

Review of the General Block Exemption Regulation with regard to ports and airports; draft amendment to regulation 651/2014

DVF contribution to the second consultation of the European Commission, Directorate-General for Competition

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Deutsches Verkehrsforum (DVF)

The German Transport Forum is the only multi-modal transport industry association in Europe. DVF promotes the improvement of mobility as a basic prerequisite for growth, employment, and sustainability. DVF is supported by 170 member companies, representing the entire value chain – among them major ports and airports.

General Remarks

DVF welcomes the Commission's intention to clarify the application of state aid regulations in the ports and airports sector and to lower the administrative burden of notification requirements.

However, we believe the draft still needs significant improvement at important points. Otherwise the GBER revision might have negative, far-reaching and unclear consequences for public investments in port-related transport infrastructures, especially with regard to seaports.

Questions we have relate to the definition of ports and ports infrastructure, the delineation of access infrastructure, the treatment of dragging, and the necessity to include provisions on concessions, rental and lease contracts.

The newly presented analytical grid for port infrastructure is helpful, but it leaves questions open, too. And most important: The analytical grid is not legally binding. The GBER itself has to provide for unambiguous definitions.

Necessary changes

Definitions

The definition of a "port" is fundamental to the GBER review. However, this basic term is not sufficiently clear in the draft. The draft definition names many relevant port features, but it does

not say which criterion exactly defines the outer boundary of a port. This leaves the geographic delineation of what is considered the port too much open to interpretation.

The definition of “ports infrastructure” has to be more restrictive. In particular, the inclusion of the general term “transport facilities” (“Verkehrsinfrastruktur”) is too extensive. Public roads, waterways and railways in the ports area should be excluded. The public provision of these infrastructures and their maintenance is not state aid.

We maintain the position that “access infrastructure” should be kept completely out of the GBER. Public provision of these infrastructures is not state aid.

Concessions, rental and lease contracts

We maintain the position that the GBER should not include provisions on concessions, rental contracts, lease contracts or on the duration of such entitlements.

The possibility to regulate ports concessions, rental or lease contracts has been discussed in the legislative procedure of the EU concessions directive. The result was a clear distinction between concessions and rental/lease contracts. For concessions the directive contains comprehensive rules, while simple rental and lease contracts have been intentionally left out.

The limitation of the duration of contracts between port authorities and port operators was a focal point of debate on different “Port Packages”. After many years of discussion the European Commission came to the conclusion that port operators contracts should not be subject to a mandatory time limitation – at least not as a general rule from EU law.

Inter-port competition and efficiency of port services in the EU is high. A mandatory limitation of the duration of contracts could make European ports unattractive for investments and endanger jobs. Moreover, the contractual relationship between (public) port management and (private) operators varies between member states. European regulations have to pay attention to these differences. They should not endanger well-functioning ports.

Dredging

Dredging is crucial to ports. It serves all port users and it is a public duty. The consequence should be, as a principle, not to consider the funding of dredging state aid.

Apart from this, the GBER draft revision is contradictory with regard to dredging. According to the draft, costs for dredging are eligible, with the exception of maintenance dredging. The consequence would be the following: The costs of exceptional and expensive dredging projects, e.g. to increase the capacity of waterways, would be eligible, while costs of regular and less expensive maintenance dredging would not be eligible. But maintenance dredging does not change the competitive position of a port. Therefore, it is difficult to understand why maintenance should not fall under the notification exemption at all.

Thresholds / aggregation of investments

With regard to maritime port’s investments we believe that the eligible costs need a final consideration, depending on the clarification of the basic definitions named above.

With regard to inland port’s investments we propose to increase the notification thresholds in article 4 paragraph 1 (ff) to EUR 50 million.

DVF agrees that circumvention of state aid control by artificially splitting up bigger investment projects should be prevented.

However, such a safety mechanism can lead to wrong results if the regulation treats all investments of one beneficiary within a period of three years automatically as part of the same single investment project. The clause can generate considerable legal uncertainty and contradict the intention of the amendment. A possible clarification would be to require that the relevant investments are part of one single planning process.
