

Input for the development of criteria for the inclusion of inland ports in the General Block Exemption Regulation

In January 2014, EFIP adopted a position paper on state aid, which highlights the following elements:

- Inland ports serve a broad range of industries both in the port and in the surrounding region, which depend on the local existence of good transport infrastructure.
- Competition in the inland ports sector is very limited and primarily intermodal (i.e. against pure road transport).
- An analysis of existing state aid cases does not indicate the existence of any specific problem for inland ports. On the contrary, investment aid to inland ports has so far always been seen as compatible with the Treaties, usually on the basis of Art. 93 TFEU (Coordination of transport).
- This also reflects the EU's broader transport policy goals, such as emission reduction and modal shift.

In view of the considerable administrative burden linked to the obligation to notify, in particular where local and regional public entities are concerned, EFIP concluded that it would welcome if the Commission developed pragmatic criteria for the inclusion of inland ports infrastructure in the scope of the General Block Exemption Regulation. With this paper we aim to provide the European Commission with further, more substantial, input on this point.

Existing rules for local infrastructure

Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty contains a block exemption for local infrastructure (Art. 56) which, at present, explicitly excludes ports from its scope of application. Investments in local infrastructure are exempted from the obligation to notify, provided that the infrastructure is made available to interested users on an open, transparent and non-discriminatory basis. The exemption covers investment aid up to a threshold of EUR 10 million or projects with a total cost up to EUR 20 million.

EFIP believes that inland ports share the main characteristics of local infrastructure and that this would, in fact, be a suitable framework for the inclusion of infrastructure investments in inland ports in the General Block Exemption Regulation.

Inland ports often serve industries that are dependent on large flows of raw materials. Such industries cannot easily re-locate to other ports and the closure of their port would lead to very high additional costs for transport of these materials by rail or road that would call into question the financial viability of the company. This explains the importance of inland ports, including smaller ports and ports that are located in relative proximity to another port for the economy in their region.

Recital 75 of Regulation (EU) No 651/2014 explains that *“the availability of local infrastructures is an important prerequisite for development of business and consumer environment and for modernising and developing the industrial base in order to ensure the full functioning of the internal market.”..... “Such infrastructures, made available to interested parties on an open, transparent and non-discriminatory basis, enable the creation of an environment conducive to private investment and growth, thus contributing positively to objectives of common interest, and in particular to the Europe 2020 priorities and objectives, while the risks of distortions remain limited.”*

Port access and facilities for bulk and general cargo

Recital 75 clarifies that *“a number of measures taken by Member States with regard to local infrastructures do not constitute aid because they do not fulfil all the criteria of Article 107(1) of the Treaty, for example because the beneficiary does not carry out an economic activity, because there is no effect on trade between Member States, or because the measure consists of compensation for a service of general economic interest which fulfils all the criteria of the Altmark case-law. However, where the financing of such local infrastructures does constitute State aid within the meaning of Article 107(1) of the Treaty, such aid should be exempted from the notification requirement when only small amounts of aid are granted.”*

In line with this observation, EFIP believes that investments in inland port infrastructure that concern **general access to the port as well as bulk cargo or general cargo facilities** are locally important for the provision of transport options for the industries in a given region, but do not have the potential to affect intra-EU competition between inland ports. They **should therefore not be regarded as state aid,** provided the infrastructure is available to interested users on an open, transparent and non-discriminatory basis.

Container terminals

For container traffic, customers can switch ports more easily, which leads to increased competition in this area. Consequently, investments in container terminals may have the potential to affect competition. In order to be able to deal with the forecast increase in volumes, a number of existing inland ports will have to develop their infrastructure for combined transport. EFIP believes that in the case of such investments, which will most likely require state support, it makes sense **to assess the effect on existing infrastructure**. Some national provisions, such as the German aid scheme for combined transport (Foerderrichtlinie fuer Kombinierten Verkehr), already require an assessment of the impact of aid on existing infrastructure.

Planned projects in inland ports

In the framework of preparatory work for the TEN-T corridor fora in 2014, EFIP collected information on the infrastructure projects planned by inland ports in the coming years. The resulting project pipeline is of course not likely to be complete, but it offers a good overview of the type of investments that are likely to arise in inland ports, as well as the kind of sums usually involved. The following table summarises the relevant results.

Type of project	Total investment (min-max)	Number of projects
Projects concerning container terminals		
Projects concerning container terminals (or partly concerning container terminals)		26
Of which:	< EUR 10m	7
	EUR 10m - EUR 20m	7
	> EUR 20m	10
	No financial data	2
Projects concerning port access and facilities for bulk and general cargo		
Cargo handling facilities for bulk and general cargo	EUR 300 000 – EUR 2.9m	5
Rail infrastructure	EUR 800 000 - EUR 10m	9
Road infrastructure	EUR 2.5m - EUR 10m	5
Access by water	EUR 600 000 - EUR 13.7m (the latter for lifting of several bridges)	3
Repairs and modernisation of quay walls	EUR 300 000 – EUR 2.9m, except one project of EUR 41m	6
Enlargement of port area (sometimes by filling up existing port basins)	EUR 800 000 - EUR 8m	3
Flood protection	EUR 16m	1
Other		10
Total number of individual projects		68

It becomes evident from the table that the vast majority of projects in inland ports involve relatively modest sums. Of the 68 projects reported to EFIP, only 11 concern investments above EUR 20m. 23 projects concern investments above EUR 10m.

Including inland ports in the scope of Article 56 on local infrastructure would thus allow to significantly reduce the number of necessary notifications, whilst keeping control of those investments that could have an effect on competition.

High aid intensities

Investments in inland ports regularly require high aid intensities. This is reflected, for example, in the German investment scheme for combined transport (Foerderrichtlinie Kombiniertes Verkehr), which allows for state funding of 80% of the total investment in terminal infrastructure. This seems justified in view of the broader policy goals behind the scheme: The aim is to support investments in transshipment infrastructure in order to significantly reduce the overall cost of transshipment, which is a key factor in the cost of sustainable transport chains. The aid thus provides an important incentive

towards the use of more sustainable modes of transport. At EU level, this kind of argument is taken up in Article 93TFEU, which allows aid for the coordination of transport.

Clearly, the wish to cover a large number of investments, including investments with high aid intensities, in the GBER, needs to be balanced against the legitimate wish of the European Commission to ensure that tax payers' money is spent wisely. **We believe that the threshold contained in the GBER for local infrastructure would also be adequate for inland ports.** It allows smaller projects to receive aid, including with high intensity, up to an aid amount of EUR 10m, but equally requires any project with a total cost above EUR 20m to be notified, even if the aid amount involved is relatively small.

EFIP would therefore very much welcome if the European Commission could, in the framework of the GBER revision, broaden the scope of Article 56 on local infrastructure to include inland ports.

COMMISSION REGULATION (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty

SECTION 13

Aid for local infrastructures

Article 56

Investment aid for local infrastructures

1. Financing for the construction or upgrade of local infrastructures which concerns infrastructure that contribute at a local level to improving the business and consumer environment and modernising and developing the industrial base shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. This Article shall not apply to aid for infrastructures that is covered by other sections of Chapter III of this Regulation with the exception of Section 1 — Regional aid. This Article shall also not apply to airport infrastructure and port infrastructure.
3. The infrastructure shall be made available to interested users on an open, transparent and non-discriminatory basis. The price charged for the use or the sale of the infrastructure shall correspond to market price.
4. Any concession or other entrustment to a third party to operate the infrastructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.
5. The eligible costs shall be the investment costs in tangible and intangible assets.
6. The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.
7. Dedicated infrastructure shall not be exempted under this Article.

Article 4

Notification thresholds

1. This Regulation shall not apply to aid which exceeds the following thresholds:

(cc) for investment aid for local infrastructures: EUR 10 million or the total costs exceeding EUR 20 million for the same infrastructure.

Recital

(75) As emphasized by the conclusions of the European Council of the 17 June 2010 endorsing the Europe 2020 Strategy, efforts should seek to address the main bottlenecks constraining growth at EU level, including those related to the functioning of the internal market and infrastructure. The availability of local infrastructures is an important prerequisite for development of business and consumer environment and for modernising and developing the industrial base in order to ensure the full functioning of the internal market as referred to in the Council Recommendation on broad guidelines for economic policies of the Member States and of the Union, which form part of the Europe 2020 integrated guidelines. Such infrastructures, made available to interested parties on an open, transparent and non-discriminatory basis, enable the creation of an environment conducive to private investment and growth, thus contributing positively to objectives of common interest, and in particular to the Europe 2020 priorities and objectives, while the risks of distortions remain limited. A number of measures taken by Member States with regard to local infrastructures do not constitute aid because they do not fulfil all the criteria of Article 107(1) of the Treaty, for example because the beneficiary does not carry out an economic activity, because there is no effect on trade between Member States, or because the measure consists of compensation for a service of general economic interest which fulfils all the criteria of the Altmark case-law. However, where the financing of such local infrastructures does constitute State aid within the meaning of Article 107(1) of the Treaty, such aid should be exempted from the notification requirement when only small amounts of aid are granted.