inland ports stress, the inland ports play a major role in the development of multimodal transport, not all the investments made by the ports are covered by Article 93 TFEU, which is limited to aids which meet the needs of coordination of transport. The corporate tax exemption does not constitute investment aid, but operating aid which is not targeted at investment. The measure favours undertakings making the most profit and therefore having greater capacity to accumulate profit and hence to finance investments. Nor is the measure targeted at the reimbursement of certain obligations inherent in the concept of a public service, as pointed out above. Moreover, the advantage derived from a tax exemption pure and simple is not limited to the amount needed for coordination of transport or for reimbursement for the discharge of certain obligations inherent in the concept of a public service, and therefore does not guarantee compliance with the principle of proportionality. It has no clearly identified incentive effect either, in particular because the exemption is more beneficial to the most profitable ports, which therefore have the most resources — and the least need of incentives. Consequently, Article 93 TFEU is not applicable.

(98) Third, according to Article 107(3)(b) TFEU, aid to promote the execution of an important project of common European interest can also be declared compatible with the internal market. The representatives of the managers of French inland ports consider in general that the corporate tax exemption comes within the scope of this article. For the same reasons as above, it is not possible to concur with this reasoning. The measure at issue is not targeted at the execution of an important project of European interest and is not proportionate to the costs of such a project. It is an advantage benefiting the ports merely in so far as they make profits, the fact that they contribute to an important project of common European interest being irrelevant in this respect.

(99) Fourth, in accordance with Article 107(3)(a) TFEU, aid to promote 'the economic development … of the regions referred to in Article 349 TFEU, in view of their structural, economic and social situation' may be considered compatible with the internal market. This stipulation is invoked by the French authorities and several overseas interested parties with regard to the ports located overseas. However, the measure at issue is not targeted at the regions in question.

([69]) See 'Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest' — 2012/C 8/02 (OJ C 8, 11.1.2012, p. 4). Also see Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7, 11.1.2012, p. 3).

([70]) See opinion of Advocate General Kokott in Case C-74/16, *Congregación de Escuelas Pías Provincia Betania* v *Ayuntamiento de Getafe*, EU:C:2017:135, paragraph 75.

([71]) Article L. 5312-2 of the Transport Code, which refers to a list of tasks imposed on the ports, concerns only the major seaports. It does not define the parameters for the calculation of compensation or the safeguard measures to avoid overcompensation.

(100) Even if the measure benefited only the ports located in the regions referred to in Article 349 TFEU, its objective is in any event not the economic development of those regions, or compensation for their structurally unfavourable situation, since it is confined to granting a sectoral advantage to a specific type of undertaking in the transport sector, whatever the undertaking's activities. France does not show that the measure has an effect on the cost of imported goods, and in this respect it can be noted that certain overseas ports make profits, pay dividends to the State ([72]) and therefore *prima facie* have margins available to reduce the amount of the port charges if they are seen as a handicap for the economic development of the regions concerned; thus the corporate tax exemption may have an impact on various financial flows (in particular dividends), but not necessarily on the cost of the goods imported. In this respect, France does not argue that the ports are in a particularly unfavourable situation in relation to other undertakings located in the regions referred to in Article 349. The very nature of the measure and its functioning (an advantage reserved to certain undertakings, without considering their activity, proportional to the profits made rather than to needs, and not limited to a clearly defined objective the attainment of which requires a financial incentive) clearly distinguish it from the tax schemes constituting operating aid referred to by the interested parties and accepted by the Commission. Tax measures to assist investment or zero rating of VAT are general measures, with a scope covering undertakings located in the regions referred to in Article 349 TFEU without discrimination.

(101) In addition, contrary to the argument put forward by the GPM of Guadeloupe, the revised General Block Exemption Regulation ([73]), which, to some extent, covers operating aid for overseas transport, is not applicable to the measure at issue. Article 15(4) of the Regulation applies only to measures where the amount is limited according to certain indicators (gross value added, labour costs, or turnover), which the corporate tax exemption is not.

(102) Consequently, the measure examined cannot be declared compatible with the internal market on the basis of Article 107(3)(a) TFEU.

(103) Fifth, and although Article 107(3)(c) has not been invoked either by France or by the interested parties, the Commission will consider whether the measure at issue is of a nature to 'facilitate the development of certain economic activities or of certain economic areas' without adversely affecting trading conditions to an extent contrary to the common interest. For the reasons already set out above, however (absence of proportionality, absence of incentive effect and absence of a link with an identified common interest objective), the Commission takes the view that Article 107(3)(c) TFEU is not applicable.

(104) Finally, although certain interested parties consider that the abolition of the measure will have an impact on the investment capacity of the ports, the Commission would emphasise that the measure at issue does not target investment ([74]).

5.3. **Existing aid or new aid**

(105) In accordance with Article 1(b)(i) of the Procedural Regulation, aid schemes that were put into effect prior to the entry into force of the Treaty are existing aid schemes.

(106) Since the tax exemption in question entered into force in 1942 and has not undergone any substantial changes since then, the Commission considers that the measure constitutes existing State aid.

6. **THE REQUESTS TO SUSPEND THE PROCEDURE**

(107) In accordance with the mandatory role allotted to it by Articles 107 and 108 TFEU, the Commission must end State aid deemed incompatible with the internal market and re-establish the conditions for a level playing field as quickly as possible.

([72]) EUR 1,196 million to be paid in 2016 by the major seaport of Guadeloupe (see order of 18 February 2016, published in *Journal officiel de la République française*, No 0048, 26 February 2016).

([73]) The revised version of the Regulation was published on 20 June 2017: Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs (OJ L 156, 20.6.2017, p. 1).

([74]) On the other hand, other measures targeted at investment and fulfilling the criteria for compatibility (in particular the existence of a general interest and the appropriateness and proportionality of the measure) might, under certain conditions, be declared compatible with the internal market.

(108) In accordance with Article 9(6) of the Procedural Regulation, the Commission must adopt a final decision as soon as the doubts raised in the opening decision have been removed. If, at this stage in the procedure, the Commission considers that incompatible aid has been granted to certain undertakings, it cannot in principle suspend the State aid procedure in question or grant a transitional period. Moreover, this would lead to authorising the payment of aid incompatible with the internal market for a longer period, which would also be unfair in relation to competitors not receiving aid or receiving a lower amount of aid. The Commission notes in this respect that the Dutch ports, which have been subject to corporate tax since 1 January 2017, have asked it to take rapid action to ensure that French ports are subject to corporate tax.

(109) As pointed out above, the possible existence of other State aid to other ports in other Member States does not justify a suspension of the procedure during which the incompatible aid would continue to be paid. It should be pointed out that 'the effects of more than one distortion of competition on trade between Member States do not cancel one another out but accumulate and the damaging consequences to the common market are increased' ([75]). Moreover, suspending the procedure abolishing the tax exemptions for French ports would have the effect of prolonging the current distortions between northern European ports, since the Dutch ports abolished these tax benefits from 1 January 2017.

(110) The fact that the procedure initiated by the Commission in the case of the tax regime for the Dutch ports ([76]) lasted longer than the procedure in the case of the French ports is not relevant in support of a request for a transitional period in the present case. The Commission treats all cases fairly and each case in the light of its specific characteristics. The Commission endeavours to determine the timeframe for its decisions so as to enable the Member State to implement the decision within a reasonable period, in the light of the circumstances, and not in order to allow the undertakings concerned to go on receiving aid declared incompatible.

(111) Finally, France does not specify how the revision of the General Block Exemption Regulation and the proposal for a Regulation on port services might require suspension of the procedure. Be that as it may, the revised version of the General Block Exemption Regulation was adopted on 17 May 2017, and does not cover pure and simple corporate tax exemption measures. As for the Regulation on port services which was adopted on 15 February 2017 ([77]), it does not have either the object or the effect of influencing the action of the Commission based on Articles 107 and 108 TFEU.

(112) Consequently, it is not appropriate to suspend the procedure.

7. **THE REQUESTS OF THE DUTCH PORTS**

(113) As regards the request of Dutch ports to defer their liability to corporate tax, the Commission would point out that the present procedure does not concern Dutch ports, but [French] (***) ports. In its final decision in case SA.25338 concerning Dutch ports ([78]), the Commission refused to delay the liability of Dutch ports to corporate tax for the same reasons of principle as those set out in the present Decision. The liability of the Dutch ports to corporate tax derives from Dutch national law and the Commission, in any case under Article 107 TFEU, is unable to require a Member State to change its legislation so as to grant State aid to certain economic operators.

8. **CONCLUSION**

(114) The corporate tax exemption in favour of the entities referred to in the ministerial decisions of 11 August 1942 and 27 April 1943 (autonomous ports — some of which are now classified as major seaports — maritime chambers of commerce, chambers of commerce and industry managing port installations, municipalities which are concessionaires of public equipment owned by the State in the seaports, and undertakings to which they may have entrusted the operation of that equipment) constitutes an existing State aid scheme which is incompatible with the internal market.

([75]) Judgment of the Court of Justice of 22 March 1977, *Steinike & Weinlig* v *Federal Republic of Germany*, 78/76, EU:C:1977:52, paragraph 24.
([76]) See the final Decision in State aid case SA.25338 (OJ L 113, 27.4.2016, p. 148).
([77]) Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports (OJ L 57, 3.3.2017, p. 1).
([78]) Commission Decision of 21 January 2016 in State aid case SA.25338 (2014/C ex E 3/2008 ex CP 115/2004) — Netherlands — Corporate tax exemption for public undertakings (OJ L 113, 27.4.2016, p. 148).

(115) It is therefore appropriate for the French authorities to abolish the exemption from corporate tax at issue and to subject the entities in question to corporate tax. This measure should be adopted before the end of the calendar year running on the date of this Decision and should apply at the latest to the income generated by the economic activities from the start of the tax year following its adoption,

HAS ADOPTED THIS DECISION:

Article 1

The exemption from corporate tax in favour of autonomous ports (some of which are now classified as major seaports), maritime chambers of commerce, chambers of commerce and industry managing port installations, municipalities which are concessionaires of public equipment owned by the State in the seaports, and undertakings to which they may have entrusted the operation of that equipment, constitutes an existing State aid scheme which is incompatible with the internal market.

Article 2

1. France shall remove the corporate tax exemption referred to in Article 1 and subject the entities for which this exemption applies to corporate tax.

2. The measure by which France fulfils its obligations under paragraph 1 shall be adopted before the end of the calendar year running on the date of notification of this Decision. This measure shall apply at the latest to the income from the economic activities generated from the start of the tax year following its adoption.

Article 3

France shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 27 July 2017.

For the Commission
Margrethe VESTAGER
Member of the Commission