



Extension of the General Block Exemption Regulation to Inland Ports

EFIP's contribution to the second public consultation round, 7 December 2016

EFIP welcomes the second proposal from the European Commission on the GBER as it provides the right legal guidelines and simplifies notification for inland ports

The response builds on the comments already shared by EFIP in its contribution to the first round of consultation on the GBER.

Before going into detail about further suggestions on the new GBER from the side of EFIP, we would like to share with you an important reference frame and common interpretation on the role and function of an inland port.

The nature of inland ports:

- Inland port authorities cannot be considered as private authorities under common law. According to the *"Fact finding survey on the governance and organization of inland ports"* (2016), they are for 88% of them owned by public entities (State, Region, Province, Municipality) and 12% of them by a mixed public-private ownership. The main goal of inland port authorities is the balance between public and private interests, not the maximization of the profit of the port authority. Consequently, their objective to secure public services of general interest override their ability to structure business plans to guarantee a return on investment.
- The inland port sector can be characterized by a more linear structure (along the waterways) where competition is very limited and primarily intermodal (i.e. against pure road transport). Therefore, inland waterway segments fit more into complementary network logic, rather than tangled competition.
- 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.

There is a common understanding among EFIP members about the added value of more clarification and a GBER-system that reflects the daily practice in inland ports. Below you will find our general concerns:

- EFIP asks the Commission to provide a long-term, stable and pragmatic legal environment for inland port authorities allowing them to develop with all parties involved (public authorities, private investors, etc.) a long-term strategy and thus limiting further legal uncertainties that might result from a case-by-case approach of the Commission.
- EFIP-members are in need of a system that brings clarity and limit the uncertainty for future investments that might result from a case-by-case approach

- Inland ports are important drivers of the local/regional economy, therefore there is a need to reduce the administrative burden and speed up project implementation and free up resources to focus on the enforcement of the more important state aid cases.
- In view of the considerable administrative burden for inland ports linked to the obligation to notify (in particular where local and regional entities are concerned) EFIP asks to reduce the procedures and timeframes.

EFIP welcomes the opportunity given to contribute to the second public consultation round and is formulating the following remarks and concerns:

1. EFIP believes that the definition of an inland port needs to be specified to its specific role (point 156, p.7, definitions for aid for ports)

EC text:

(156) 'Inland port' means a port other than a maritime port, for the reception of inland waterway vessels

EFIP suggests:

(156) 'Inland port' means a port other than a maritime port, ***managed by a designated port authority*** for the reception of inland waterway vessels.

Reasoning:

There is a need to define an inland port according to its specific function. Besides there is a need to make a clear distinction between infrastructure like quay walls which are under the responsibility of a port and those falling under the responsibility of waterway and infrastructure authorities with public tasks.

2. Considering all investments in a port as one single investment project is not the way to avoid artificially splitting up of aided projects (article 56c, 6)

EC text:

(Art 56c, 6) Any aided investment started by the same beneficiary within a period of three years from the date of start of works on another aided investment in the same inland port shall be considered to be part of a single investment project.

EFIP suggests:

(Art 56c, 6) Any aided investment started by the same beneficiary within a period of ***[two]*** years from the date of start of works on another aided investment in the same inland port shall be considered to be part of a single investment project ***if they are intrinsically linked to each other.***

Reasoning:

EFIP understands that the definition of a single investment aid (for inland ports) should comply with definitions in other sectors, like the Guidelines on regional state aid 2014-2020 (2013/C 209/01). EFIP agrees with the intention to prevent a project from being split into several sub-projects to escape the application of the special provisions embodied in the framework. In that respect, EFIP fully supports a provision specifying that the method of delimiting a port investment shall not be made only with the intention to remain underneath the investment aid and aid intensity thresholds of the GBER.

The complexity of port activities:

EFIP believes that the safeguard foreseen in Article 56c, paragraph 6 of the GBER proposal will lead to artificially bringing together aided investments in a port that are not connected and do not at all aim at realising one single investment project. Inland port authorities manage the entire port or different areas and it is a daily practice that they undertake several projects even at the same time serving different needs, markets and locations in the port. As an example, one inland port manages 32 different areas where the distance between the first and the last area is 60 km. Looking at the daily practice of inland ports and the applicability of this condition it is difficult to consider projects which are functionally and geographically spread as one.

3 years planning doesn't reflect the practice of inland ports:

Moreover by considering all investment aid for a given port over a 3 year period as "one single project", it will be very difficult to assess the aid intensities as foreseen in article 4. Most inland ports are public entities and depend heavily on (public) annual budget allocations and have to deal with instable investment windows depending on the political situation. Besides, most inland ports work with very small operators. EFIP fears that due to the annual investment instability of inland ports, especially taking into account a period of 3 years, this will put the final realization of crucial port infrastructure investments more at risk. EFIP suggests changing the reference to 3 years into a 2 years' clause.

Taken the above into account, EFIP believes the scope of a "single investment project" should be limited to projects that are intrinsically linked in an inseparable way from a functional, geographic standpoint and that serve the same aim. In addition, connected investments that are part of one project should not be artificially split. Projects that are subject to a single planning consent because e.g. they are subject to the same social cost-benefit analysis or part of the same impact assessment might be seen as belonging to "one single investment project".

Besides, EFIP believes that alternative fuel infrastructure and waste reception facilities serve environmental needs and should not be considered with other aided investments in the inland port.

The start of works:

For inland ports it is very difficult to forecast the "start of works" and to know in advance if the start of works of the second aided investment falls within the three years period. It is expected that inland ports will have to face a lot of uncertainty whether or not the aided investment will have to be notified or not and if the threshold have been surpassed or not. EFIP suggests defining what is exactly meant by the start of works as this can lead to many uncertainties for an inland port.

EFIP suggests:

'The start of works' mean: the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible.

3. **EFIP welcomes the proposal to specify categories of inland port infrastructure needed to adapt to the use of alternative fuels and stricter requirements on environmental performance.**

EFIP welcomes the proposal to insert definitions of “alternative fuel infrastructure” and “infrastructure for the collection of ship-generated waste and cargo residues”, since this will clarify the scope of the port infrastructure investments (the “eligible costs”) that can be exempted according to article 56c, paragraph 2), (b).

EC text:

(162) ‘alternative fuel infrastructure’ means port infrastructure allowing a port to receive vessels that use fuels such as electricity, hydrogen, biofuels (liquids), synthetic fuels, methane, including natural gas (CNG and LNG) and biomethane and liquefied petroleum gas (LPG) which serve, at least partly, as a substitute for fossil oil sources in the supply of energy to transport, contribute to its decarbonisation and enhance the environmental performance of the transport sector

EFIP suggests:

(162) ‘alternative fuel infrastructure’ means ***fixed, floating or mobile*** port infrastructure allowing a port ***to supply*** vessels with ***energy sources such*** as electricity, hydrogen, biofuels (liquids), synthetic fuels, methane, including natural gas (CNG and LNG) and biomethane and liquefied petroleum gas (LPG). **These energy sources** serve, at least partly, as a substitute ***for oil based sources*** in the supply of energy to transport, contribute to its decarbonisation and enhance the environmental performance of the transport sector;

Since “electricity” is mentioned it is preferable not to refer to “fuels” or “oil based fuels” but rather to “energy sources” and “oil based sources”.

4. **EFIP favors the modification of the simplified approach to small projects**

EFIP welcomes the Commission proposal to ease the assessment of the needed aid intensities in case of very small projects. In order to make it more clear, EFIP would like to propose some suggestions:

EC text:

(Art 56c, 9) For aid not exceeding EUR 2 million, the maximum amount of aid may be set at 80 % of eligible costs, alternatively to the method referred to in paragraphs 4 and 5.

EFIP suggests:

(Art 56c, 9) ***For investment projects with an eligible cost not exceeding 2 million EUR***, the maximum amount of aid maybe be set at 80% of eligible costs, alternatively to the method referred to in paragraphs 4 and 5.

5. **EFIP suggest a higher threshold and equal reference to inland ports as they are crucial nodes on the core network**

EC text:

(Art. 4, ff) For investment aid for inland ports: EUR [20] million per single investment project

EFIP suggests:

(Art. 4, ff) for investment aid for inland ports: EUR **30** million per single investment project **(or EUR 40 million per single investment project in an inland port 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*)**;

EC text:

(8) Investments included in the work plans of the Core Network Corridors set up by Regulation (EU) No 1315/2013 of the European Parliament and of the Council are projects of common interest with a particular strategic interest for the Union. Maritime ports that are part of those networks constitute the entry and exit points of goods being transported in and out of the Union. Investments aiming to improve the performance of those ports should benefit from a higher notification threshold.

EFIP suggests:

(8) Investments included in the work plans of the Core Network Corridors set up by Regulation (EU) No 1315/2013 of the European Parliament and of the Council are projects of common interest with a particular strategic interest for the Union. Maritime ports **and inland ports** that are part of those networks constitute the entry and exit points of goods being transported in and out of the Union. Investments aiming to improve the performance of those ports should benefit from a higher notification threshold.

EC text:

(Art 65C, 5) The maximum aid intensity shall not exceed 100% of the eligible costs.

EFIP suggests:

The maximum aid **amount for the investments defined in paragraph 2 (a and b)** shall not exceed:
(a) 100% of the eligible costs where eligible costs are up to EUR 30 million;
(b) 80% of the eligible costs where eligible costs are above EUR 30 million and up to EUR 50 million;

Reasoning:

The outcome of an internal survey on future investments in inland ports showed that the threshold although the total of received aided investment is not always clear yet, seems to be too low for a relative amount of inland ports. At least 2 inland ports have indicated that future investments will surpass the EUR 20 million threshold; some plan to invest in the range between EUR 40-60 million and the biggest investment is around EUR 90 million. EFIP would like to underline that it is possible that more inland ports although they have expressed not being able to provide data at this stage, would surpass the threshold of 20M investments in future. Especially, due to expected increase of the costs of infrastructure expenditures (internalization of costs, inflation, globalization, cost of congestion, sustainable and environment standards, etc.). In future, inland ports are also expected to invest more in alternative fuel infrastructure (towards 2025), which will lead to higher total investments. EFIP therefore suggests increasing the threshold to EUR 30 million.

EFIP believes that when considering the threshold two conditions should be met and taken into consideration in parallel:

1. That all investments in the given period should be considered a single investment only if projects are intrinsically linked in an inseparable way and that serve the same aim.
2. That ports/ areas are administrated by the same port.

Besides inland ports (like maritime ports), located on the core network have similar challenges to face and strongly support in terms of logistic services and traffic handled the development of a sustainable multimodal transport network and stimulate the development of the entire comprehensive network. Both maritime ports and inland ports are crucial nodes of the core network (see art. 41 of Regulation (EU) No 1315/2013 of the European Parliament and of the Council). Also looking at the share and amount of freight handled, the traffic flows in (core) inland ports, the difference in thresholds between maritime ports (EUR 120 Million) and inland ports (EUR 20 Million) seems unbalanced.

Inland ports play a crucial role in the enhancement of efficient multimodal transport and services should not be neglected. Therefore, EFIP suggests a transparent and equal approach towards inland ports in this respect as this would also support a balanced realization of the TEN-T networks.

6. Overall suggestions relating to the threshold

Suggestion 1: increasing the threshold to EUR 30 million and for core ports to benefit from a higher threshold

Suggestion 2: changing the 3 years period into 2 years