



Position Paper

07 March 2017

State Aid Law for Ports and Infrastructure WITH REFERENCE TO COMMISSION REGULATION AMENDING REGULATION (EU) No 651/2014 AND REGULATION (EU) No 702/2014

EUROCHAMBRES is calling for revisions to the draft to ensure that the competitiveness of Member States is not unduly disadvantaged.

ISSUES AT STAKE

- The current draft of the General Block Exemption Regulation would interpret state aid law in a particular way that is quite far-reaching. **Unclear definitions and certain interpretations could unduly limit the public sector's scope of action.** Such a limitation would not be in the interests of most Member States.
- In various letters and interpretative documents (e.g., Notice on the Notion of State Aid and in particular the so-called Analytical Grid), the European Commission emphasizes that this is not the intention. However, **the interpretative documents are not legally binding**, as Commissioner Vestager confirmed herself. According to the Commission's Services, the intention is to maintain flexibility in order not to have to engage the College of Commissioners for every change.
- The interpretation of the Directorate-General for Competition (DG COMP) is particularly problematic in the area of dredging, which – due to geography and hydrography – some ports require more than others. DG COMP considers so-called maintenance dredging to be an operating aid, which state aid law generally prohibits. However, such maintenance dredging is indispensable to the functioning of a port. The full cost recovery from the private sector that the European Commission is implicitly seeking would lead to disproportionate price increases for ports that are affected by wind and tide change conditions that lead to an aggregation of a significant amount of harbor silt in the basins. **The recurring dredging of a port, including of individual basins, is required to maintain the competitiveness of the port as a whole.** Moreover, DG COMP's approach does not take into consideration a port's benefits not only to its own region, but to the wider national and European economy.
- **The method for calculating thresholds is not practicable.** The rolling three-year period for determining the costs to be applied could retroactively turn projects into projects that need to be notified to the Commission. This unnecessarily impedes the public sector's willingness to invest.

- **The European Union should refrain from deciding on the duration of concessions**, as the reasons why concession agreements in ports have different durations are to be found in the specifics of each port. Hence, deciding on an EU level on such country, and sometimes region-specific aspects, should not and, in the past, has been repeatedly rejected by Member States or European Parliament.

Recommendations and amendments

- **Revise definitions**
- **Make the rules in the interpretative aids legally binding for the European Commission**
- **Consider all dredging in ports as serving the general public**
Specifically, remove the final phrase of article 56b 2. b) as follows: for the construction, replacement or upgrade of access infrastructure within the area of the port. This includes dredging within the area of the port, ~~with the exception of maintenance dredging.~~
- **Limit the period for determining threshold values to one year**
Specifically, amend article 56 b 7: 7 as follows. Any aided investment started by the same beneficiary within a period of one year from the date of the start of works on another aided investment in the same maritime port shall be considered to be part of a single investment project.
- **Remove the clause on the limitation of concession agreements**
Specifically, remove article 56 b 8., 2nd sentence as follows: 8. Any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis. ~~The duration of any concession or other entrustment for the rental or operation of the aided port infrastructure to a third party shall not exceed the time that this third party could reasonably be expected to take to recoup the investments made in operating the works or services together with a return on invested capital taking into account the investments required to achieve the specific contractual objectives.~~

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