



REGULATION OF INVESTMENT AID FOR EUROPEAN AIRPORTS - COULD IT BE APPLIED TO SEAPORTS?

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1. Introduction

- EU seaports → development of EU trade, 74% external and 37% internal trade
- overall cargo volume in EU ports, increase around 50% by 2030 (container traffic > 85%) → transparent rules for public financing.
- paper subject: investment aid for seaport infrastructure and superstructure → no specific sectorial rules
- aviation sector 2014 Aviation Guidelines
- in 2016 Proposal for the inclusion of invest aid for seaports and airports in GBER



2. Seaport and airport infrastructure- similarities and differences

- historically seaport and airport infrastructure → managed and financed by public sector
- similarity-limited capacity → limited access by vessels or aircrafts
- EC and CJEU-investments in transport infrastructures, do not fall within the scope of Article 107 of the TFEU, if free and equal access to them by all the users is quarantined.
- 1994 Aviation Guidelines *the construction and enlargement of transport infrastructures projects represents a general measure of economic policy which cannot be controlled by the Commission under the TFEU rules on State aids* .



- Ports Package I, 2001- investments in the infrastructure which is *de jure and de facto* open to all users, are not considered a State aid because they are not selective→ public (general) infrastructure and user specific (terminal) infrastructure
- operation of seaports (the provision of port infrastructure to the services providers and users for a charge) and airports infrastructure-considered as commercial activity
- *Leipzig-Halle airport* Case, 2011, General Court EU clarified that the operation of an airport is an economic activity, of which the construction of airport infrastructure is an inseparable part=Case *Aéroports de Paris*, 2000-application of State aid rules on financing infrastructure could not be excluded



- In **Ventspils Case C 39/2009 (Latvia)** the Commission found that if *dredging works and access railroads are directly related to the development of terminals i.e. infrastructure that has commercial character, consequently public financing of dredging confers an economic advantage to the port authority and therefore it may involve State aid.*
- Different approach-**Case N 520/2003 Flemish ports-** as regards nautical access and sea locks, Commission considered- project *did not give the port authorities a commercial advantage, and the financial contribution was not seen as State aid.*



- main difference → ports are more heterogeneous- often not comparable with each other-difficult to set uniform rules for investment aids in ports, especially as regards ceilings of permissible aid intensities.



3. The 2014 Aviation Guidelines rules on investment aid to airports



- 2014 Aviation Guidelines- cumulative conditions for compatibility of aid with the Internal Market (2012 Communication on State Aid Modernisation) :
- contribution to a well-defined objective of common interest;
- need for State intervention;
- appropriateness of the aid measure;
- incentive effect ;
- proportionality of the aid ;
- avoidance of undue negative effects on competition and trade between Member States;
- transparency of aid.



- **Proportionality of aid**

- 2014 Aviation Guidelines determined ceilings of permissible aid intensity, which depend on the size of the airport as measured by the number of passengers a year:

- *airports with a passenger volume below 1 million per annum, it is up to 75% of eligible costs;*

- *airports with a passenger volume of 1-3 million per annum, it is up to 50% of eligible costs;*

- *airports with 3-5 million passengers per year, it may not exceed 25% of eligible costs;*

- *investment projects at the airports above the 5 million passengers threshold cannot involve State aid.→ Exceptions, provide flexibility.*

- airports comparable- airports specialised in freight transport-not sufficient experience.

4. Current legal framework on investment aid to seaports

- no specific sectorial rules → legal basis, Article 107 of the TFEU and case-law of the European Courts and Commission.
- exemptions prescribed by the rules of Article 107 paragraphs 2 and 3 a) and c) –larger discretionary powers to the Commission-used more often.
- 107 3 a) “to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation”

- 107 3 c) “to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”.
- Commission opinion changes over time- -activities or facilities which previously were not consider as commercial regarded as commercial- Flemish ports case and Ventspils case → issue of legal certainty.



5. Proposal for the inclusion of investment aid for seaports in the GBER

- GBER 654/2014 - Commission declares categories of State aid compatible with the TFEU, exempts them from the requirement of prior notification and Commission approval.
- material scope, eligible costs are cost of the investments:
- (a) for the construction or upgrade of maritime port infrastructures and superstructures, with the exception of mobile equipment; and
- (b) for the construction or upgrade of access infrastructure, including dredging and excluding maintenance dredging, dedicated to commercially exploited maritime port infrastructure.
- **Excluded:** non-transport related activities, industrial production facilities, offices and shops.



- **Port infrastructure** generate a direct income for the managing body - berths, quay walls, jetties and floating pontoon ramps, internal basins, backfills and land reclamation, and transport facilities within the port area;
- **Port superstructure** means surface arrangements, buildings as well as mobile equipment (e.g. cranes) and fixed equipment that directly relate to the transport function of the port;
- **Access infrastructure** infrastructure necessary to ensure the access and entry to the maritime or inland port, in particular, access roads, access rail tracks, breakwaters, access channels, locks;
- **Maintenance dredging** means dredging routinely done in order to keep the waterway accessible.



- The maximum aid intensity (depends on the size of the investment) shall not exceed:
 - (a) if eligible costs are up to € 20 million: 100% of the eligible costs;
 - (b) if eligible costs are above € 20 million and up to EUR 50 million: 80% of the eligible costs;
 - (c) if eligible costs are above € 50 million and up to EUR 100 million: 50% of the eligible costs;
 - (d) if eligible costs are up to € 120 million for the maritime ports included in the core network corridor from Regulation 1315/2013, 50% of the eligible costs.



6. Conclusion

- seaport and airport infrastructure- many similarities
- differences- ports not comparable→ handling different kinds of cargo, serving different hinterlands, have different ownership, management and administration models →difficult to set uniform rules for investment aids for seaports
- determination of maximum permissible amount of investment aid for seaport, in relation with size of the maritime port (as measured by cargo volume number of passengers or number of berthing contracts)-not applicable in practice-size of investment criterion





Grazie per l'attenzione!

