

## EXPLANATORY NOTE

# **Simplification of the rules and extension of the General Block Exemption Regulation to Ports and Airports**

## **1. CONTEXT OF THE PROPOSAL**

### **• Reasons for and objectives of the proposal**

Over the past two and a half years, the Juncker Commission has continued its reform and modernisation of State aid control to simplify procedures and focus on measures that genuinely affect competition in the Internal Market (the State Aid Modernisation).

As a result, many public support measures are no longer considered State aid by the Commission and therefore are not subject to European control. Of the public measures that constitute State aid, 95% (with a combined annual expenditure of about €28 billion) are now implemented by Member States without prior control at the EU level.

To achieve this, the Commission has (1) clarified the notion of State aid;<sup>1</sup> (2) exempted State aid from prior control via the General Block Exemption Regulation;<sup>2</sup> and (3) focused on measures that genuinely affect trade between Member States, leaving many local investment projects outside State aid control.<sup>3</sup>

The General Block Exemption Regulation plays a crucial role in simplifying and clarifying State aid rules, cutting red tape and allowing for investments to go ahead as fast as possible. This also allows the Commission to focus its State aid control on the potentially most distortive cases.

This Regulation, amending the General Block Exemption Regulation, builds on and complements the State Aid Modernisation, further simplifying procedures and focusing EU State aid control on measures that genuinely affect competition in the Internal Market. This will facilitate and provide legal certainty for investments, in line with the Commission's objective to stimulate investment in order to boost and job creation and growth.

The Regulation achieves this by extending the scope of the GBER to cover two additional economic sectors: ports and airports. The Regulation sets out, clearly and in advance, what criteria aid measures in favour of ports and airports must meet in order to be exempted from the obligation to obtain prior approval by the Commission under EU State aid rules.

As a result, investment in regional airports handling up to 3 million passengers per year, as well as investment of up to €150 million in sea ports and €50 million in inland ports can be carried out with full legal certainty, without prior control under EU State aid rules by the Commission. The proposed Regulation will also allow Member State authorities to cover operating losses for small airports (up to 200 000 passengers per year).

---

<sup>1</sup> Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 17.7.2016, p. 1.

<sup>2</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Article 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

<sup>3</sup> See Press Release of the Commission of 29 April 2015, *State Aid: Commission gives guidance on local public support measures that can be granted without prior Commission approval*, (IP/15/4889) and Press Release of the Commission of 21 September 2016, *State Aid: Commission gives guidance on local public support measures that do not constitute state aid*, (IP/16/3141).

The Regulation also includes simplifications of State aid rules in a few other areas, where experience has revealed a need to fine-tune the rules in the General Block Exemption Regulation. In particular, higher notification thresholds for aid for culture (provided that the measures constitute state aid, which is not the case in most instances) and for sports and multi-functional recreational infrastructures. The Regulation also makes it easier for public authorities to compensate companies for the additional costs they face when operating in the EU's outermost regions, taking account of the specific challenges these companies are facing.

By reducing administrative burdens for public authorities, project promoters and other stakeholders, the Regulation forms part of the Commission's Regulatory Fitness and Performance of EU Legislation (REFIT) agenda.

The Commission carried out two public consultations to collect the views of stakeholders, and reflected the input received in the provisions of this Regulation.

- **Consistency with existing policy provisions in the policy area**

The new exemption conditions for airports complement the Commission's Guidelines on state aid to airports and airlines (OJ C 99, 4.4.2014, p. 3), which apply to notified cases.

- **Consistency with other Union policies**

The new exemption conditions facilitate and provide legal certainty for investments in port and airport infrastructure, in line with the Commission's objective to stimulate investment in order to boost growth and job creation. The proposal is consistent with the newly adopted 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.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis for this Regulation is Council Regulation (EU) 2015/1588 of 13 July 2015.

- **Subsidiarity (for non-exclusive competence)**

The application of State aid rules and the adoption of specific exemption provisions falls within the exclusive competence of the Commission.

- **Proportionality**

The codification of the Commission's decision-making practice increases legal certainty for public authorities and other stakeholders. The exemption from prior notification reduces the administrative burden involved in filling in and analysing notifications for cases that do not create significant distortions of competition. The initiative is therefore proportionate to ensure that markets are kept open and competitive while minimising administrative burden for public authorities and companies.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Stakeholder consultations**

As required by the legal basis of the GBER (Council Regulation (EU) 2015/1588 of 13 July 2015), the Commission has carried out two public consultations on drafts of the Regulation. It has also consulted Member States in Advisory Committee meetings on both drafts. Stakeholders were also invited to provide feedback to the roadmap.

All contributions to the public consultation are available at the following websites:  
[http://ec.europa.eu/competition/consultations/2016\\_gber\\_review/index\\_en.html](http://ec.europa.eu/competition/consultations/2016_gber_review/index_en.html);  
[http://ec.europa.eu/competition/consultations/2016\\_second\\_gber\\_review/index\\_en.html](http://ec.europa.eu/competition/consultations/2016_second_gber_review/index_en.html).

The Commission has taken into account the comments received and has significantly amended the Regulation compared to its first draft.

- **Impact assessment**

As explained in the roadmap, an impact assessment was not necessary in line with the Guidelines on Better Regulation because the instrument codifies existing practise and simplifies rules.

The Commission is following up on its intention expressed in recital 1 of the GBER to include ports and airports in the GBER as soon as sufficient case experience has been developed. The inclusion in the GBER will not change the substantive conditions on when State aid can be granted and therefore has no significant impact on the amount of State aid granted and competition in the internal market.

- **Regulatory fitness and simplification**

Under the EU State aid rules, Member States in principle have to notify State aid measures to the Commission before implementation. The measures can only be implemented once the Commission has approved them. The Commission can exempt measures from this obligation, provided that certain conditions are fulfilled, which ensure that the measures are compatible with the internal market. The exempted measures must be simply communicated to the Commission, but are not subject to a stand-still clause and can be quickly implemented by public authorities.

Such exemption provisions play a crucial role in reducing administrative burden for public authorities and other stakeholders (such as investors in a large variety of infrastructures), as well as the Commission. At the same time they provide legal certainty for the measures.

This initiative therefore simplifies the application of State aid rules for investments into ports and airports, thus reducing administrative burden and costs and speeding up the implementation of projects which were previously not subject to such exemptions.

While it is clear that the initiative will significantly reduce administrative burden, it is hard to quantify the reduction. The Commission has asked as part of the first public consultation all stakeholders to provide any relevant data, but has not received any well substantiated data nor any estimates. The Commission has also directly contacted selected stakeholders and national administrations individually, the majority of which was not able to provide any data. Some stakeholders were able to provide limited data.

Based on the data available on investments in ports and airports in the past partly financed by EU Funds or by the EIB, the Commission estimates the potential annual regulatory cost-savings that can be achieved by this initiative in the range of EUR 14 million to EUR 27 million for projects that are at least partly financed by EU Funds or by the EIB. In addition, it expects very substantial administrative cost savings for other investments in ports and airports (i.e. investments not at least partly financed by EU Funds or the EIB), which can however not be quantified since no reliable data on the number of such projects exists.

The Commission has taken particular care to ensure a very light administrative burden for situations that pose particularly low risks of competition distortions that affect the internal market. It has therefore included more generous rules and simplified conditions for small airports (below 200 000 passengers per year) and for small investments in seaports (below EUR 5 million of State aid) and in inland ports (below EUR 2 million of State aid).

The Commission has also increased the notification thresholds for measures supporting culture and for investments in sports and multifunctional recreational infrastructures, which reduces administrative burden and speeds up projects. Moreover, it has simplified the rules to compensate companies operating in the EU's outermost regions for their additional costs.<sup>4</sup>

#### **4. BUDGETARY IMPLICATIONS**

The initiative does not have budgetary implications.

#### **5. OTHER ELEMENTS**

- **New exemption for airports:**

The Regulation introduces a new exemption from the obligation to notify State aid measures to the Commission for approval before they are implemented, covering investment aid for airports below 3 million passengers. The main conditions are the following:

- Aid should not be granted to airports located in the catchment area of another airport.
- There is a demonstrated need that the funded infrastructure will actually be used in the future and will not be oversized.
- The aid does not go beyond what is necessary to trigger the investment, taking into account future revenues from the investment (i.e. aid can only cover the "funding gap").
- Only a certain percentage of the investment costs can be subsidised (depending on the size of the airport and on whether the airport is located in a remote region).

In addition, the Regulation allows operating aid and provides for simplified rules for investment aid for small airports below 200 000 passengers per year.

---

<sup>4</sup> While both measures constitute important simplifications for the respective areas, the aggregate administrative cost savings are far lower than for the changes for ports and airports and therefore not quantified.

- **New exemption for ports:**

The Regulation introduces a new exemption from the obligation to notify State aid measures to the Commission for approval before they are implemented, covering maritime ports and inland ports. The main conditions are the following:

- The aid does not go beyond what is necessary to trigger the investment, taking into account future revenues from the investment (i.e. aid can only cover the "funding gap").
- Only a certain percentage of the investment costs can be subsidised (depending on the size and the nature of the investment and on whether the port is located in a remote region).
- Only investment costs are eligible for aid (with the exception of dredging, for which both investment and maintenance costs are eligible for aid).
- Concessions and other entrustments to third parties for the construction, upgrade, operation or rent of port infrastructures must be assigned on a competitive, transparent, non-discriminatory and unconditional basis.

In addition, the Regulation provides for simplified rules for investment aid for small investment projects in ports.

- **Other simplifications:**

The Regulation also contains limited changes to the General Block Exemption Regulation on the basis of the Commission's case practice since the adoption of that Regulation. In particular:

- The "simplified cost options" used for Structural and Investment Funds can also be used under the General Block Exemption Regulation, which ensures consistency between different fields of EU law and reduces administrative burden.
- The notification thresholds for measures supporting culture and sports/multifunctional recreational infrastructure are increased because measures involving higher amounts of aid do not pose a threat to competition if the conditions set out in the General Block Exemption Regulation for those measures are complied with.
- In view of practical difficulties in application of the General Block Exemption Regulation provisions as regards outermost regions, those provisions have been clarified and further simplifications were introduced.