British
Ports
Association

BRITISH PORTS ASSOCIATION

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RESPONSE TO THE CONSULTATION ON THE EXTENSION OF GENERAL BLOCK EXEMPTION REGULATION (GBER) TO PORTS

Thank you for this first public consultation on proposals to extend the GBER to ports.

This response is sent on behalf of the British Ports Association and the UK Major Ports Group which, collectively, represent virtually all port activity in the UK. The first part of our response deals with the particular situation of the UK ports industry. The UK ports sector is the second largest in Europe and yet the UK is one of a relatively small number of member states whose port sector receives no systematic state aid. The industry is essentially private sector, privately financed and receives no strategic direction from national or local governments. Proposals for new developments are based on each port's judgement of the needs of the market.

This means that our interest in the proposals is likely to be of a different nature to the interests of most other member states. Our view is that it would benefit the sector if other member states were to follow this financially and strategically independent model. Not only would this reduce public expenditure, it would also allow developments to be undertaken based on assessments of the market in line with user needs, fairer pricing and prevent over capacity and wasted resources.

As a matter of principle, the Leipzig-Halle ruling stated that public funding of any infrastructure that could be commercially exploited may potentially be considered as state aid. It is our firm view that nothing in the GBER should alter that principle, which also seems to be confirmed in the Commission Communication on the notion of State Aid, adopted on 19 May 2016. There it indicates that when public funding of port infrastructure favours an economic activity, it is, in principle, subject to State Aid rules.
There are indications that the trend within the EU port sector is indeed towards a more commercially based, privately financed approach with, for example, changes in some corporate structures to create more financial aid and strategic independence. Also, recent Commission activity surrounding liability for corporation tax by some Continental ports and the conclusion that those ports are liable to pay this tax is an indication that ports are increasingly seen as profitable commercial entities.

We therefore start from a position that the continuation of widespread public support for port development activity is undesirable from a number perspectives. Like airports, ports can (and often do) compete across national boundaries and therefore, the public funding

of port infrastructure can distort competition and trade not only within Member States, but also between them.

The proposals do provide some clarification of the status of different types of aid under the Treaty. Although not of direct relevance to the UK (and in our view the clarification is certainly too wide in some cases), clarification should help to ensure a more consistent approach between different member states.

As to the detail of the proposals in **Article 56(b)**, our views are as follows:-

Section 2(a): The effect of this is to exempt notification of superstructure funding. Although we can understand (but do not agree with) the principle of state aid funding which benefits all users in terms of access, superstructure investment is normally very user specific and we believe it should therefore be excluded from the scope of the GBER.

Section 2(b): We support the exclusion of maintenance dredging from scope. Whilst capital dredging is included (presumably because it creates channels open to all users), it is our view that maintenance dredging achieves the same effect. We therefore believe that capital dredging should also be excluded from the scope of the GBER and should be notifiable along with maintenance dredging.

Section 4: The GBER aims "at limiting competition distortions that would undermine a level playing field in the internal market" The proposed thresholds are simply not consistent with this aim and should be very substantially reduced from those proposed in this draft. Notwithstanding our view that public subsidy of capital dredging and that superstructure construction or upgrade should be excluded from the scope of the GBER, if they are included, they should be subject to specific, lower thresholds. Otherwise, virtually all maintenance dredging and superstructure construction will be exempt, with consequent potential for distortion of the market. We also believe that, in any event, the European Commission should provide supporting evidence justifying their proposed threshold levels.

Section 6: We agree that such investments should be considered as part of a single investment project, so that the rules are not circumvented by dividing a project into smaller developments. However, as currently presented, the Regulation would allow subsequent phases of a project to start more than [three] years after the start of the first phase and, as a result, benefit from the same amount of State Aid without any notification being required. To reduce the ease with which State Aid rules can be circumvented, we suggest that the qualifying period should be made longer than three years and that the following text be inserted :"...same maritime port, **or which is covered by the same planning or constructions consents,** shall be considered to be part of a single investment project."

Section 7: We strongly disagree with any attempt to link, either directly or indirectly, the State Aid rules with the Port Services Regulation, currently under discussion by the Parliament, the Commission and the Council. For this reason, we would like to see the phrase in square brackets, which makes that direct link, removed. The same is true for **Recital 9** of the proposal.

We remain deeply concerned that the linking of the negotiations on the Port Services Regulation to the GBER review will undermine the integrity of DG Comp's approach. For example, the proposed amendment to the GBER seems to closely reflect the European Parliament's proposed amendments 30 and 31 (ie new Recitals 22(b) and 22(c)) to the Port Services Regulation. We regard this as unhelpful.

The UK ports industry has always argued for greater transparency of public subsidy to port operators and for more uniform enforcement of the existing State Aid rules, as the best way of ensuring a level playing field for port operations within the EU. Even then, we believe that it is important that the Commission continues from time to time to review even those cases which are exempt. It is not clear how this proposed extension of the GBER will help with this.

In summary, we are strongly of the view that the thresholds set in Section 4 of Article 56b are materially too high; that neither superstructure, nor capital dredging should be potentially exempt from notification under the GBER; and that there should not be any direct or indirect link between the proposed extension of the GBER and the Port Services Regulation.

The proposal will provide negligible, if any, cost savings or reduction in administrative burden to the UK.

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