



Targeted review of the General Block Exemption Regulation: Extension to national funds combined with certain Union programmes

Contribution of the European Sea Ports Organisation (ESPO) to the public consultation

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Introduction

The European Sea Ports Organisation (ESPO) welcomes the opportunity to participate in the public consultation on the amendment of Regulation (EU) No 651/2014 extending it to national funds combined with certain EU programmes.

For years already, the European Sea Ports Organisation (ESPO) has sought greater clarity as regards the application of relevant Treaty rules on the public funding of ports.

In that respect and at a general level, ESPO repeats the importance to:

1. provide a fair, pragmatic, predictable and stable environment for port authorities allowing them to develop together with all parties involved (public authorities, private investors, etc..) a long-term strategy for port investments and thus limiting the legal uncertainty that might result from a case-by-case approach of the Commission;
2. achieve a level playing field for port investments and operations between ports and transport modes in the European Union but also with third country ports which are in direct competition with EU ports;
3. reduce the administrative burden and shorten the timeframes;
4. take a consistent (coherent) approach in the assessment of EU funding and national/regional funding of transport infrastructure.

ESPO believes that extending the GBER to national funds combined with Union programmes could contribute to these aims by:

- extending the GBER to national funds granted to projects under the Connecting Europe Facility (CEF)
- reducing the administrative burden on port development and speeding up project implementation;

In general, European ports **welcome the European Commission's initiative** of a targeted extension of the GBER with the objective to facilitate the combination of national funding and funding from the EU budget by enabling Member States to implement certain State aid measures without prior notification.

- **While ESPO welcomes the proposal to extend the application of the GBER, under a limited set of conditions, to national funds combined with InvestEU, Horizon Europe, and European Territorial Cooperation (ETC) projects, European ports believe that national funds combined with the Connecting Europe Facility (CEF) should be equally included in the extension.**

1. ESPO regrets that the extension does not cover national funds combined with the Connecting Europe Facility (CEF)

ESPO is a **strong supporter of Europe's Transport Infrastructure Policy framework** as set out in the TEN-T Regulation (EU) No 1315/2013 and the CEF Regulation (EU) No 1316/2013, defining the EU transport network priorities. TEN-T policy is instrumental in strengthening the social, economic and territorial cohesion of the Union and is facilitating the creation of a single European transport area.

INEA, the European Commission's agency, is centrally managing the funds under the Connecting Europe Facility and external experts are involved in the selection process.

The selection procedure of a TEN-T project application for CEF funding is currently a separate procedure from the process of state aid notification and clearance. State aid rules apply to the amount of funding which the Member State plans to provide.

ESPO notes that the **Council Regulation (EU) No 2018/1911** amending the Enabling Regulation, enables the Commission to declare that, under certain conditions, aid granted by Member States, where such aid is channelled through or supported by such centrally-managed financial instruments or budgetary guarantees, is compatible with the internal market and is not subject to the notification requirement.

ESPO believes that this provision should be applied to the Connecting Europe Facility, as it is a centrally-managed financial instrument and projects are selected at Union level following transnational calls, as well as evaluations are conducted by independent experts. In order to be selected, projects have to respond to the specific call requirements and to meet objectives of common European interest.

However, currently TEN-T projects are in most cases subject to two procedures on Union level. These separate procedures can cause unnecessary delays and can jeopardise the timely project implementation.

The impact assessment in support of the **Commission’s proposal on streamlining measures for advancing the realisation of the trans-European transport network¹** identified uncertainties related to State aid control procedures as one of the main perceived problem drivers for efficient permit granting procedures.

- **European ports believe that the financial contributions made by Member States as co-funding to an approved CEF project in a core or comprehensive port, should be thus considered compatible with the internal market and exempted from the notification requirement.**
- **The conditions for the exemption should be set in such a way, that they do not lead to distortions of competition that would undermine a level playing field in the internal market.**

2. In addition and with regard to the general application of the GBER to ports, ESPO would like to raise the following concerns:

Non-economic infrastructure

ESPO recognizes that the latest *“Infrastructure analytical grid for port infrastructure”* seeks to clarify the instances in which no state aid exists. ESPO believes however that the whole question of compatibility of state aid to ports would gain in clarity if reference would be made in the GBER to these categories of public funding that are to be considered as non-economic and do not have to be considered as state aid.

ESPO would favour a distinction between infrastructure that is to be considered “economic” versus infrastructure that is “non-economic”. A distinction made on whether the infrastructure is located inside or outside the port area (as in the analytical grid) is not

¹ COM(2018) 277

appropriate since in many cases the “port area” is defined entirely arbitrary (e.g. as a result of historical geography).

- **ESPO and its members regret that no reference is made in the GBER proposal to publicly funded port infrastructure that is not to be considered state aid (outside the scope of Article 107 Treaty)**

ESPO believes that the following categories of public funding do not constitute state aid:

- *Public funding for access and defense infrastructure to the port, both from the maritime and the landside, does not constitute state aid, insofar this public funding:*
 - *is not selective (or not “dedicated”) and*
 - *potentially benefits (through the port) a whole region, hinterland and/or corridor and/or potentially links those with the rest of the world.*
- *Infrastructure that is strictly needed for and linked to the operation of Services of General Non-Economic Interest.*

Rail infrastructure

In addition, European ports believe that the “availability free of charge” of access infrastructure, to which reference is made in the analytical grid, cannot be used as an element for assessing the non-economic nature of access infrastructure in the case of railways. In accordance with EU railway legislation, railway infrastructure is due to be subject to railway infrastructure charges, whether it is economic or not.

ESPO therefore believes the rail infrastructure should not be determined as “economic” or “non-economic”, based on the applied charges.
