LATVIAN COMMENTS
(REVISED AFTER THE ADVISORY COMMITTEE MEETING ON MAY 24, 2016) ON DRAFT COMMISSION REGULATION
AMENDING THE GENERAL BLOCK EXEMPTION REGULATION

Herewith Latvian authorities provide to the Commission the comments regarding the draft Commission Regulation amending the General Block exemption regulation (hereinafter – **draft Regulation proposing amendments into Regulation 651/2014**) with respect to airports and ports, in the meanwhile also submitting valuable proposals to amend other articles of Regulation 651/2014 in order to be able to ensure a correct application of the state aid rules.

AIRPORTS

- Recital (3) of the draft Regulation proposing amendments into Regulation 651/2014

We would like to express our concerns regarding recital (3) of the draft Regulation proposing amendments into Regulation 651/2014. It says that any investment aid to regional airport up to 3 million passengers per year does not give rise to undue distortion of trade and competition and that it is not appropriate to establish a notification threshold in terms of the amount of aid for such airports. We believe that there could be certain circumstances when the investment aid to regional airports creates distortion to competition. Consequently we would like to suggest for the airports with up to 3 million passengers per year to set State aid notification threshold starting from the investment in infrastructure that exceeds 100 MEUR.

In accordance with the Guidelines on State aid to airports and airlines maximum investment aid in infrastructure for airports with average annual passenger traffic of more than 3 and less than 5 million, during the two financial years preceding the year in which aid is granted, is 25% of the eligible costs. If the investment has no direct impact on airport capacity increase, we believe that such investment will have no adverse effects on competition. Therefore, we propose to supplement the draft Regulation proposing amendments into Regulation 651/2014 with the exemption from the notification of the aid for airports with average annual passenger traffic of more than 3 and less than 5 million passengers, during the two financial years preceding the year in which aid is granted, if the amount of the investment does not exceed 50 MEUR and investment has no direct impact on airport capacity increase. Recital (3), sub-point dd) of the point 1 of the Article 4, point 5 and 11 of the Article 56a of the draft regulation, and the titles of Section 14 and Article 56a should be amended accordingly.

- Article 56a 'Investment aid for regional airports', point 2

Please, elaborate on the wording used in point 2 – what is meant by 'satisfactory' and 'reasonable'. At least some clarification should be included in the recitals.

- Article 56a 'Investment aid for regional airports', point 3

Clarification is sought regarding the wording in point 3 "The airport must be open to all potential users and must not be dedicated to one specific user". Does it refer to the potential selectivity at the level of airport operator or do we understand air carriers as the 'specific user'?

- Article 56a 'Investment aid for regional airports', point 5, point 6, and point 7

Latvian authorities would appreciate clarification of the term 'financial years'. The financial years may differ by country, by company etc.

Latvia proposes to amend point 7 as follows: "7. *Point 4 shall not apply to airports with an annual passenger traffic of up to 100 000 passengers during the two financial years preceding the year in which aid is actually granted [provided the aid is not expected to cause the airport to increase its*

average annual passenger traffic above 100 000 passengers within two financial years following the granting of the aid]."

We believe a threshold of 50 000 passengers is too small. According to Council conclusions on Special Report No 21/2014 by the European Court of Auditors: "EU-funded airport infrastructures: poor value for money" and the Report itself, typically those airports with fewer than 100 000 passengers per year are smaller regional airports. We would like to ask the Commission to provide initial assessment carried out and criteria used to define the threshold of 50 000 passengers. In addition, several Member States have expressed their concerns regarding catchment area. During the Advisory Committee meeting on May 24, 2016 it was argued that 100 km and around 60 minutes travelling time are ambiguous criteria due to weather conditions, quality of infrastructure and other circumstances, therefore we believe that increase of a threshold up to 100 000 passengers provides better coherence between paragraphs 4 and 7.

In addition, we seek to clarify how the requirement on limiting the number of passengers within two years following the granting of the aid is to be observed taking into account that the basic idea when awarding state aid is to foster economic development in the region/sector/company.

- Article 56a 'Investment aid for regional airports', point 10

Latvian authorities urge the Commission to revise the definition of 'airport infrastructure' mentioned in Article 2:

- In point (144) the examples in the final sentence should be deleted since they are doubling the information included in point (151).
- In point (151) the term 'commercial services to airlines' needs clarification since commercial services to airlines are also those linked to aeronautical activities and examples provided do not give sufficient and unbiased interpretation of the term.

In addition, point 10 should be extended so to include also the planning costs of investments.

It should be clear also from the text of the draft Regulation proposing amendments into Regulation 651/2014 that the incentive effect is observed even if the planning costs of the investments have taken place before the submission of the project and that the planning costs are regarded as eligible in such cases. The underlining idea for a well thought through project preparation and effective implementation lays in the documentation that is well elaborated before the submission of the project. In addition, definition of 'planning costs' would need to be included in draft Regulation proposing amendments into Regulation 651/2014, too.

PORTS

- Recitals (7), (8) and (9)

For a correct application of State aid rules in financing port infrastructure we invite the Commission to consider introducing a new Point in the Recitals clarifying the scope of the application of the State aid rules in ports depending on the character of the port activity to which investments are targeted, similar to the Point 49 with respect to research infrastructure (public remit vs commercially exploitable infrastructure).

For example, proposal for Article 56b (2)(b) covers only costs related to the commercially exploitable maritime port access infrastructure. At the same time proposal does not give any guidance how to distinguish between commercially exploitable access infrastructure, general use (public) access infrastructure, public remit access infrastructure.

- Article 2(152) - (158), definitions of 'port', 'maritime port', 'inland port', 'port infrastructure', 'port superstructure', 'access infrastructure', 'dredging', 'maintenance dredging'

First, we would ask the Commission to clarify the term 'principally' in the proposed definition of 'port' in point (152).

Second, the proposal for Article 56b (2) second Paragraph uses a term 'perimeter of the port' with the meaning that a port is operating in pre-defined territory. Please, consider replacing the used term 'perimeter of the port' by term 'port territory' and, please, consider introducing a new definition of the 'port territory'.

"'Port territory' means a defined area of land and water, managed by the managing body of the port and made up of infrastructures and facilities so as to permit, the reception of ships, their loading and unloading, the storage of goods, the receipt and delivery of these goods and the embarkation and disembarkation of passengers and staff, territorial developments, logistics, value added services and port development possibilities."

Concept of a 'port' in Latvia is defined in Law on Ports as follows:

"A port is a part of the land territory of Latvia defined by boundaries, including artificially created banks, and such part of inland waters, including inner and outer roadsteads and fairways in the port entrance, which are set up for the servicing of ships and passengers, for the conduct of cargo, transport and expedition operations and other economic activities."

Accordingly, the concept of a 'port' in Latvia, as defined in the national legislation, covers broader scope of activities than just to ensure transport-related activities within a boundaries of the port. Aforementioned concept is justified by the Latvia's geographical location and the linkage between industrial development and transportation policies. Therefore within the 'port territory' a non-transport related activities are performed and non-transport related infrastructure developed, additionally to transport related activities.

Please, note also that some of the elements of 'port infrastructure' mentioned in Article 2 (155) as quay walls, or backfills and land reclamation do not generate direct income for the port managing body. We would ask the Commission to revisit the definitions based on the most outstanding decision practice by including also a clear understanding when aid to 'port infrastructure' is to be considered as non-aid measure and when an aid measure.

In Article 2 (155), please, consider replacing terms 'port area' with words 'port territory' to ensure consistency in the terminology used within the draft Regulation proposing amendments into the Regulation 651/2014.

Definition of 'access infrastructure' (point (157)) shall also be reconsidered. It is important to distinguish between 'commercially exploitable access infrastructure' and 'general/ public use access infrastructure'. Additionally, please consider adding in the definition of 'access infrastructure' (point (157)) words 'to the port territory' as follows:

"(157) 'Access infrastructure' means any type of infrastructure necessary to ensure the access and entry to the port territory from land or sea [..]'"

According to the Latvian legislation Latvian ports, besides the development and maintenance of transport infrastructure, acts as developers of industrial territories (infrastructure and superstructure), which are included in port territories. For example, Section 2 of The Free Port of Ventspils Law prescribes the following: "This Law determines the principles of operation and management procedures for the Free Port of Ventspils in order to promote the participation of Latvia in international trade, attract investments, develop manufacturing and services, as well as create new jobs". The developed infrastructure is for general use (e.g. access roads, engineer-communication to the sites) or is being leased to industrial companies (e.g. production buildings), without Port Authorities being involved in production activities. Therefore Port Authorities should be able to receive aid from all categories of draft Regulation proposing amendments into the

Regulation 651/2014 that can be applied to other actors that perform industrial development, for example, local municipality.

Based on the aforementioned, please, consider reviewing Article 13 and provide a clear definition of 'transport related infrastructure'. Additionally, please consider reviewing Article 56(2) which excludes possibility to grant state aid to 'port infrastructure'. Taking into account that the concept of a 'port' in Latvia is broader and that different activities may be performed within the port territory, we would invite the Commission to establish clear un uniform criteria for the application/ exemptions in application of Article 14, Article 56 and Article 56b regarding infrastructure targeted to transport-related activities and non-transport-related activities within (and related with) port territory. If the aid beneficiary is the port managing body then it should be foreseen that the most favourable of State aid rules are applied (for instance, for access infrastructure (roads) in the port territory Article 56 (or Article 56b) could be applied both to a road leading to an industrial area and to a road leading to berths).

Additionally, point (157) shall be revised to include other types of relevant infrastructure, like electricity, communications, etc. The Commission in its decision practice has considered also such type of infrastructure as eligible in ports (for example, in case SA.39608 (2014/NN) - Germany Sea Port extension Wismar).

- Article 56b "Investment aid for maritime ports"

It shall be clear from the provisions of Article 56b whether it can be used as a legal base for eligibility of state aid only when support is planned for the transport-related port infrastructure and the port's access infrastructure or also for the investments in the port territory for industrial development. Or the latter should be eligible only under other Articles of the Regulation 651/2014, for example - regional investment aid as defined in Articles 13 and 14.

- Article 56b "Investment aid for maritime ports", point 1 and 2(a)

From Article 56b (1) it is not clear to whom it is applicable: will it be applied only to projects carried out by port's managing authorities or also by port operators. For example, Article 56b (2)(a) includes such eligible costs as superstructures, but excludes costs of mobile equipment - both required by port operators for a functional operation of the port. Mobile equipment should not be excluded from the categories of investment aid.

- Article 56b "Investment aid for maritime ports", point 2

Article 56b(2) shall be supplemented to include the planning costs for investment as eligible even if they have arisen before the submission of the project and that in such case the incentive effect is considered to be fulfilled.

- Article 56b "Investment aid for maritime ports", point 2 (b)

Regarding Article 56b(2)(b) which excludes maintenance dredging from eligible costs we invite the Commission to introduce more clarity regarding this provision:

a) if maintenance dredging is excluded because it is not a subject to State aid rules, we invite the Commission to explain it in recitals and in the definitions; or

b) if maintenance dredging is excluded because these are considered as operational costs of the port, we invite the Commission to introduce in this Article additional provisions regarding operating aid to finance maintenance dredging as State aid.

We consider that the maintenance dredging is linked to the navigation safety issues therefore it should be defined as not to contain State aid element. According to the Law on Ports the inner water area of the port (aquatorium) is the property of the State, which is transferred into possession of the relevant port authority, who is responssible for keeping waterways usable for the water transport. It is important to note that the waterway access to a port shall be looked at in the same as public roads,

i.e. as motorway of a sea. Maintenance dredging is important to ensure safe entrance of vessels, ferries, yachts, etc. into the port and access is granted on equal terms to all operators.

- Article 56b "Investment aid for maritime ports", point 4

It should be made absolutely clear what intensity shall be applied to a project of certain amount. Do we understand correctly that, for instance, if the eligible costs of a project amount to 70mE, then according to Article 56b (4) the first 20mE can be supported up to 100% and the next 50mE only up to 80%?

How to interpret this point to observe the maximum aid intensity in the context of single investment project/ avoiding artificial project division? If additional projects are planned to be implemented in the port that would be considered to form a single investment project and would exceed a specific threshold, is the maximum aid intensity to be corrected also for the first project? What actions should be undertaken if in this regard the overall threshold that allows for exemption to notification is exceeded?

Additionally, please merge sub-points (c) and (d) as follows:

"(c) if eligible costs are above EUR [50] million and up to EUR [100] million or in case of investments included in the work plan of a core network corridor as referred to in Article 47 of Regulation (EU) No 1315/2013 of the European Parliament and of the Council up to EUR [120] million: [50]% of the eligible costs."

- Article 56b "Investment aid for maritime ports", point 6

Latvian authorities consider the requirement included in Article 56b(6) unclear due to the lack of definition of 'single investment project'. Our understanding is that <u>any</u> investment started by the same beneficiary within a period of [three] years from the date of the start of works on another aided investment in the same maritime port <u>cannot be considered to be part of a single investment project. The relation between the projects needs to be economically indivisible (technical, functional or strategic link and immediate geographic proximity)</u>.

- Article 56b "Investment aid for maritime ports", point 7

In the Law on Ports Latvia has determined the maximum duration of lease and rent agreements for the land of the port and other immovable property for 45 year. We propose the following wording of the Article *"…The duration of any concession or other entrustment for the rental or operation of the infrastructure to a third party shall not exceed a maximum duration of 45 years with a possibility to prolong this term without organising a new assignment process for up to 45 years.*"

When considering the duration of the lease/ rent agreements, pay-back periods of investments made by the port authority and by operator of infrastructure shall be looked at together. In the funding gap calculations only investments by the infrastructure owner (manager), i.e. port authority is taken into account. But it is important to note that the operator of infrastructure is further investing in port superstructure and pay-back period may vary depending on type of cargo served (oil, coal, timber, general cargo, etc.). Accordingly, duration of the lease/ rent agreements shall be justified by the significant investments made by the operator of the infrastructure leased/ rented that needs to be amortized over certain period of time in accordance with generally accepted accounting principles.

- Please, consider clarifying the definitions of 'maritime port' and 'inland port' since there in theoretical situation one port might serve both purposes and it could be unclear which state aid rules needs to be applied.

Please, consider developing <u>Guidelines for investments and operating aid in ports</u> that would clarify the application of state aid principles in all the levels of potential beneficiaries in ports based on the most outstanding case practice. We consider that one paragraph in the recently published Notion of

State Aid is not sufficient to cover the details of EC case practice. Guidelines could then further seek to clarify also the distinction between the non-aid cases and state aid cases.

PROPOSALS FOR ADDITIONAL CLARIFICATIONS TO THE DRAFT REGULATION PROPOSING AMENDMENTS INTO THE REGULATION 651/2014

- Article 2, Definitions

Article 13 of Regulation 651/2014 excludes shipbuilding sector, but the definition of shipbuilding sector is lacking. We ask the Commission to supplement the draft Regulation proposing amendments into the Regulation 651/2014 with the shipbuilding definition similarly to the already existing definitions of other excluded sectors for regional aid schemes.

For the 'transport sector' definition there are NACE codes provided in the Regulation 651/2014. In order to ensure correct application of Regulation 651/2014 we would recommend to include NACE codes also for all other sectors defined in the Regulation 651/2014 and the draft Regulation proposing amendments into the Regulation 651/2014.

In order to facilitate correct application of Article 2(29) regarding the 'tangible assets' it needs to be supplemented ensuring that, for example, the author supervision, building inspection or archaeological monitoring and other costs linked to the investments in buildings and plant, machinery and equipment that constitute the value of the tangible assets created within the project since they are an integral part of the construction process shall be eligible.

In order to establish the compliance with the "research and knowledge-dissemination organisation" as defined in Article 2(83) of Regulation 651/2014 or point 15(ee) of RDI Framework, a clarification is required regarding the meaning of the "primary goal". What percentage of activities of an entity must be related to 'independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer' to consider that "the primary" goal of that entity?

Is our understanding correct that investments in low-voltage infrastructure are allowed to be supported under Articles 14 or 56 of Regulation 651/2014? Please, include this information in the definitions.

- Article 5 'Transparency of aid'

Please, consider elaborating on Article 5(2) (k) by including the period (stemming from the case practice) when the evaluation of an independent expert is considered to be in line with market price. The period of less than 6 months should already be considered void, and evaluation of around a year is useless for establishing a market price.

In addition, what has induced changes in the Commission opinion (Commission communication concerning aid elements in land sales by public authorities): previously the Commission has explicitly justified that 'generally accepted benchmarks' do not reflect the market price and thus cannot be used.

- Article 39 'Investment aid for energy efficiency projects in buildings'

Recital 59 of Regulation 651/2014 establishes that '*Member States should have the possibility to support energy efficiency investments in buildings by granting aid in the form of direct grants to the building owners or tenants in line with the general provisions on energy efficiency measures but also in the form of loans and guarantees via financial intermediaries chosen under a transparent selection mechanism under the specific provisions for energy efficiency projects in buildings.*' Nevertheless Point 4 of Article 39 'Investment aid for energy efficiency projects in buildings' of Regulation 651/2014 foresees that '*The aid shall be granted in the form of an endowment, equity, a*

guarantee or loan to an energy efficiency fund or other financial intermediary, which shall fully pass it on to the final beneficiaries being the building owners or tenants.'

We would ask the Commission to align the terminology used in the Regulation 651/2014 since the aid to owners or tenants of a building can be provided in the form of grants. We would also ask to supplement Article 39 with further requirements regarding provision of grant, i.e. amount of aid and aid intensity.

- Article 54 'Aid schemes for audiovisual works'

Taking into account the information provided by the Commission representatives interpreting that Article 54 can also be applied to ad hoc cases (and not only to schemes), we would ask the Commission to state this interpretation also clearly in the text of the draft Regulation proposing amendments into the Regulation 651/2014.

- Article 21-24 'Aid for access to finance for SMEs'

Taking into account the information provided by the Commission representatives interpreting that Article 54 can be applied to ad hoc cases (and not only to schemes), we would ask the Commission to state this interpretation also clearly in the text of the draft Regulation proposing amendments into the Regulation 651/2014 with respect to other Articles that are supposedly meant to be applied to schemes, however in practice can also be applied to ad hoc cases.

- Article 55 'Aid for sport and multifunctional recreational infrastructures'

According to Article 55(9): '*For operating aid for sport infrastructure the eligible costs shall be the operating costs of the provision of services by the infrastructure. Those operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but exclude […]*'.

The meaning of 'operating aid for sports related infrastructure' needs to be explained in the recitals to give an answer to questions if aid to sports events could also be supported under this article as sport infrastructure related activity, including costs of organisation of the sport events and license payments for organisation of the international events/competitions in the Member State (operating aid).

In the meanwhile professional sportsman's training/preparatory/qualifying costs and participation fees for taking part in competitions should also be possible to be considered eligible under Article 55. We would ask the Commission to amend the respective Article clarifying this issue.

- Article 6 'Incentive effect'

Please, revise the wording in the Regulation 651/2014 in order to clarify the interpretation of the incentive effect. We consider planning costs to observe the incentive effect principle, even if they have occurred before the submission of the project.

- Article 9 "Publication and information"

Article 9.1 states that "*The Member State concerned shall ensure the publication on a comprehensive State aid website, at national or regional level of: [..]*"

Considering that Commission is developing an IT application (the Award Module) that will help Member States to fulfil their obligations to publish individual aid awards (known as "the transparency obligation") Latvian authorities would like to propose amendments in mentioned article and foresee that the Member State concerned shall ensure the necessary publication in the Award Module maintained by Commission (where the Commission ensures keeping the data and the search function).

- Article 12 "Monitoring"

Amended Article 12 states, "*In the case of schemes under which fiscal aid is granted automatically based on tax declarations of the beneficiaries, and where there is no ex ante control that all compatibility conditions are met for each beneficiary, Member States shall set up an appropriate control mechanism for a regular verification once per fiscal year, at least ex post and on a sample basis, that all compatibility conditions are met, and in order to draw the necessary conclusions.*"

Latvian authorities would like to see the wording unquestionable to ensure that the mentioned obligation (for Member States to set up an appropriate control mechanism for a regular verification once per fiscal year, at least ex post and on a sample basis, that all compatibility conditions are met must be ensured) concerns only the new schemes. If the mentioned obligation is to be applied also for existing schemes that would create additional unnecessary administrative burden.

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