

# State aid: Commission requires Belgium and France to put an end to tax exemptions for ports

The Commission has also requested information from and continues to assess the functioning and taxation of ports in Member States to ensure fair competition in the EU port sector.

Commissioner Margrethe **Vestager**, in charge of competition policy, stated: *“Ports are key infrastructure for economic growth and regional development. Recently, the Commission has introduced new rules to save Member States time and trouble when investing in ports and airports, whilst preserving competition. At the same time, the Commission decisions for Belgium and France – as previously for the Netherlands – make clear that unjustified corporate tax exemptions for ports distort the level playing field and fair competition. They must be removed.”*

In **Belgium**, a number of sea and inland waterway ports (notably the ports of Antwerp, Bruges, Brussels, Charleroi, Ghent, Liège, Namur and Ostend, as well as along the canals in Hainaut Province and Flanders) are exempt under Belgian law from the general corporate income tax regime. These ports are subject to a different tax regime, with a different taxable base and tax rates, resulting in an overall lower level of taxation for Belgian ports as compared to other companies in Belgium.

Most **French** ports, notably the 11 “grands ports maritimes” (of Bordeaux, Dunkerque, La Rochelle, Le Havre, Marseille, Nantes-Saint-Nazaire and Rouen as well as Guadeloupe, Guyane, Martinique and Réunion), the Port autonome de Paris, and ports operated by chambers of industry and commerce, are fully exempt from corporate income tax under French law.

The Commission considers that the corporate tax exemptions granted to Belgian and French ports provide them with a selective advantage, in breach of EU state aid rules. In particular, the tax exemptions do not pursue a clear objective of public interest, such as the promotion of mobility or multimodal transport. The tax savings generated can be used by the port operators to fund any type of activity or to subsidise the prices charged by the ports to customers, to the detriment of competitors and fair competition.

The two Commission decisions make clear that if port operators generate profits from economic activities these should be taxed under the normal national tax laws to avoid distortions of competition.

Belgium and France now have until the end of 2017 to take the necessary steps to remove the tax exemption in order to ensure that, from 1 January 2018, all ports are subject to the same corporate taxation rules as other companies.

Since the corporate tax exemption for ports already existed before the

accession of France and Belgium to the EU, these measures are considered as “existing aid” and the Commission cannot ask Belgium and France to recover the aid already granted.

## **Background**

Ports in different Member States compete with each other and the Commission is committed to ensuring a level playing field in this important economic sector.

In [July 2014](#), the Commission informed Belgium and France about its concerns regarding their regimes for the taxation of ports. In [January 2016](#), the Commission asked Belgium and France to adapt their legislation to ensure public or private ports pay corporate tax on their economic activities in the same way as other companies. Since Belgium and France did not accept these measures, the Commission opened the formal investigation procedure in [July 2016](#).

The Commission has requested information from and continues to assess the functioning and taxation of ports in Member States to ensure fair competition in the EU port sector. The inquiries, started by the Commission in 2013, showed that most Member States subject their ports’ economic activities to the normal corporate tax regime. In January 2016, the Commission took a decision that the corporate tax exemption granted to Dutch seaports to be state aid, and [required the Netherlands to subject their ports to corporate tax](#) as from 1 January 2017. The Commission also ensured that certain German seaports have put in place a transparent financing structure separating public remit activities from economic activities in order to prevent cross-subsidization from one to the other.

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

The non-confidential versions of these decisions will be made available under the case numbers [SA.38393](#) (Belgian ports) and [SA.38398](#) (French ports) in the [State Aid Register](#) on the Commission’s [competition website](#) once any confidentiality issues have been resolved. New publications of state aid decisions on the internet and in the Official Journal are listed in the [State Aid Weekly e-News](#).

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## Daily News 27 / 07 / 2017

### **EU launches new humanitarian programme for the integration & accommodation of refugees in Greece**

The European Commission has today announced a new wave of emergency support projects to help refugees in Greece worth €209 million. This includes the launch of the flagship 'Emergency Support To Integration & Accommodation' (ESTIA) programme to help refugees and their families rent urban accommodation and provide them with cash assistance. This marks a change from previous humanitarian projects which mainly provided support for accommodation in camps and the provision of direct supplies. Speaking in Athens today at the launch of the programme, Commissioner for Humanitarian Aid and Crisis Management, Christos **Stylianides**, said: "Today we are opening a new chapter in the lives of refugees in Greece. Our new funding is a game changer on how we deliver aid to improve people's lives. The aim of these new projects is to get refugees out of the camps and into everyday accommodation and help them have more secure and normal lives. Together with our humanitarian partners and the national authorities, we are committed to helping the most vulnerable refugees and fulfilling our humanitarian duty in the move towards a more cost-effective response." Commissioner for Migration, Home Affairs and Citizenship Dimitris **Avramopoulos** added: "Europe means solidarity and this is what today's decision is about. The Commission has been standing side by side with Greece from day one and together we have come a long way. The projects launched today are one part of our wider support to the country but also to those in need of our protection. Around 1.3 billion euros of EU funds are at the disposal of Greece for the management of the migration crisis." A [press release](#) is available in all EU languages, [photos](#) as well as a [factsheet](#) on EU financial support to Greece to manage the refugee crisis. A press conference took place this morning in Athens and is available on [EBS](#). (For more information: Carlos Martín Ruiz de Gordejuela – Tel.: + 32 229 65322; Natasha Bertaud – Tel.: +32 229 67456; Daniel Puglisi – Tel.: +32 229 69140)

### **Special EU support in case of natural disasters enters into force today**

As of today, Member States affected by a natural disaster will be able to activate [a special EU financial mechanism](#) and fund reconstruction operations with an exceptional EU co-financing rate of 95% under a [Cohesion policy](#) programme, instead of the programme's normal co-financing rate. Commissioner for Regional policy Corina **Crețu** said: "This special EU support is a tangible sign of EU solidarity; it is Europe reaching out to help its Member States in dark moments. This mechanism can be activated anywhere in the EU, as of day one, to supplement EU Solidarity Fund assistance." The Commission [proposed this amendment](#) to the Cohesion policy Regulation in the wake of the earthquakes which struck four regions in Central Italy in 2016. President **Juncker** had announced that the EU would stand by Italy and its citizens, and

help fully reconstruct the areas damaged, including the Basilica of San Benedetto in Norcia. But any Member State affected by a natural disaster can now activate this form of EU support. Without changing the volume of national [European Regional Development Fund](#) envelopes, it means that a disaster-stricken region whose Cohesion Policy programme foresees a 50% co-financing rate, like most French and German regions for example, could get almost double funding from the EU to finance reconstruction works. Programmes with an 85% EU co-financing rate, like in the Portuguese region of Madeira, could get an exceptional top-up that would spare public resources in difficult times. Member States struck by earthquakes, floods, severe droughts and forest fires can activate this special EU support from day 1 of a disaster, and for disasters that have occurred since the beginning of the current programming period, i.e. 1 January 2014. (For more information: Christian Wigand – Tel.: +32 229 62253; Sophie Dupin de Saint-Cyr – Tel.: +32 229 56169)

### **Juncker Plan: EUR 29 million to upgrade medical facilities in Treviso, Italy**

The [Juncker Plan](#) has backed a EUR 29 million European Investment Bank (EIB) loan agreement to finance new healthcare facilities at the Ca' Foncello Hospital in Treviso, Italy. The loan agreement will finance the refurbishment of some existing buildings and the construction of new facilities. This will include an enhanced medical centre with almost 1,000 beds and new research and logistical centres. The EFSI is the central pillar of the European Commission's Investment Plan for Europe, the so-called "Juncker Plan". European Commission Vice-President Jyrki **Katainen**, responsible for Jobs, Growth, Investment and Competitiveness, said: *"The construction of modern, state of the art medical facilities and hospitals requires significant investment. The European Fund for Strategic Investments is playing an important and growing role in facilitating investments in the social sector. This agreement proves that the Investment Plan can deliver a social dividend, directly benefiting the citizens of Treviso, whilst also providing a boost for jobs and growth across Europe."* This transaction is the latest example of the EFSI's support for the development of social infrastructure. As of July 2017, social infrastructure projects have been backed by EUR 1.6 billion in EFSI financing. The EFSI also supports microfinance, social enterprises and social impact investment under its SME Window. Italy is amongst the Juncker Plan's top beneficiaries. The EFSI is now expected to trigger over EUR 33 billion in investments in Italy and EUR 225 billion across Europe. A full press release is available [here](#). (For more information: Annika Breidhardt – Tel.: +32 229 56153; Enda McNamara – Tel.: +32 229 64976)

### **Seafarers: New measures to improve working conditions**

The European Commission is proposing that an agreement between social partners to improve the working conditions of seafarers on board of EU-flagged vessels, be enshrined in EU law. The proposal will ensure that seafarers are better protected against abandonment in foreign ports in the future, and will strengthen their rights to compensation in the event of death or long-term disability due to an occupational injury, illness or hazard. Commissioner for Employment, Social Affairs, Skills and Labour

Mobility, Marianne **Thyssen**, said: *“Maritime transport remains crucial for Europe’s economic development. Today’s proposal will strengthen seafarers’ protection and underpin fair competition in the maritime sector. Improved working conditions will also make the shipping sector more attractive for young Europeans. This proposal is an excellent example of how social partners support the Commission in keeping EU law fit for purpose.”* More information can be found [here](#). (For more information: Christian Wigand– Tel.: +32 229 62253; Sara Soumillion – Tel.: + 32 229 67094)

### **Aides d’État: La Commission demande à la Belgique et à la France de mettre fin aux exemptions fiscales pour les ports**

La Commission européenne a demandé à la Belgique et à la France d’abolir les exemptions de l’impôt sur les sociétés accordées à leurs ports, de manière à aligner leurs régimes fiscaux sur les règles de l’UE en matière d’aides d’État. Les bénéficiaires des opérateurs portuaires doivent être taxés selon les lois nationales normales relatives à l’impôt sur les sociétés afin d’éviter des distorsions de la concurrence. En **Belgique**, toute une série de ports maritimes et fluviaux ne sont pas assujettis, selon le droit belge, au régime général d’imposition des sociétés. La plupart des ports **français**, notamment les 11 «grands ports maritimes», le «port autonome de Paris» et les ports exploités par des chambres de commerce et d’industrie, sont totalement exonérés, selon le droit français, de l’impôt sur les sociétés. La Commission considère que les exemptions de l’impôt sur les sociétés accordées aux ports belges et français leur procurent un avantage concurrentiel, en violation avec les règles de l’UE sur les aides d’État. Les deux décisions de la Commission indiquent clairement que si les opérateurs portuaires tirent des bénéfices d’activités économiques, celles-ci doivent être taxées selon les lois fiscales nationales normales pour éviter les distorsions de concurrence. La Commission a également demandé des informations aux États membres et continue d’évaluer le fonctionnement et la taxation de leurs ports pour assurer des conditions de concurrence loyales dans le secteur portuaire de l’UE. Mme Margrethe **Vestager**, commissaire chargée de la politique de concurrence, a déclaré à ce propos: *«Les ports sont des infrastructures essentielles pour la croissance économique et le développement régional. Récemment, la Commission a introduit de nouvelles règles pour épargner aux États membres du temps et des difficultés lorsqu’ils investissent dans des ports et aéroports, tout en préservant la concurrence. Dans le même temps, les décisions de la Commission concernant la Belgique et la France – comme précédemment celle concernant les Pays-Bas – montrent clairement que les exemptions injustifiées de l’impôt sur les sociétés pour les ports distordent les conditions de concurrence équitables et loyales. Ces exemptions doivent disparaître.»* Le communiqué de presse est disponible en ligne en [EN](#), [DE](#), [FR](#), [NL](#). (Pour plus d’informations: Ricardo Cardoso – Tel.: +32 229 80100; Yizhou Ren – Tel.: +32 229 94889)

### **Mergers: Commission conditionally clears both FMC’s acquisition of parts of DuPont’s crop protection business and DuPont’s acquisition of FMC’s Health and Nutrition business**

Today’s decisions follow the Commission’s clearance, subject to conditions, of the Dow/DuPont merger in [March 2017](#). DuPont committed to divest major

parts of its global crop protection business, including its global research and development organisation, which FMC will now acquire. As part of the deal to acquire these parts of DuPont's crop protection business, FMC is selling its Health and Nutrition business to DuPont. The clearance of FMC's acquisition of parts of DuPont's crop protection business is conditional on the divestment of FMC's sulfonylurea and florasulam businesses in the European Economic Area (EEA). The clearance of DuPont's acquisition of FMC's Health & Nutrition business is conditional on the divestment of DuPont's global alginates business. In view of the remedies proposed in each of these transactions, the Commission concluded that, as modified, the proposed transactions would not significantly impede effective competition in the EEA. Both decisions are conditional upon full compliance with the respective commitments. The full press release is available online in [EN](#), [DE](#), and [FR](#). (For more information: Ricardo Cardoso – Tel.: +32 229 80100; Maria Sarantopoulou – Tel.: +32 229 13740)

### **Mergers: Commission clears acquisition of First Rent A Car by Volvo**

The European Commission has approved, under the EU Merger Regulation, the acquisition of First Rent A Car (FRAC) by Volvo Car Corporation, both of Sweden. FRAC is active in short term car rental activities (including car sharing activities) in Sweden, Norway and Denmark, as well as fleet management services and retail distribution of passenger cars in Sweden. Volvo is active in the design, development, manufacturing, marketing, and wholesale distribution of passenger cars and, through Volvofinans, in the provision of automotive financial services, fleet management services, credit card services and dealer financing. The Commission concluded that the proposed acquisition would raise no competition concerns, given the limited overlaps in Sweden, Norway and Denmark and the number of strong players that would remain in these markets. The transaction was examined under the normal merger review procedure. More information is available on the Commission's [competition](#) website, in the public [case register](#) under the case number [M.8309](#). (For more information: Ricardo Cardoso – Tel.: +32 229 80100; Maria Sarantopoulou – Tel.: +32 229 13740)

### **Mergers: Commission clears acquisition of Hayward Industries by CCMP Capital and MSD Aqua**

The European Commission has approved, under the EU Merger Regulation, the acquisition of joint control of Hayward Industries Inc. by CCMP Capital LP and MSD Aqua Partners LLC, all three of the US. Hayward Industries is a manufacturer and supplier of swimming pool equipment. CCMP Capital is a global private equity firm and MSD Aqua Partners is an investment entity within the MSD group of companies. The Commission concluded that the proposed acquisition would raise no competition concerns, as the companies are not active in the same product and geographic market or in a product market which is upstream or downstream from those markets. The transaction was examined under the simplified merger review procedure. More information is available on the Commission's [competition](#) website, in the public [case register](#) under the case number [M.8557](#). (For more information: Ricardo Cardoso – Tel.: +32 229 80100; Maria Sarantopoulou – Tel.: +32 229 13740)

## ANNOUNCEMENTS

### **Le Commissaire Moscovici est auditionné par la commission des Affaires européennes de l'Assemblée nationale française**

En ce début de législature, la commission des Affaires européennes de l'Assemblée nationale française a auditionné pour la première fois Pierre **Moscovici**, Commissaire aux affaires économiques et financières, à la fiscalité et aux douanes. Cette rencontre a permis au Commissaire d'échanger avec les députés sur le contexte européen de l'action du gouvernement et d'appeler l'Assemblée nationale à jouer un rôle moteur dans la construction d'une Union européenne plus politique et plus démocratique. (*Pour plus d'informations: Annika Breidhardt – Tel.: + 32 229 56153; Enda McNamara – Tel.: +32 229 64976*)

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## **Seafarers: New measures to improve working conditions**

The European Commission is proposing that an agreement between social partners to improve the working conditions of seafarers on board of EU-flagged vessels, be enshrined in EU law. The proposal will ensure that seafarers are better protected against abandonment in foreign ports in the future, and will strengthen their rights to compensation in the event of death or long-term disability due to an occupational injury, illness or hazard.

Commissioner for Employment, Social Affairs, Skills and Labour Mobility, Marianne **Thyssen**, said: *"Maritime transport remains crucial for Europe's economic development. Today's proposal will strengthen seafarers' protection and underpin fair competition in the maritime sector. Improved working conditions will also make the shipping sector more attractive for young Europeans. This proposal is an excellent example of how social partners support the Commission in keeping EU law fit for purpose."*

The global nature of the shipping industry, with different national laws applying depending on the state of the ship owner, the flag state of the vessel or the nationality of the crew, make it difficult for seafarers to get speedy and satisfactory redress in case of abandonment, injury or death. What the Commission is proposing are improvements to the existing system.

The proposal will improve seafarers' protection in the event of abandonment, including when the ship owner fails to pay contractual wages for a period of at least two months, or when the ship owner has left the seafarer without the necessary maintenance and support to execute ship operations. This will not

only benefit seafarers themselves, but also all EU port authorities, as it will result in fewer problematic cases of abandonment.

The proposal will also improve the mechanisms by which compensation is provided. This will make the payment of claims quicker and easier, which will help avoid the long delays in payment and red tape that seafarers or their families frequently encounter in case of abandonments or in case of death or long-term disability resulting from accidents or illness at work.

## **Background**

In 2010, there were an estimated 230,000 active seafarers in maritime transport in EU Member States. According to a [Eurofound study on social dialogue in the maritime sector](#) and a [report by the European Commission](#), transport by sea is essential for the European economy: 80% of world trade is carried by sea while short-sea shipping carries 40% of intra-European freight. Moreover, maritime transport has also an impact on citizens' quality of life, offering transport services to both tourists and inhabitants of islands and peripheral regions. Thus, more than 400 million sea passengers pass through European ports each year.

In this context, the [International Labour Organisation](#) adopted the Maritime Labour Convention (MLC) in 2006, aiming to create a single, coherent instrument embodying all up-to-date standards applying to international maritime labour. It provides a set of rights and protection measures at work for all seafarers regardless of their nationality or the flag of the ship. So far the MLC has been ratified by 81 countries including all the EU Member States except Austria, Slovakia and the Czech Republic. The provisions were incorporated into EU law by [Council Directive 2009/13/EC](#). The Convention addresses some of the problems relating to liability and compensation in connection with crew claims for death, personal injury and abandonment. However, seafarers working far from home are still vulnerable to potential abandonment in foreign ports if ship owners no longer fulfil their responsibilities. According to data collected by the International Labour Organisation, since 2004, 192 merchant ships have been abandoned, of which 21 were EU-flagged vessels. In 2016 five merchant vessels counting 58 seafarers were abandoned in EU ports.

The International Labour Conference therefore approved certain amendments at its [103<sup>rd</sup> session in Geneva on 11 June 2014](#), with all EU Member states voting in favour. On 5 December 2016 the social partners in the maritime transport sector of the EU concluded an agreement to amend Directive 2009/13/EC to take on board these changes. The Commission's proposal now transposes this agreement between the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) into EU law.

## **For more information**

[Proposal for a Council Directive](#)

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## **Mergers: Commission conditionally clears both FMC's acquisition of parts of DuPont's crop protection business and DuPont's acquisition of FMC's Health and Nutrition business**

Today's decisions follow the Commission's clearance, subject to conditions, of the Dow/DuPont merger in [March 2017](#). DuPont committed to divest major parts of its global crop protection business, including its global research and development organisation, which FMC now acquires. As part of the deal to acquire these parts of DuPont's crop protection business, FMC is selling its Health and Nutrition business to DuPont.

### **FMC's acquisition of parts of DuPont's crop protection business**

Clearance of this transaction is conditional on the divestment of FMC's sulfonylurea and florasulam businesses in the European Economic Area (EEA). Sulfonylureas and florasulam are herbicides used to control broadleaf weeds in cereal crops.

The Commission had concerns that the transaction, as originally notified, would have allowed FMC to unilaterally raise prices in a number of national markets in the EEA by eliminating a close competitor (DuPont). This would have been the case for products to control broadleaf weeds once crop seedlings have emerged (post-emergence control) in cereals. The commitments offered by FMC address these concerns.

FMC offered to divest its sulfonylurea and florasulam businesses in the EEA through exclusive licences to thifensulfuron-ethyl, tribenuron-ethyl, metsulfuron-ethyl and florasulam – including mixtures with other active ingredients – and the necessary personnel to run these businesses.

### **DuPont's acquisition of FMC's Health & Nutrition business**

Clearance of this transaction is conditional upon the divestment of DuPont's global alginates business. Alginates are used as stabilising, thickening or gelling agents in food and pharmaceutical products.

The Commission had concerns that the transaction, as originally notified, would have strengthened FMC's dominant position on alginates for use as

pharmaceutical excipients and would have significantly reduced competition for food applications by eliminating an important competitor (FMC) in the EEA market. The commitments offered by DuPont address these concerns.

DuPont offered to divest its global alginates business, including all tangible and intangible assets for the sourcing, development, manufacturing, packaging or sale of alginates. This includes DuPont's manufacturing plant located in Landerneau (France), a licence to use DuPont's GRINSTED® Alginate brand for a certain period of time, as well as DuPont's pectin-alginates mixtures.

In view of the remedies proposed in each of these transactions, the Commission concluded that, as modified, the proposed transactions would not significantly impede effective competition in the EEA. Both decisions are conditional upon full compliance with the respective commitments.

### **Companies and products**

**DuPont** is headquartered in the US. It is the ultimate parent company of the DuPont group, which researches, develops, produces, distributes, and sells a variety of chemical products, polymers, agro-chemicals, seeds, food ingredients, and other materials.

**FMC** is also headquartered in the US. It is a global specialty chemicals company with interests in agricultural, industrial and consumer markets.

### **Merger control rules and procedures**

FMC's acquisition of parts of DuPont's crop protection business was notified to the Commission on 8 June 2017. DuPont's acquisition of FMC's Health & Nutrition business was notified to the Commission on 7 June 2017.

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the [Merger Regulation](#)) and to prevent concentrations that would significantly impede effective competition in the EEA or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has a total of 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

More information on this case is available on the Commission's [competition](#) website, in the public [case register](#) under the cases numbers [M.8345](#) and [M.8440](#).

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# [Pyrrolizidine alkaloids in tea, herbal infusions and food supplements](#)

Exposure to pyrrolizidine alkaloids in food, in particular for frequent and high consumers of tea and herbal infusions, is a possible long-term concern for human health due to their potential carcinogenicity, say EFSA's experts.

The consumption of food supplements based on pyrrolizidine alkaloid-producing plants could also result in exposure levels causing short-term toxicity resulting in adverse health effects.

EFSA has updated its [2011 advice on the risks for human and animal health from pyrrolizidine alkaloids](#), a large group of toxins produced by different plant species that can unintentionally enter the food chain.

The European Commission requested the updated risk assessment, which takes account of exposure estimates using more recent data on the levels of these toxins in honey, tea, herbal infusions and food supplements.

In 2011 EFSA concluded there were possible long-term health concerns for toddlers and children who are high consumers of honey, the only food category for which sufficient data were then available.

EFSA's experts identified 17 pyrrolizidine alkaloids in food and feed that should continue to be monitored and recommended further studies on the toxicity and carcinogenicity of those most commonly found in food.