



## European Commission - Competition

### Information

### Public consultations

### Targeted review of the General Block Exemption Regulation (State aid): extension to ports and airports (2nd consultation)

#### Policy field

State aid

#### Target group

All citizens and organisations are welcome to contribute to this consultation.

#### Consultation period

From **13.10.2016** until **08.12.2016**

#### Objective of the consultation

The Commission's **State aid Modernisation (SAM)** initiative, launched in 2012 and continued since then, aims to boost public support measures that help create growth and jobs whilst focusing State aid control on those measures which have the biggest impact on the internal market.

The **General block exemption Regulation (GBER)** adopted on 17 June 2014 is a key element in the SAM reform. (Other elements include the *de minimis* Regulation, the *Notice on the Notion of State aid*, and two recent packages of decisions confirming that many local support measures do not qualify as State aid of *April 2015* and *September 2016*).

The GBER allows Member States to implement a wide range of public support measures without prior notification to the Commission, in areas such as research and development, environmental protection or support to SMEs. This reduces the administrative burden for public authorities and speeds up delivery of public support, including support granted via EU structural funds.

As a result, 90% of all State aid measures (with a combined annual expenditure of over €33 billion in 2015) are now implemented by Member States under the GBER. The total number of State aid measures notified by Member States for prior approval by the Commission under State aid rules has dropped by two thirds since its entry into force (from 578 in 2013 to 332 in 2014 and 192 in 2015). This allows the Commission to concentrate its State aid investigations on big cases that have the most distortive impact on the internal market.

Building on this success, **the Commission is proposing to further expand the GBER to cover investments in ports and airports.** The proposal is part of the Regulatory Fitness and Performance of EU Legislation (**REFIT**) agenda. It aims at facilitating and providing legal certainty for investments in port and airport infrastructure, in line with the Commission's objective to stimulate investment in order to boost growth and job creation.

The proposed new provisions will exempt from prior Commission approval investment in ports (below €100 million) and investment in small regional airports (below 3 million passengers per year). This way, public funding which normally does not pose problems for the internal market can proceed without delay. A particular focus of the new exemptions lies on very small investment in ports (below €5 million for seaports and €2 million for inland ports) and on support to very small airports (under 150,000 passengers per year), for which additional simplifications are proposed.

In addition, the Commission wants to make it easier for public authorities to compensate companies for the additional costs they face operating in the EU's outermost regions. This way support measures can take better account of the challenges and specificities of these companies.

Overall, the scope for Member States to give State aid without prior authorisation from the Commission has greatly expanded in recent

As required by the legal basis of the GBER (Council Regulation (EU) 2015/1588 of 13 July 2015), the Commission will carry out two public consultations on drafts of the Regulation and will consult Member States in Advisory Committee meetings on both drafts.

This is the second public consultation. The first public consultation took place from 07.03.2016 to 30.05.2016. The consultation documents and replies of the first public consultation are available at:  
[http://ec.europa.eu/competition/consultations/2016\\_gber\\_review/index\\_en.html](http://ec.europa.eu/competition/consultations/2016_gber_review/index_en.html).

We welcome contributions from citizens, organisations and public authorities.

- If you are answering this consultation as a **citizen**, please click [here](#) to submit your contribution.
- If you are answering this consultation on behalf of an **organisation**, please click [here](#) to submit your contribution.
- If you are answering this consultation on behalf of a **public authority**, please click [here](#) to submit your contribution.

Received contributions will be published on this webpage. **Only submissions that contain the word "CONFIDENTIAL" (in English, in capital letters) in the subject line of the email can be treated as such and not published.** In that case please also provide a non-confidential version of your reply. It is important to read the privacy statement attached to this consultation for information on how your personal data and contribution will be dealt with.

Please note that we cannot guarantee to take account of replies received after the deadline.  
We would appreciate receiving documents in an electronic format, preferably in English, French or German.

## View the consultation document

- Draft amending Regulation [bg](#) [cs](#) [da](#) [de](#) [el](#) [en](#) [es](#) [et](#) [fi](#) [fr](#) [hr](#) [hu](#) [it](#) [lt](#) [lv](#) [mt](#) [nl](#) [pl](#) [pt](#) [ro](#) [sk](#) [sl](#) [sv](#) 

## Reference documents and other, related consultations

[Roadmap](#) 

[First consultation](#)

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EUROPEAN  
COMMISSION

Brussels, XXX  
[...] (2016) XXX draft

COMMISSION REGULATION (EU) .../...

of XXX

**amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) No 702/2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union**

**Draft**

(Text with EEA relevance)

COMMISSION REGULATION (EU) .../...

of **XXX**

**amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) No 702/2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union**

**Draft**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid<sup>1</sup>, and in particular Article 1(1)(a) and (b) thereof,

After consulting the Advisory Committee on State aid,

Whereas:

- (1) Commission Regulation (EU) No 651/2014<sup>2</sup> determines certain categories of aid that are declared compatible with the internal market and exempted from the requirement that they must be notified to the Commission before they are granted. Regulation (EU) No 651/2014 announced that the Commission intended to review the scope of that regulation with a view to including other categories of aid, and in particular aid for port and airport infrastructure, once sufficient case experience would have been acquired.
- (2) In the light of the experience acquired by the Commission and in order to simplify and clarify the State aid rules, to reduce the administrative burden and to allow the Commission to focus on the potentially most distortive cases, **aid for port and airport infrastructure now should be included in the scope of Regulation (EU) No 651/2014.**
- (3) **Investment aid to regional airports with an average annual passenger traffic volume of up to three million passengers can improve both the accessibility of certain regions and local development,** depending on the specificities of each airport. This supports the priorities of the Europe 2020 strategy contributing to further economic growth and objectives of common EU interest. **The experience acquired** following the application of the Guidelines on State aid to airports and airlines<sup>3</sup> **reveals that investment aid to regional airports does not give rise to undue distortion of trade and competition,**

<sup>1</sup> OJ L 248, 24.9.2015, p. 1.

<sup>2</sup> Commission Regulation 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 (OJ L 187, 26.6.2014, p. 1).

<sup>3</sup> OJ C 99, 4.4.2014, p. 3.

provided certain conditions are met. It should therefore be covered by the block exemption in Regulation (EU) No 651/2014, provided certain conditions are fulfilled. It is not appropriate to establish a notification threshold in terms of the amount of aid, since the competitive impact of an aid measure depends mainly on the size of the airport and not on the size of the investment.

- (4) The conditions for the exemption of aid from the notification requirement should aim at limiting distortions of competition that would undermine a level playing field in the internal market, in particular by ensuring the proportionality of the aid amount. In order to be proportionate, the aid should fulfil two conditions. The aid intensity should not exceed a maximum permissible aid intensity, which varies according to the size of the airport. In addition, the aid amount should not go beyond the funding gap of the investment. For very small airports of up to 150 000 passengers per annum, the aid should only be required to fulfil one of those conditions. The compatibility conditions should ensure open and non-discriminatory access to the infrastructure. The exemption should not apply to aid granted to airports located in the vicinity of an existing airport from which scheduled air services are operated, because aid to such airports entails a higher risk of distortion of competition and should therefore be notified to the Commission, with the exception of aid granted to very small airports (up to 150 000 passengers per annum), which is unlikely to result in significant distortion of competition.
- (5) Maritime ports are of strategic importance for achieving the smooth functioning of the internal market and the strengthening of economic, social and territorial cohesion, as set out, inter alia, in the Europe 2020 Strategy and in the Commission White Paper "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system"<sup>4</sup>. As highlighted in the Communication "Ports: an engine for growth"<sup>5</sup>, the effective operation of ports in all Union maritime regions requires efficient public and private investment. Investments are necessary, in particular, for the adaptation of access infrastructure to ports and of port infrastructure to the increased size and complexity of the fleet, to the use of alternative fuel infrastructure and to stricter requirements on environmental performance. The lack of high quality port infrastructure results in congestion and extra costs for shippers, transport operators and consumers.
- (6) The development of inland ports and their integration into multi-modal transport is a major objective of Union transport policy. Union legislation explicitly aims at reinforcing transport intermodality and the shift towards more environmentally-friendly modes of transport such as rail and sea/inland waterway transport.
- (7) Conditions for exempting aid to ports should aim at limiting competition distortions that would undermine a level playing field in the internal market, in particular by ensuring the proportionality of the aid amount. In order to be proportionate, the aid should not exceed the maximum permissible aid intensity, which for maritime ports varies according to the size of the investment project. The aid amount should not go beyond the difference between the eligible costs and the operating profit of the investment, except for very small aid amounts, for which a simplified approach is appropriate in order to reduce administrative burden. Open and non-discriminatory access to the infrastructure should also be ensured.

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<sup>4</sup> COM(2011)144.

<sup>5</sup> COM(2013)295.

- (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<sup>6</sup> 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. Inland ports that are part of those networks are key factors enabling the multimodality of the network. Investments aiming to improve the performance of those ports should benefit from a higher notification threshold.
- (9) In the light of the experience acquired following the application of Regulation (EU) No 651/2014 and Regulation (EU) No 702/2014, it is also appropriate to adapt certain provisions of those Regulations.
- (10) In particular, as regards regional operating aid schemes for outermost regions, the application of different rules for the compensation of additional transport costs and of other additional costs has proven difficult in practice and not appropriate to address the structural handicaps referred to in Article 349 of the Treaty, remoteness and insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, and the provisions should therefore be replaced by a method that applies to all additional costs.
- (11) In view of the limited negative effects on competition of aid for culture and heritage conservation, the notification thresholds for aid in those areas should be increased.
- (12) Regulation (EU) No 651/2014 and Regulation (EU) No 702/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

**Regulation (EU) No 651/2014 is amended as follows:**

- (1) Article 1 is amended as follows:
  - (a) paragraph 1 is amended as follows:
    - (i) points (k) and (l) are replaced by the following:  
'(k) aid for sport and multifunctional recreational infrastructure;  
(l) aid for local infrastructures;'
    - (ii) the following points (m) and (n) are added:  
'(m) aid for regional airports; and  
(n) aid for ports.'

(b) in paragraph 3, the first subparagraph is replaced by the following:

'This Regulation shall not apply to:

- (a) aid granted in the fishery and aquaculture sector, as covered by Regulation (EU) No 1379/2013 of the European Parliament and of the Council\* with the exception of training aid, aid for SMEs' access to finance, aid in the field of research and development, innovation aid

<sup>6</sup> Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

for SMEs, aid for disadvantaged workers and workers with disabilities and regional operating aid schemes in outermost regions and sparsely populated areas;

(b) aid granted in the primary agricultural production sector, with the exception of regional operating aid, aid for consultancy in favour of SMEs, risk finance aid, aid for research and development, innovation aid for SMEs, environmental aid, training aid and aid for disadvantaged workers and workers with disabilities;

(c) aid, other than regional operating aid, granted in the sector of processing and marketing of agricultural products, in the following cases:

(i) where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or

(ii) where the aid is conditional on being partly or entirely passed on to primary producers;

(d) aid to facilitate the closure of uncompetitive coal mines, as covered by Council Decision No 2010/787\*\* ,

(e) the categories of regional aid excluded in Article 13.

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\* Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1).

\*\* Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ L 336, 21.12.2010, p. 24).

(c) paragraph 4 is amended as follows:

– (i) point (a) is replaced by the following:

'(a) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by the same Member State illegal and incompatible with the internal market, with the exception of aid schemes to make good the damage caused by certain natural disasters;'

– (ii) point (c) is replaced by the following:

'(c) aid to undertakings in difficulty, with the exception of aid schemes to make good the damage caused by certain natural disasters and regional operating aid schemes, provided those schemes do not treat undertakings in difficulty more favourably than other undertakings.'

(2) Article 2 is amended as follows:

(a) point 39 is replaced by the following:

'(39) 'operating profit' means the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude, for the purpose of this Regulation, depreciation charges and the costs of financing if these have been covered by investment aid. Discounting revenues and operating costs using an appropriate discount rate allows that a reasonable profit can be made.'

(b) point 42 is replaced by the following:

'(42) 'regional operating aid' means aid to reduce an undertaking's current expenditure. This includes cost categories such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but excludes depreciation charges and the costs of financing if these have been included in the eligible costs when granting investment aid;'

(c) point 48 is replaced by the following:

'(48) 'sparsely populated areas' means NUTS 2 regions with less than 8 inhabitants per km<sup>2</sup> or NUTS 3 regions with less than 12.5 inhabitants per km<sup>2</sup>;

(d) the following point 48a is inserted:

'(48a) 'very sparsely populated areas' means NUTS 2 regions with less than 8 inhabitants per km<sup>2</sup>;

(e) point 55 is replaced by the following:

'(55) 'areas eligible for operating aid' means an outermost region referred to in Article 349 of the Treaty or a sparsely populated area, or a very sparsely populated area.'

(f) the following point 61a is inserted:

'(61a) 'Closure of the same or similar activity' means full closures and also partial closures resulting in substantial job losses. For the purpose of this provision substantial job losses are defined as losses of at least [100] jobs in that activity in an establishment or as a job reduction in that activity in an establishment of at least 50% of the workforce;'

(g) after point 143 the following points are added:

#### **'Definitions for Aid for regional airports'**

(144) 'airport infrastructure' means infrastructure and equipment for the provision of airport services by the airport to airlines and the various service providers, including runways, terminals, aprons, taxiways, centralised ground handling infrastructure and any other facilities that directly support the airport services, excluding infrastructure and equipment which is primarily necessary for pursuing non-aeronautical activities;

(145) 'airline' means any airline with a valid operating licence issued by a Member State or a Member of the Common European Aviation Area pursuant to Regulation (EC) No 1008/2008 of the European Parliament and of the Council\*;

(146) 'airport' means an entity or group of entities performing the economic activity of providing airport services to airlines;

(147) 'airport services' means services provided to airlines by an airport or any of its subsidiaries, to ensure the handling of aircraft, from landing to take-off, and of passengers and freight, so as to enable airlines to provide air transport services, including the provision of ground handling services and the provision of centralised ground handling infrastructure;

(148) 'average annual passenger traffic' means a figure determined on the basis of the inbound and outbound passenger traffic during the two financial years preceding that in which the aid is granted;

(149) 'centralised ground handling infrastructure' means infrastructure which is normally operated by the airport manager and put at the disposal of the various providers of ground handling services active at the airport in exchange for remuneration, excluding equipment owned or operated by the providers of ground handling services;

(150) 'high-speed train' means a train capable of reaching speeds of over 200 km/h

(151) 'ground handling services' means services provided to airport users at airports as described in the Annex to Council Directive 96/67/EC\*\*;

(152) 'non-aeronautical activities' means commercial services to airlines or other users of the airport, including ancillary services to passengers, freight forwarders or other service providers, renting out of offices and shops, car parking and hotels;

(153) 'regional airport' means an airport with average annual passenger traffic of up to 3 million passengers;

#### **Definitions for Aid for ports**

(154) 'port' means an area of land and water made up of such infrastructure and equipment, so as to permit the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods and the embarkation and disembarkation of passengers, crew and other persons and any other infrastructure necessary for transport operators within the port area;

(155) 'maritime port' means a port for, principally, the reception of sea-going vessels;

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

(157) 'port infrastructure' means infrastructure and facilities for the provision of transport related port services, including berths used for the mooring of ships, quay walls, jetties and floating pontoon ramps in tidal areas, internal basins, backfills and land reclamation, alternative fuel infrastructure, infrastructure for the collection of ship-generated waste and cargo residues and transport facilities within the port area;

(158) 'port superstructure' means surface arrangements, buildings as well as mobile equipment, including cranes, and fixed equipment within the port area that directly relate to the transport function of the port;

(159) 'access infrastructure' means any type of infrastructure necessary to ensure the access and entry from land or sea and river by users to the maritime or inland port, in particular access roads, access rail tracks and access channels and locks;

(160) 'dredging' means the removal of sand, sediment or other substances from the bottom of the waterway access to a port, or within a port area, in order to allow vessels to have access to the port;

(161) 'maintenance dredging' means dredging routinely done in order to keep the access waterways or port area accessible;

(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;

(163) 'vessel' means a floating marine structure, whether self-propelled or not, with one or more surface displacement hulls;

(164) 'sea-going vessel' means vessels other than those which navigate exclusively in inland waters or in waters within, or closely adjacent to, sheltered waters;

(165) 'inland water vessels' means vessels intended solely or mainly for navigation on inland waterways;

