Extension of the General Block Exemption Regulation to Inland Ports

EFIP's contribution to the first public consultation round

27 May 2016

General position of EFIP on the proposed GBER:

- EFIP welcomes the proposal from the European Commission on the GBER as it provides the right legal guidelines and simplifies notification for inland ports
- EFIP-members are in need of a system that brings clarity and limit the uncertainty for future investments that might result from a case-by-case approach
- EFIP asks the Commission to provide a long-term, stable and pragmatic legal environment for inland port authorities allowing them to develop with all parties involved (public authorities, private investors, etc.) a long-term strategy and thus limiting further legal uncertainties that might result from a case-by-case approach of the Commission.
- Inland ports are important drivers of the local/regional economy, therefore there is a need to reduce the administrative burden and speed up project implementation and free up resources to focus on the enforcement of the more important state aid cases.
- In view of the considerable administrative burden for inland ports linked to the obligation to notify (in particular where local and regional entities are concerned) EFIP asks to reduce the procedures and timeframes.

EFIP welcomes the opportunity given to contribute to the first public consultation round and is formulating the following remarks and concerns:

1. **EFIP asks the Commission to define a specific category of port infrastructure needed to adapt to the use of alternative fuels and to stricter requirements on environmental performance**

Recital 5 of the GBER proposal for maritime ports states that '*investments are necessary in particular for the adaptation of port access infrastructure and port infrastructure and superstructure to the increased size and complexity of the fleet, to the use of alternative fuel infrastructure and to stricter requirements on environmental performance*.

EFIP would like to stress that these types of infrastructure investments, though on a different economic scale are important for inland ports as well.[1] EFIP understands that these are examples of investments that could be exempted of notification if all conditions as foreseen in article 56b) are fulfilled.

EFIP believes that infrastructure needed for the use of alternative fuel and for the implementation of stricter requirements on environment should be defined and be added to the list of definitions foreseen in article 2 since this type of infrastructure is neither included in the definition of "port infrastructure" nor in the definition of port superstructure. A separate definition of this category seems most appropriate in view of defining the eligible costs in article 56c). In this respect EFIP would like to refer to the proposal made by ESPO.

1. **EFIP believes that the definition of a port ignores the multi-modal profile of inland ports (point 152, p.4, definitions for aid for ports)**

EC text:
'Port' means an area of land and water made up of infrastructure and equipment for, principally, the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods, or the embarkation and disembarkation of passengers and any other infrastructure necessary for transport operators within the port area;

EFIP suggests:
'Port' means an area of land and water made up of infrastructure and equipment for ***among others*** ~~principally~~ the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods, or the embarkation and disembarkation of passengers and any other infrastructure necessary for transport operators within the port area;

Reasoning:
The definition contains a limitation to the multi-modal profile of most European inland ports. The text states that port infrastructure and equipment is principally put in place for the reception of waterborne vessels and doesn't take the differences in modal split between inland ports into account. There is considerable diversity of the modal share (rail, road and inland navigation) between inland ports in Europe as inland ports act as multi-modal hubs. Depending on their geographical position, infrastructure capacity and availability of volumes and bundling cargo networks, inland ports show different modal split. This is why for example the modal split of the Bayernhafen Gruppe (69% by road in 2015) is different in comparison with the modal split of the Port of Liège (74% by inland waterways). The proposal of EFIP includes inland ports with a variated modal split and respects their multi-modal nature.

2. **EFIP believes that for the definition of an inland port, it is unclear what is meant by indirect access to the sea (point 154, p.4, definitions for aid for ports)**

EC text:
'Inland port' means a port other than a maritime port, with indirect access to the open sea through inland waterways

[1] COM (2013) 18 final, article 6, par. 2: 'Member States shall ensure that publicly accessible LNG refuelling points for inland waterway transport are provided in all inland ports of the TEN-T Core Network, by 31 December 2025 at the latest.'

EFIP suggests:
'Inland port' means a port other than a maritime port, with ***~~indirect~~*** access to the open sea through inland waterways

Reasoning:
It is very unclear what is meant by the words "indirect access" and EFIP fears this brings an additional limitation. If the definition is to be maintained then it should be made clear what is meant by indirect (including direct) access to the open sea.

3. **EFIP believes that maintenance dredging done on a public access is not to be considered state aid. This should be clarified in the framework of the GBER (art. 56C, 2):**

EC text: the eligible costs shall be the costs, including planning costs, of the investments:
(a) for the construction or upgrade of inland port infrastructures and superstructures, with the exception of mobile equipment; and
(b) for the construction or upgrade of access infrastructure, including dredging and excluding maintenance dredging, dedicated to commercially exploited inland port infrastructure.

EFIP comment:
Capital dredging that is not dedicated to commercially exploited inland port/ public infrastructure is considered as a non-economic activity. Consequently, maintenance dredging linked to such a dredging project is also being considered as non-economic. EFIP believes it would be helpful to specify that maintenance dredging in these cases is not falling under the state aid rules and is not subject to a GBER.

4. **Considering all investments in a port as one single investment project is not the way to avoid artificially splitting up of aided projects (article 56b, 5)**

EC text:
Any investment started by the same beneficiary within a period of [three] years from the date of start of works on another aided investment in the same inland port shall be considered to be part of a single investment project.

EFIP suggests:
Any investment started by the same beneficiary within a period of [***two*** ~~three~~] years from the date of start of works on another aided investment in the same inland port ***and subject to a single planning consent***, shall be considered to be part of a single investment project.

Reasoning:
EFIP agrees that a safeguard like in other European legislation[2] has to be foreseen in order to avoid the circumvention of the foreseen thresholds and artificially splitting up of an aided project into sub-projects, the sol called "salami slicing". In that respect, EFIP fully supports a provision specifying that the method of delimiting a port investment shall not be made only with the intention to remain underneath the investment aid and aid intensity thresholds of the GBER. Connected investments that are part of one project should not be artificially split. EFIP however believes that the safeguard foreseen in Article 56c), paragraph 5 of the GBER proposal will on the contrary artificially bring together investment aids for a port that are not connected and not at all aim at realising one project.

[2] The European procurement Directives, the concession directive and case law on the environmental Impact Assessment directive.

Concerning the proposal on the single planning consent, inland ports are very complex and broad entities both in terms of area and functions. There might be different investment projects running at the same time which serve completely different needs like transport or industries and aim at improving completely different functions or areas of the port. Only projects that are part of the same planning consent should be considered to be part of the single investment project because they aim for the same infrastructure objective. The single planning consent could read as follows: *a single planning consent covers all initial projects started by the same beneficiary within a given period that are linked to a certain function and geography in the port.*

Moreover by considering all investment aid for a given port over a 3 year period as "one single project", it will be very difficult to assess the aid intensities as foreseen in article 4. Most inland ports are public entities and depend heavily on (public) annual budget allocations and have to deal with instable investment windows depending on the political situation. Besides, most inland ports work with very small operators. The practice shows that for inland ports a time span of 2 years for infrastructure investments is rather normal. EFIP fears that due to the annual investment instability of inland ports and especially taking into account a period of 3 years, this will put the final realisation of crucial port infrastructure investments more at risk in comparison with a period of 2 years.

5. Article 56C, paragraph 6 and 7 is not the best way to avoid that an advantage is given at the operator level

EC text:
The infrastructure shall be made available to interested users on an open, transparent and non-discriminatory basis. The price charged for the use of the infrastructure shall correspond to the market price.

EFIP suggests:
The infrastructure shall be made available to interested users on an open, transparent and non-discriminatory basis. The price charged for the use of the infrastructure shall correspond to the ~~market price.~~ ***market conditions.***

EFIP comment:
EFIP fully understands the intention of the Commission to avoid that state aid is being given at operator level. EFIP however believes that "market price" only is not a correct parameter and would suggest that one should refer to "market conditions". Besides, on the contrary to maritime ports there is hardly any competition between and within ports on freight flows and primary intermodal (i.e. against pure road transport). Inland ports are not private operators and act more as an intermediary between the involved actors of the public sector and private sector. Inland ports often serve industries or economic operators that are dependent on large flows of raw materials; such industries cannot easily re-locate to other ports. Taking into account the societal role of an inland port, other conditions are of equal importance when selecting an operator: modal split targets, socio-economic value added, min staff, conditions of the operation etc. In addition EFIP considers it useful to have a reference in the GBER to the applicable tender requirements and/or the place where they have been written down.