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Extension of the General Block Exemption Regulation to Ports

Contribution of Finnish Port Association (FPA) to the first public consultation round

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On behalf of Finnish Port Authorities FPA gives its remarks on Extension of the General Block Exemption Regulation to Ports

Introduction

European Ports have sought greater clarity as regards the application of relevant Treaty rules on the public funding of ports.

In that respect and at a general level, European Ports have been asking the Commission to:

1. provide a fair, pragmatic, predictable and stable environment for port authorities allowing them to develop together with all parties involved (public authorities, private investors, etc..) a long-term strategy for port investments and thus limiting the legal uncertainty that might result from a case-by-case approach of the Commission.
2. achieve a level playing field for port investments and operations between ports and transport modes in the European Union but also with third country ports which are in direct competition with EU ports.
3. reduce the administrative burden and shorten the timeframes.
4. take a consistent (coherent) approach in the assessment of EU funding and national/regional funding of transport infrastructure.

Developing a GBER for ports could contribute to these aims by:

- bringing clarity and limiting the uncertainty that would result from a case-by-case approach;
- reducing the administrative burden on port development and speeding up project implementation;;

Furthermore we strongly encourage the Commission to use the resources freed up from analysing standard aid notifications to examine significant state aid investment cases and potential distortions to trade. Advantage should also be taken of the transparency provisions of the upcoming Port

Regulation which should allow a better flow of information about sources of funding and facilitate the control of state aid.

In this regard it is important to recognize that:

1. **While extending the regulation it is still important to clarify what is not to be considered state aid (outside the scope of Article 107 Treaty)**

Finnish Port Association stresses that the following categories of public funding do not constitute state aid:

- Public funding for access and defense infrastructure to the port, both from the maritime and the landside, does not constitute state aid, insofar this public funding is not selective and potentially benefits (through the port) a whole region, hinterland and/or corridor and/or potentially links those with the rest of the world.
- Infrastructure that is strictly needed for and linked to the operation of Services of General Non Economic Interest.

The GBER proposal would gain in clarity if reference would be made to these categories of public funding that are to be considered as non-economic and do not have to be considered as state aid.

2. **Investment aid for port superstructure should be subject to notification**

Investment aid for port superstructure as defined in point (155) of article 2 e) is more likely to favour certain undertakings and should thus be subject to the notification procedure foreseen in Article 108(3) of the Treaty.

3. **It is important 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 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.***

FPA understands that these are examples of investments that could be exempted of notification if all conditions as foreseen in article 56b) are fulfilled.

This proposal is welcomed but however 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 e) since this 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 56b).

FPA supports the proposal that European Sea Ports Organization ESPO has given in that respect the following definition:

(160) (new) 'Infrastructure needed to adapt to the use of alternative fuels and/or to adapt to stricter requirements on environmental performance': means infrastructure and facilities within the port area that directly relate to the need to adapt to the use of alternative fuels for (maritime) transport and/ or infrastructure and facilities that are being developed in the port area to meet stricter requirements on environmental performance;

=> As a result of point 2 and 3 of this position paper, article 56b), paragraph 2, should read as follows:

2. The eligible costs shall be the costs, including planning costs, of investments:

(a) for the construction or upgrade of maritime port infrastructures ~~***and superstructures, with the exception of mobile equipment;***~~ ***and***

(b) for the construction or upgrade of ***land and maritime*** *access infrastructure, including dredging and excluding maintenance dredging, dedicated to commercially exploited maritime port infrastructure.*

c) (new) for infrastructure needed for adapting to the use of alternative fuel and/or for implementing stricter requirements on environmental performance.

Investment costs relating to non-transport related activities, including industrial production facilities active in the perimeter of the port, offices or shops, are ineligible.

4. Maintenance dredging done on a public maritime access is not to be considered state aid. This should also be clarified in the framework of the GBER.

Capital dredging that is not dedicated to commercially exploited maritime port infrastructure is considered as a non-economic activity. Consequently, maintenance dredging linked to such a dredging project is also be considered as non-economic. 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.

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